

(2009) 07 UK CK 0060

In the Uttarakhand High Court

Case No : Writ Petition No. 159 of 2009 (M/S)

Rai Bahadur Singh Sugar Mills Ltd.

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 12, 15, 16, 16(2)

Citation : (2009) 2 UC 1297

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : R.K. Srivastava and C.K. Sharma, for the Appellant; L.P. Naithani, General, K.P. Upadhyay, Addl. Chief Standing Counsel for State of Uttarakhand/ Respondent No. 1 and 2 and A.K. Joshi, for the Respondent

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.—The Learned Advocate General of the State has raised a preliminary objection during the course of argument that since the crushing season of the year 2008-09 has already come to an end, the writ petition has become infructuous, however, the legal issues raised by the Learned Counsel for the Petitioner in the writ petition remain and with the common consent of all the parties, the writ petition is being decided on the issues which have been raised in the writ petition.

2. The Petitioner is a private sugar mill and has challenged the order of the Cane Commissioner, Uttarakhand dated 11.1.2009 and order dated 16.2.2009. According to the Petitioner, the first order dated 11.1.2009 is violative of the sugar laws presently in force in the State of Uttarakhand inasmuch as it has taken away from the Petitioner certain areas i.e. sugarcane growing areas which were reserved for the Petitioner. The order dated 11.1.2009 has been passed without giving any opportunity of hearing to the Petitioner although it is a mandatory requirement. The second order dated 16.2.2009 is also an order

passed by the Cane Commissioner by which he has reviewed his earlier order dated 11.1.2009 and instead of returning the areas earlier reserved for the Petitioner, they are left for "joint purchase" by the Petitioner and Respondent No. 3 (which is also a sugar factory). In other words, instead of giving the exclusive right to purchase sugar cane from this area to one sugar factory, these rights have been given to two sugar factories i.e. the Petitioner and Respondent No. 3, leaving them on the choice of the sugarcane growers who may either sell their sugarcane to the Petitioner or to Respondent No. 3. This, the Petitioner alleges is also illegal inasmuch as such a practice goes against the scheme of the Act envisaged under the sugar laws and, therefore, the second order dated 16.2.2009 is also liable to be set aside.

3. At this juncture, it must be stated that earlier the Petitioner had only challenged the order dated 11.1.2009 (contained as Annexure 9 to the writ petition) and the second order dated 16.2.2009 was passed during the pendency of the writ petition and presently challenged by way of amendment to the writ petition.

4. The case of the Petitioner is as follows:

According to the Petitioner, it is a public limited company registered under the provisions of the Companies Act, 1956 which is engaged in the business of manufacture of white crystal sugar manufactured through vacuum pan process in its sugar factory situated at Laksar, district Haridwar, for which it has been granted licence under the provisions of Industries, Companies (Development and Regulations) Act, 1951. The licenced capacity of Petitioner's sugar factory is for crushing 10,000 metric tonnes sugarcane per day for which raw material i.e. sugarcane is supplied to the Petitioner through the Cooperative Cane Development Societies in Uttarakhand. This supply of sugarcane to all the sugar factories in the State of Uttarakhand is regulated and controlled by the Cane Commissioner of the State who exercises powers under the provisions of U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (from hereinafter referred to as "the Act") as applicable in the State of Uttarakhand as well as under the provisions of Sugarcane (Control) Order, 1966. The relevant provisions of sugarcane are laid down in Sections 12, 15 and 16, which are reproduced below:

Section: 12. Estimates of requirements-

(1) The Cane Commissioner, may for purposes of Section 15, by order, require the occupier of any factory to furnish in the manner and by the date specified in the order to the Cane Commissioner an estimate of the quantity of cane which will be required by the factory during such crushing season (or crushing seasons) as may be specified in the order.

(2) The Cane Commissioner shall examine very such estimate and shall publish the same with such modifications, if any, as he may make.

(3) An estimate under Sub-section (2) may be revised by an authority to be prescribed. Section: 15. Declaration of reserved area and assigned area.-(1) Without prejudice to any order made under Clause (d) of Sub-section (2) of Section 16 the Cane Commissioner may, after consulting the Factory and Cane-growers" Co-operative Society in the manner to be prescribed:

(a) reserve any area (hereinafter called the reserved area); and

(b) assign any area (hereinafter called an assigned area),

for the purposes of the supply of cane to a factory in accordance with the provisions of Section 16 during (one or more crushing seasons as may be specified) and may likewise at any time cancel such order or alter the boundaries of an area so reserved or assigned.

(2) Where any area has been declared as reserved area for a factory, the occupier of such factory shall, if so directed by the Cane Commissioner, purchase all the cane grown in that area, which is offered for sale to the factory.

(3) Where any area has been declared as assigned area for a factory, the occupier of such factory shall purchase such quantity of cane grown in that area and offered for sale to the factory as may be determined by the Cane Commissioner.

(4) An appeal shall lie to the State Government against the order of the Cane Commissioner passed under Sub-section (1).

Section 16. Regulation of purchase and supply of cane in the reserved and assigned areas.-

(1) The State Government may, for maintaining supplies, by order, regulate-

(a) the distribution, sale or purchase of any cane in any reserved or assigned area; and

(b) purchase of cane in any area other than a reserved or assigned area.

(2) Without prejudice to the generality of the foregoing powers such order may provide for-

(a) the quantity of cane to be supplied by each Cane-grower or Cane-growers" Co-operative Society in such area to the factory for which the area has so been reserved or assigned;

(b) the manner in which cane grown in the reserved area or the assigned area, shall be purchased by the factory for which the area has been so reserved or assigned and the circumstance in which the cane grown by a cane-grower shall not be purchased except through a Cane-growers" Co-operative Society;

(c) the form and the terms and conditions of the agreement to be executed by the occupier or manager of the factory for which an area is reserved or assigned

for the purchase or cane offered for sale;

(d) the circumstances under which permission may be granted-

(i) for purchase of cane grown in reserved or assigned area by a (Gur Rab or Khandsari Manufacturing Unit or any person or factory) other than the factory for which area has been reserved or assigned, and

(is) for the safe of cane grown in a reserved or assigned area to a (Gur Rab or Khandsari Manufacturing Unit or any person or factory) other than the factory for which the area is reserved or assigned;

(e) such incidental and consequential matters as may appear to be necessary or desirable for this purpose.

5. As per the above provisions of law, the first thing that the Cane Commissioner has to do is that even before the crushing season begins, he must ask the sugar factories to furnish their requirement or estimate of quantity of sugarcane required by them for crushing during the seasons. According to the Petitioner, under this provision of law, i.e. u/s 12 of the Act, the Cane Commissioner has notified 112 lakh tonnes (for the crushing season 2007-08) of sugarcane as the requirement of the Petitioner sugar factory. Similarly, for Respondent No. 3, the Cane Commissioner notified the requirement of 77 lakh quintals for the same crushing season i.e 2007-08.

6. The Cane Commissioner consequently in his reservation order dated 28.11.2008 provided 25,598 hectares of sugarcane area from which 177.41 lakh quintals of sugarcane would be available to the sugar factory of the Petitioner.

7. It is an admitted case of all the parties that for the crushing season 2008-09, the same area of reservation was maintained as was for the previous crushing season 2007-08. The crushing activity in the Petitioner's sugar factory commenced from 13 December, 2008 and the Petitioner during this crushing season must get a regular supply of sugarcane as allotted to him by the Cane Commissioner. According to the Petitioner, however, vide order dated 11.1.2009 the Cane Commissioner has taken away 6,426 hectares of Petitioner's reserved sugarcane area and has given it to Respondent No. 3. At this juncture, it is necessary to mention here that during the crushing year 2006-07, 2007-08 and 2008-09, the State Government of Uttarakhand had fixed the S.A.P. as Rs. 127 per quintal for general variety sugarcane and Rs. 132 per quintal for early variety. These rights were challenged by the Petitioner in writ petitions bearing No. 204 of 2008 (M/B) and 205 of 2008 (M/B), which were dismissed by the Division Bench of this Court. Subsequently, the order of this Court was challenged before the Supreme Court in S.L.P No. 10516-10517/2008 in which as an interim measure, the Hon''ble Supreme Court had fixed the rate at which the sugarcane was to be given to the sugar factory by the cane grower. The case of the Petitioner is that the Petitioner is paying the rates as determined presently by the order of the Supreme Court, although the State Government and,

particularly, the Minister for Cane Development & Sugar Industries is repeatedly asking for the rates as earlier fixed by the State Government and since the Petitioner is not paying the rate fixed by the State Government, he is being penalized by the Cane Commissioner and, therefore, the Cane Commissioner has taken away from the Petitioner areas which were reserved for him, by passing order dated 11.1.2009.

8. Be that as it may, the Petitioner has challenged the order dated 11.1.2009 before this Court on the grounds that the order is an ex parte order passed without affording any opportunity of hearing to the Petitioner and it is in the teeth of provision given u/s 15 of the Act as well as law laid down by the Supreme Court in its seminal decision in *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, where the Hon'ble Apex Court has held that the proceedings u/s 15 whereby an area is reserved for sugar factory and the consequent order u/s 15(1) (b) of the Act, if any, by which such order is cancelled or modified by altering boundaries so reserved or assigned, is in fact a quasi judicial order and, therefore, before such an order can be passed, an opportunity of hearing must be given to such sugar factory.

9. A bare perusal of Section 15(1) of the Act says that while reserving an area for a sugar factory, the Cane Commissioner has to consult the factory and Cane Growers Cooperative Society in the manner to be prescribed. The powers given to the Cane Commissioner to cancel or alter the boundary of an area so reserved or assigned does not mean that the subsequent order, if any, of reassigning the boundaries of a reserved area can be done without consulting the factory or the cane grower, as the case might be. The subsequent order of cancellation or modification is not merely an administrative order where no opportunity of hearing would be required to those in favour of whom the earlier order had been passed. Even if there is no specific provision given, such a provision will be read into it as it is a requirement of principle of natural justice. For the simple reason that by reserving area in favour of sugar factory, certain rights vest with the sugar factory and these rights cannot be taken away without affording an opportunity of hearing to such a person. To that extent the order dated 11.1.2009 being admittedly an ex parte order without affording any opportunity of hearing is bad in the eyes of law and is liable to be quashed. As already referred above, this is so even if there is no express provision of affording an opportunity of hearing prior to modification of the order. However, this order is no more in existence as it has now been modified subsequently vide order dated 16.2.2009 by which the areas which were taken from the Petitioner have now been restored to the Petitioner, however, in that order a system of "joint purchase" of sugarcane has been ordered i.e. both the Petitioner as well as Respondent No. 3 are free to take the sugarcane from this particular area. What has to be seen by this Court is whether such an order of "joint purchase" of sugarcane in favour of two sugar factories is legally permissible or will it be in conflict with the established laws pertaining to sugar industries and sugar manufacturer in the State. This aspect has again been examined by the Lucknow

Bench of Allahabad High Court in the case of Govind Nagar Sugar Ltd. Walterganj, Basti and etc. v. State of U.P. and Ors. reported in 2001 All. L.J. 741. Adjudicating on this issue, the Allahabad High Court has held that since the very purpose of the Act and the scheme adopted under the Act in reserving the area for sugar factory, etc. with the aim and purpose to provide smooth functioning of sugar mills and to give them an opportunity of having a reasonable quantity of sugarcane throughout the crushing season and that the supply of sugarcane should not be hampered or disturbed by unhealthy competition or be exploited either by cane growers or Cane Grower Cooperative Societies. The order of "joint purchase" goes against the very purpose of a scheme of the Act. It has been held by the Allahabad High Court in the said judgment as follows:

The question of joint purchase by two or more than two sugar factories from one reserved area cannot be in consonance with the scheme and object of the Act. in other words, the Act and the Rules, do not envisage reservation or assignment, one particular area, in favour of two or more sugar factories.

10. The reasons assigned by the Allahabad High Court against the "joint purchase" scheme are dear. Such a situation is not envisaged under the Act! Moreover, in case a joint purchase is allowed it would lead unhealthy competition among the sugar factories. Also, in case such a contingency arises then it is better to demarcate areas clearly rather than to resort to joint purchase scheme. This is what the Allahabad High Court to say further on this:

The conclusion, therefore, is that a harmonious construction of the provisions of the Act and the Rules and Order 1954 and in line with the aim and object of the Act there cannot be an order permitting the joint purchase by two or more than two sugar factories in a particular reserved and assigned area and consequently there cannot be an order for willing cane growers, to sell the sugarcane to any factory of their choice in such area. In case the necessity is felt and exigencies so demand that two or more than tow factories should be permitted to lift the sugarcane from one reserved or assigned area, the Cane Commissioner would be obliged to demarcate the reserved or assigned area for each sugar factory.

11. The State undoubtedly has to work under various constraints and the Court is aware of the same, it has to follow a policy which has been laid down and, therefore, normally on this reservation of sugarcane areas or de-reservation of sugarcane areas, the Court will normally not interfere the same, unless the same is absolutely unreasonable or mala fide and not in violation of certain principles of law and this Court finds that it was a mandatory requirement of the State to give an opportunity of hearing before passing order dated 11.1.2009. However, the order was modified subsequently vide order dated 16.2.2009, the Cane Commissioner has further complicated the issue instead of resolving the same. As it has also been observed by this Court that the order of joint purchase is not envisaged in the Act to the scheme, therefore, the same is bad in the eyes of law.

12. Therefore, in view of the law discussed above, the validity of order dated

16.2.2009 cannot stand and, therefore, this order is hereby set aside. Writ petition is allowed to that extent. No order as to costs.