
(2010) 05 AHC CK 0026

In the Allahabad High Court

Case No : C.M.W.P. No's. 28487 and 30907 of 2010

Navneet Kumar and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 2

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117(1)

Citation : (2010) 5 AWC 5205

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Alok Kumar Yadav, for the Appellant; Ravindra Singh, S.P. Kesarwani and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—The Petitioners in both the writ petitions claim themselves to be working in the Establishment of a Sugar Mill as Seasonal Staff and they claim that the impugned orders which are founded on the strength of the official Gazette dated 17.4.2010 are invalid and illegal inasmuch as the Notification dated 17.4.2010 is ultra vires to the provisions of Section 2(i) of the U.P. Sugar Cane (Regulations of Supply and Purchase) Act, 1953 and is even otherwise arbitrary being violative of Article 14 of the Constitution of India.

2. Sri Alok Kumar Yadav, learned Counsel for the Petitioner, contends that even if the same is legally sustainable, it cannot be given a retrospective effect and secondly keeping in view the provisions of the Regulations including that of transfer as contained in Regulation 60 of the U.P. Cane Co-operative Service Regulations. 1975. The definition of "Crushing Season" now introduced under the impugned notification deserves to be quashed as it militates against the interest of the Petitioners, who were protected in their seasonal engagement under the definition contained in Regulation 2(n) relating to crushing season.

3. The challenge is to the Notification u/s 122 of the U.P. Co-operative Societies Act, 1965 which has been issued after hearing the parties. The impugned Notification clearly recites that in view of the provisions of Section 122 of the U.P. Co-operative Societies Act read with Section 21 of the U.P. General Clauses, 1904 as well as Rule 200 of the U.P. Co-operative Cane Service Rules, 1975, the definition of the word "crushing season" was being altered to redefine the period commencing from the date when the crushing of sugar cane in the concerned sugar factory commences till the crushing ends.

4. Sri Ravindra Singh has put in appearance on behalf of the Respondents alongwith Sri S.P. Kesarwani and they have invited the attention of the Court to the judgment of the Supreme Court, that led to the amendments which have now been brought about, in the case of U.P.C.U.E.F. Ltd. Vs. Cane Commissioner and R.C.C.S. and Others, They submit that the amendment is neither ultra vires nor arbitrary nor does it in any way impede the rights of the Petitioners so as to divest them of any right which can be bracketed as a fundamental right or a legally infeasible right.

5. Having heard learned Counsel for the parties, there is no doubt that the phrase "crushing season" as defined in the Service Regulations of 1975 was carrying the same meaning as contained in the U.P. Sugar Cane, (Regulation of Supply and Purchase) Act, 1953. The Cane Commissioner and the State Government proceeded to issue Notifications which were not in conformity with Section 122 of the U.P. Co-operative Societies Act, 1965. The issue was raised before the Apex Court in the judgment referred to hereinabove but the said question remained unanswered as per paragraph No. 15 of the said judgment.

6. The question of terminating the services of such employees or their paying off arose in several writ petitions and ultimately it was held that so long as there is no notification validly notified u/s 122 of the U.P. Co-operative Societies Act, the termination orders would not be valid as the phrase "crushing season" as defined in 1975 Regulations have not been appropriately amended. It is for this reason that the exercise was undertaken by the Respondents and the impugned Notification has been issued after giving an opportunity of hearing and after assessing all the aforesaid factors which has been raised in the present writ petition.

7. In my opinion, the 1953 Act with its objects and reasons was clearly framed to regulate the supply and purchase of sugar cane and the Act did not make any provision for regulating the services of seasonal employees. Learned Counsel for the Petitioner has been unable to point out any provision which may define the service conditions of seasonal employee in the said Act. The argument advanced by Sri A.K. Yadav that the field in this regard stood occupied with the definition of the phrase "crushing season" is misplaced inasmuch as the said phrase was simply borrowed from the 1953 Act in the 1975 Regulations. The 1975 Regulations can be amended in the exercise of the powers so conferred. The regulations having been framed under the U.P. Co-operative Societies Act, 1965

can be modulated u/s 122 of the 1965 Act. The powers for such modulation under the said provisions was conferred on the Cane Commissioner. The impugned Notification, therefore, redefines the words crushing season by limiting its operation between the period commencing from the date of crushing of sugar cane by the concerned sugar factory till the crushing ends. Thus, this amendment has been carried out in accordance with law and in accordance with the provisions aforesaid. They do not militate against any provisions of the 1953 Act which was framed for an altogether different purpose. The 1975 Regulations have been framed for the purpose of Cooperative Cane Union its internal functioning and the service conditions of their employees which in no way is governed by the 1953 Act. Thus, there is no conflict as the 1975 Regulations have been framed for a different purpose altogether. The engagement and employment of seasonal employees has to be in accordance with the crushing season which may co-relate to the actual crushing by sugar mills. This, in my opinion, is perfectly reasonable and does not suffer from any arbitrariness. It is also pragmatic as the proportionality of the seasonal engagement is directly correlated to the crushing season.

8. The employer cannot be compelled to engage a seasonal employee beyond the season. There are separate provisions under another set of Regulations for payment to "offseason" employees who are engaged for periods even beyond the crushing season for performing duties other than not related to actual crushing for which they are paid retention allowances.

9. There cannot be read into the regulations a guarantee of employment even beyond the season. It is to be remembered that the same words may be used in different statutes but they cannot be identically situated so as to carry the same purport. Similar words and phrases in the same statute can carry different meanings and they cannot be declared ultra vires without any element of inconsistency. See Interpretation of Statutes by Justice G.P. Singh Page 231 which is as under:

Even when the same word is used at different places in the same clause of the same section it may not bear the same meaning at each place having regard to the context of its use. Section 117(1) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, authorises the State Government to declare that hats, bazars and melas which had "vested" in the State shall "vest" in the Gaon Sabhas. Interpreting this section, it was held by the Supreme Court that although the vesting in the State was absolute, the vesting in the Gaon Sabha was limited to possession and management subject to divestiture by Government. The case illustrates that a word which is used more than once in the same Sub-section of a section may connote and denote divergent things depending upon the context. (See Ramnarayan Mor and Another Vs. State of Maharashtra, ; Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, ; Maharaj Singh Vs. State of Uttar Pradesh and Others, ; Dr M. Ismail Frauqui and Others Vs. Union of India (UOI) and Others, and Dr M. Ismail

Frauqui and Others Vs. Union of India (UOI) and Others,

10. The period which was defined through dates between 1st October to 15th July in the 1953 Act, indicates the period within which a sugar mill is to operate for the purpose of supply and purchase of sugar cane. This appears to have been done by the Legislature to ensure the period within which the crushing has to be completed by the sugar mills. This period as defined in no way is concerned with the exact period of running of a particular sugar mill. A sugar mill having a lesser reserved area of sugar cane would operate for a lesser period of time and a sugar mill having a larger reserved area may have to operate for a larger period of time. Thus, the engagement of the employees on seasonal basis would be directly proportional to the period of actual crushing by the sugar mills. This, in my opinion, is in conformity with the meaning of the word "season" coupled with the word "crushing".

11. Sri Alok Yadav contends that this would bring about un-uniformity in terms of engagement as a seasonal employee of one sugar mill with a large period of crushing season would benefit whereas a seasonal employee of a sugar mill having a lesser period of crushing season would stand to deficit. The aforesaid argument is being advanced as if discrimination would intervene amongst the same set of seasonal employees. The aforesaid contention may appear to be attractive at first flush but if rationally analysed, it would indicate that a seasonal employee has to conform to the crushing season and, therefore, such a disparity is inbuilt with the nature of the employment itself related to the actual supply and crushing of sugar cane. In view of this, discrimination cannot be complained of and it is for the State Government to make allocations to the respective sugar mills in order to ensure that the seasonal employees get enough work possibly in equal proportions as per the availability of sugar cane. The amended definition, therefore, cannot be said to be ultra vires, irrational or arbitrary.

12. The question with regard to application of the rules is concerned, it goes without saying that the same would apply prospectively as the amendment being a delegated exercise by the Commissioner itself recites to that effect.

13. Learned Counsel for the Petitioner relies on an interim order passed by a Co-ordinate Bench staying the operation of the notification. It is settled by now that interim orders are not precedents and are guiding factors if such similar matters are being considered. This matter has been heard and is being disposed of finally for reasons recorded hereinabove and, therefore, the interim order relied on, which does not in my opinion contain reasons, would not be binding so as to persuade me to interfere with the notification. Needless to say that the notification was issued after giving an extensive hearing and consideration of all possible objections. It is in effect in the shape of an order in view of the various judicial interventions referred to therein with adequate reasons to support the notification.

14. There is yet another submission which has been advanced which is to the

effect that the Notification is not preceded by any approval of the Government. Sri S.P. Kesarwani has invited the attention of the Court to the letter dated 22.3.2010 dispatched by the Cane Commissioner to the State Government requesting for approval. The State Government vide order dated 12.4.2010 granted approval and communicated the same to the Cane Commissioner. Upon receipt of such approval, the Cane Commissioner requested the Director, Government Press, to publish the present Notification and, accordingly, the Gazette Notification was published on 17.4.2010. All the aforesaid documents have been placed before the Court. The submission, therefore, made on behalf of the Petitioners on this score is also untenable.

15. With the aforesaid observations, both the writ petitions are dismissed.