

(1972) 03 AHC CK 0048

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1163 of 1972

Om Prakash and Another

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 28-03-1972

Acts Referred:

Uttar Pradesh General Clauses Act, 1904 — Section 8
Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 — Section 4(1)
Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 — Section 4(1)
Uttar Pradesh General Clauses Act, 1904 — Section 8
Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 — Section 4(1)
Uttar Pradesh General Clauses Act, 1904 — Section 8

Citation : (1972) 42 AWR 428

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Advocate : N.C. Rajvanshi, for the Appellant;

Final Decision : Allowed

Judgement

C.S.P. Singh, J.—The Petitioner owns a diesel power crusher and it is averred that he has been using this power crusher for manufacture of gur from sugarcane cultivated from his fields. The area in which the Petitioner has his holding lies in an area reserved for the Upper India Chini Mills Khatauli. It has, however, been stated that the supplies to the factory from the reserved area are not affected by the Petitioner's working his power crusher. On the 5th October 1971, a letter was received by the Petitioner from the Assistant Sugarcane Commissioner, Saharanpur asking him to apply for a licence for crushing his sugar-cane in coming season. It also stated that the Petitioner had already a licence for crushing his sugar-cane for the year 1970-71. Subsequently by letter dated 23-12-1971 sent by the Up Ganna and the Up Chini Ayogh, who was also the Licensing Authority, the Petitioner was informed that on account of the fact that the village of the Petitioner was situated within a radius of ten miles of the reserved area of the Upper India Chini Mills, Khatauli, it would not be in public

interest to grant a licence inasmuch as it would have an adverse effect on the fulfillment of the supply target of cane fixed for the Mill. The order refusing licence was purported to have been passed u/s 3(4) of the U.P. Khandsari Sugar Manufacturing Licensing Order of 1967. The Petitioner, however, seems to have continued crushing of sugar-cane and on the 9th February, 1972, the Khandsari Inspector visited the place where the crusher of the Petitioner was fixed and sealed the power crusher and the engine belonging to the Petitioner. In the report submitted by the Khandsari Inspector in respect of the seizure, it was stated that he has been informed that the crusher had been working since November 1971 and that at the time the Inspector inspected the crusher, he found one cart load of sugarcane, which was said to have been brought for the purposes of being crushed so as to manufacture gur. It was further mentioned that the Petitioner did not have a licence as required by Section 4(1) of the U.P. Sugarcane Purchase Act, 1961 and as such the crusher had been sealed in exercise of powers u/s 7(1) of the Act.

2. Learned Counsel for the Petitioner has contended that inasmuch as the Petitioner already had a licence under 1967 Order, renewal of the licence could not be refused without affording an opportunity of hearing to the Petitioner as provided for under second proviso to Section 3(4) of the Act. It has also been contended that no licence whatsoever was necessary for the manufacture of gur and as such the Respondents had no authority under the law to seal the power crusher of the Petitioner or to prevent him in any manner from working the same.

3. So far as the first contention is concerned, it is doubtful as to whether the Petitioner ever held a licence under 1967 Order. In para. 12 of the counter-affidavit, it has been stated that the letter Annexure "I" to the petition was sent by mistake and in fact the Petitioner did not have any licence at all. The Petitioner has not filed the licence which he asserts had been granted to him earlier. Neither is there any allegation that at the time when he sought for renewal, he sent the licence to the licensing authority. It is thus doubtful as to whether the Petitioner held a licence previously. That being so it cannot be said that the Petitioner was entitled to any hearing before rejection of his application. This contention must, therefore, fail.

4. The second contention, however, succeeds. Insistence on the Petitioner having a licence for the manufacture of gur is based on the provisions of Section 4 of the UP Sugarcane (Purchase Tax Act), 1961. That section so far as is relevant may be quoted:

No unit other than a unit, which has obtained a licence under the U.P. Khandsari Sugar Manufacturing Licensing Order, 1960, shall, without obtaining a Licence from the Sugar Commissioner, carry on or undertake any process connected with the manufacture or production of gur or rab:

5. A reading of this section discloses that before gur could be manufactured by a unit, it is necessary for it to have a licence under the UP Khandsari Sugar

Manufacturing Licensing Order, 1960 and further a licence from the Sugar Commissioner. It is common ground that the Licensing Order 1960 had been repealed by 1963 Order and is no longer in force. That being so, it is not possible for any one to get a licence, as before the Sugar Commissioner can issue a licence for the manufacture of Gur, it is necessary that the unit should also have a licence under the U.P. Khandsari Sugar Manufacturing Licensing Order 1960. The Licensing Order of 1960 is no longer in force and as such the provisions for obtaining a Licence from the Sugar Commissioner for carrying out manufacture of gur has become redundant and unworkable. The insistence, on a citizen obtaining a Licence under a law which is unworkable, would, in the circumstances amount to an unreasonable restriction on his right to hold and dispose of property and also to carry on an occupation, trade or business. It seems that the Legislature by an inadvertent lacuna omitted to amend Section 4 of Act No. IX of 1961 so as to include a reference to the Licensing Orders in force, so as to make the section workable.

6. In order to sustain the action of the Respondents u/s 4 of the Act, an argument has been advanced that the reference to the Licensing Order 1960 must be taken to be to the order of 1967 and reliance for this contention has been placed on Section 8 of the U.P. General Clauses Act. This section, in view of the language used, in it does not apply strictly to repeal of statutory orders. It has, however, been held in two decisions of this Court one in the case of *Mistra Nand Kaushik v. State of UP* AIR 1965 All. 204 and the second in the case of *Union of India v. Mohd. Usman* AIR 1968 All. 269 that the principles underlying this section is applicable to enactments which are not in the nature of Acts or Regulations made by legislatures. Thus, it has now to be seen as to whether Section 8 even if applied would still save the situation for the Respondents. In order that Section 8 can apply to a case it must be shown that a particular order has repealed and re-enacted a former order and in this situation if there is a reference to the provisions of the repealed order in some other enactments then references to the provisions of the repealed order have to be interpreted as references to the provisions which have been re-enacted by the new order. In the present case, Section 4 refers to the Order 1960. This Order was repealed by the Order 1963. Thus, till such time that the Order 1963 held the field the words "U.P. Khandsari Manufacturing Units" used in Section 4 of U.P. Act 9 of 1961 had to be construed as the "U.P. Sugar Manufacturing Licensing Order, 1963." This position, however, came to an end with the repeal of the 1963 Order by the 1967 Order. With the passing of that Order the legal existence of the Order, 1963 came to an end subject to the saving clauses contained in the 1967 Order. The 1967 Order however, repealed only the Order, 1963 and not the 1960. That being so, Section 8 would, in my view, not apply, for Section 8 applies only to a case where the repealing enactment repeals the enactment which is referred in another statute and does not apply to a case of successive repeals, as is the case here. This contention raised on behalf of the Respondents must, therefore, fail. It is then urged that references to the Order 1960 in Section 4 must on general

principles be construed as references to the Order 1967, so that the scheme of Section 4 of the Act may be kept alive. It is not possible for a court of law to substitute words in an enactment, solely for the purpose of giving efficacy to a provision of the statute which has become unworkable, on account of an omission to make appropriate amendments. Further, no authority has been brought to my notice permitting such a course to be taken. This contention too must, therefore, fail. Counsel for the Petitioner also made an attempt to challenge the vires of the Act. But, inasmuch as no ground has been taken in the petition, I have not permitted him to address arguments on this aspect of the matter.

7. The writ petition is partly allowed and a mandamus issued restraining the Respondents not to interfere with the Petitioner's working his crusher for manufacturing Gur. The Respondents are also directed to release forthwith the items sealed by them, including the crusher and the oil engine. The Petitioner is entitled to his costs.