

(2005) 02 AHC CK 0140

In the Allahabad High Court

Case No : Writ Petition Nos. 105 & 170 of 2005 (MS)

Ramgarh Chini Mills Sitapur : Kamlapur Sugar Factories Ltd.	APPELLANT
Vs	
State of U.P.& Ors.	RESPONDENT

Date of Decision : 25-02-2005

Acts Referred:

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 15
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 22

Citation : (2005) 02 AHC CK 0140

Hon'ble Judges : O.P.Srivastava, J

Final Decision : Disposed Of

Judgement

O.P. Srivastava, J.—Since identical questions have arisen for consideration in both the cases, they are being disposed of finally by this common judgment.

2. Ramgarh Chini Mills (in short Ramgarh Mills) was established in the year 1993 while Kamlapur Sugar Factories Ltd. (in short Kamlapur Factory) came into being in 1999. Both of them are engaged in manufacture of sugar from sugarcane. After establishment of Kamlapur Factory, certain areas/centers reserved/assigned for supply of sugarcane to Ramgarh Mills were reserved/assigned for Kamlapur Factory. Since the beginning of Kamlapur Factory, there have been series of litigations between the two factories in regard to sugarcane areas/centers. This time also there is dispute in regard to the reservation/assignment of certain centers between the two factories.

3. To regulate the supply of sugarcane to the sugar factories, the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (in short Act) is in force. There are rules also known as U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 framed under the Act. As per scheme of the Act, the crushing season is normally to be taken as from 1st October of the year till 15th July next year. There is provision for reserving and assigning of the cane growing area for supply of sugarcane to the factories. The purpose of the Act appears to ensure the proper supply of the sugarcane to the factories in the best interest of the

factories, sugarcane growers and other connected persons/agencies. The Act recognizes such Cooperative Society of area also, one of whose object is to sell cane grown by its members. They are known as Canegrowers' Cooperative Society.

4. The Cane Commissioner, appointed under Section 9 of the Act, has to declare under Section 15(1) of the Act reserved and assigned area/center for every sugar factory for the crushing season after consulting the factory and the Canegrower' Co operative Society of the area. The exhaustive guidelines have been laid down under Rule 22 of the Rules to be followed for reserving/assigning the areas. The Act also provides for appointment of Inspectors to perform the duties and exercise the power conferred or imposed on him under the Act/Rules. The Rules framed under the Act provide as to who may act as Inspectors to exercise the power or duties described under Rule 20. There is provision of appeal also under subsection (4) of Section 15 against the order of the Cane Commissioner in regard to the reservation and assignment of the centers. The provision of survey of the area is also provided under Section 14 of the Act.

5. The Cane Commissioner by order dated 11112004 reserved/assigned various centers mentioned in the order for the two factories. Both the factories felt aggrieved against the order of Cane Commissioner in respect of certain centers. Therefore, both of them preferred appeals under Section 15(4) of the Act before the State Government. The grievance of the Ramgarh Mills is in respect of centers Sidhauli, KatiliI, KatiliII, KatiliIII, UdrauliI, UdrauliII, RichhahiI, RichhahiII and Kusaila reserved/assigned for Kamlapur Factory. Similarly Kamlapur Factory ventilated its grievance in respect of GauriaI, GauriaII, Behut Berum, Harpalpur, Wazir NagarI and Wazir Nagar II reserved/assigned by the Cane Commissioner for Ramgarh Mills.

6. After the notices to the other party as also the concerned Cane Growers' Cooperative Society and upon consideration of the response, the learned appellate authority disposed of the appeals by orders dated 30122004 passed separately in the two appeals. The appeal of Ramgarh Mills was allowed in respect of all the areas except Sidhauli. Similarly, the appeal of Kamlapur Factory was also allowed in respect of all the areas except Behut Berum. Centers, in regard to which the appeals were allowed, were reserved/assigned to the other factory and the orders of the Cane Commissioner were modified to that extent.

7. Being aggrieved of the said orders passed in appeals, both Ramgarh Mills and Kamlapur Factory have come up before this Court through the above writ petitions praying that the orders passed in appeals be quashed.

8. Learned Counsel for the parties have addressed the Court at considerable length on the merit of the orders passed in appeals as also on the question of scope of the writ Court in such matters.

9. Learned Counsel for Kamlapur Factory argued that this Court cannot substitute its findings in place of findings of appellate Court. To this proposition of law,

learned Counsel for Ramgarh Mills also agreed.

10. The Hon''ble Supreme Court in *Purtabpore Co. Ltd. v. Cane Commissioner, Bihar*, 1969 (1) SCC 308, has held that order of modification of reservation made in favour of the sugar mills, by Cane Commissioner is quasijudicial as the same has effect of having serious repercussion adversely affecting the interest of mills. In the State of U.P. also as it would appear from Section 15 itself, the Cane Commissioner has power under Section 15(1)(b) to cancel the order made earlier or alter the boundaries of an area so reserved or assigned. There are certain requirements under the Act, which are to be followed before the reservation/assignment is made by the Cane Commissioner under Section 15(1). If the Cane Commissioner fails to follow the said provision, his order can be said to be in violation of the provisions of the Act. Similarly, once the reservation/assignment has been made, the Cane Commissioner has further power to cancel such order or alter boundaries at any time but he cannot do so without giving opportunity to the concerned party before doing so. There are certain guidelines also as referred to under Rule 22, which are to be followed by the Cane Commissioner while dealing with the matter of reservation/assignment of areas. Similarly the appellate authority cannot act upon the appeal and pass any order against any party modifying/cancelling any area of Cane Commissioner without affording a reasonable opportunity to the other party and also without following the guidelines under Rule 22. Thus, at any rate, the order of the appellate authority is also to be treated as quasijudicial. Although the writ Court cannot substitute its finding on the basis of the material but can consider to quash the same if it is manifestly erroneous/arbitrary or is against the provisions of law or on the factual side the finding of the appellate authority has been given without properly considering the material/guidelines or the finding so recorded is perverse. In taking this view, I get support of judgment of Hon''ble Supreme Court in *Indian Railways Construction Company Ltd. v. Ajay Kumar*, (2003) 4 SCC 579, cited by the learned Counsel for Ramgarh Mills.

11. On examination of the orders passed by the appellate authority in light of above I come to the conclusion that the order passed in appeal is manifestly erroneous and factually perverse on following counts :

(1) In the appeal of Ramgarh Mills, appellate authority relied upon the order dated 1042003 passed in the previous year in appeal regarding zoning which itself was erroneous and was quashed also by this Court.

(2) Making wrong observation in regard to the distance in Ramgarh Mill's case, that distances of the centers as given by the Kamlapur Factory were not disputed by the Ramgarh Mills.

(3) Ignoring the legislative mandate of taking into consideration, the view of the Cane Growers'' Cooperative Society of the area.

(4) The order was passed without taking note of and dealing with all factors indicated in Rule 22 in both the appeals.

12. The appellate authority in its order in the appeal of Ramgarh Mills has heavily relied upon the order dated 1042003 passed by the appellate authority in a matter passed in the previous year wherein the Cane Commissioner was directed to ensure the zoning. Learned Counsel for Ramgarh Mills submitted that said order dated 1042003 was quashed by the High Court. Otherwise also, I am of the considered opinion that such direction neither could be given nor deserves to be relied upon by any appellate authority. The Act provides for reservation and assignment of the area in respect of one or more seasons but it does not say anything as regards the zoning or rezoning of the area. It is open to the Cane Commissioner to pass order in regard to the reservation or assignment of the area not only for one season but also for more crushing seasons but it is not open to him under the Act to go for zoning altogether of any area. Thus the order dated 1042003 passed by the appellate authority in the previous year being against the provision of the Act was not sustainable and could not be relied upon by the appellate authority. Thus, relying upon that area in Ramgarh Mills, the appellate authority has rendered his order manifestly erroneous.

13. As regards the second point mentioned above, the appellate authority has wrongly mentioned in its order that distances of the centers as given by the Kamlapur Factory in its appeal were not disputed by the Ramgarh Mills. The learned Counsel for Ramgarh Mills vehemently contested this observation of the appellate authority. The record also shows that the distances given by the Ramgarh Mills are different to the distances given by the Kamlapur Factory. Besides this, the distances given by the Cane Commissioner in its order in respect of same areas were challenged immediately thereafter by the Ramgarh Mills by way of application, copy whereof has been filed alongwith rejoinder affidavit before this Court. In this view of the matter, it is totally out of imagination that Ramgarh Mills would have accepted the contention of the Kamlapur Factory in regard to all the distances given by it. Therefore, appellate authority proceeding on a wrong assumption has rendered his order suffering from serious infirmity.

14. Learned Counsel for Kamlapur Factory tried to convince this Court by filing a paper of 1996 that two centers, namely, Gauria (now Gauria I and Gauria II), are at the shorter distance from Kamlapur Factory than Ramgarh Mills. This Court has to examine the orders on the material on the basis of which the appellate authority rendered the orders. In case any of the party wanted to rely upon any paper, the proper course open was to have filed the same before the appellate authority for consideration. This Court while examining the matter cannot travel beyond what is in the order or material which was before the appellate authority. Learned Counsel for Ramgarh Mills rightly relied upon the case of Mohinder Singh Gill & Ors. v. Chief Election Commissioner, New Delhi & Ors., 1978(1) SCC 406. in which Hon"ble Supreme Court has gone to the extent of saying that it is not open even to authority concerned after passing the order to explain as to what was his intention while passing the order.

15. In view of various distances given at various places by the different parties, if the appellate authority or Cane Commissioner is unable to come to the conclusion regarding various distances given by parties then as provided in Section 14 itself that they can go for survey of the places by the Inspectors which may be one of the duties assigned under Rule 20 for the Inspectors. Rendering of the judgment on the wrong observation that there was no dispute which was consistently contested by Ramgarh Mills is a manifest error committed by appellate authority.

16. As regards the third point, it was admitted by both the parties during the course of arguments that as required under Rule 22 (g), the views of the Cane Growers' Cooperative Society of the area were not taken into account by the appellate authority. In view of Section 15 of the Act itself, as argued by learned Counsel for Ramgarh Mills, the provision regarding consideration of the views of the Society can be said to be legislative mandate. Even the Cane Commissioner is obliged to pass order regarding reservation/assignment after consulting the factory and Society as provided under Section 15 of the Act. Consideration of the view of the Society is one of the factors enumerated in Rule 22 also. Thus, either at the time of reservation/assignment by the Cane Commissioner or at the time of consideration of the appeal under Section 15(4) filed by the aggrieved person against the order of Cane Commissioner, the Society has to be consulted and before taking final decision, the views of the Society are to be considered.

17. Learned Counsel for the Society also addressed the Court and submitted that respective Societies had expressed their views in favour of the sugar mills to which reservation/assignment was made by the Cane Commissioner. Therefore, the appellate authority could not allow the appeal without recording reasons, disagreeing with the views of the Society.

18. On examination of two orders, I am also of the view that appellate authority had failed to address itself to all the factors of Rule 22. He did not consider any of the factors in the appeal of Kamlapur Factory. However, he casually referred touching some of the other factors in the appeal of Ramgarh Mills.

19. Learned Counsel for the Kamlapur Factory strenuously tried to convince the Court that appellate authority has considered almost all the factors of Rule 22 in the appeal of Ramgarh Mills except considering the views of the Society. I was taken through some of the portions of the order which according to the learned Counsel showed that other factors were considered. On going through the orders passed by the appellate authority, I have come to the conclusion that besides committing mistake on two counts mentioned above, the appellate authority has not dealt with other factors also either in the right perspective giving the cogent reasons or ignoring the factors all together. If the area reserved/assigned in the previous year has to be taken out and reserved or assigned for any other factory, the reason should be recorded. Merely referring the fact of reservation or assignment in the previous year is not sufficient. Nonrecording of the reason that inspite of reservation in the previous year why the area has been taken out for

reservation/assignment to other factory, renders the order as passed without application of mind.

20. In regard to Rule 22(h), in the appeal of Ramgarh Mills, the appellate authority has discarded the arguments of Ramgarh Mills regarding developing of reserved/assigned area by them by saying that Kamlapur Factory had no occasion to develop the said area and that it was the duty/responsibility of Ramgarh Mills to have developed the area reserved/assigned for them. Once an area has been developed on expenditure of heavy cost by a sugar mill, for taking out that area, the cogent reason should have been recorded. The reason given by the appellate authority does not meet out the requirement/intention of the Rule.

21. As regards quantity of sugarcane supplied to and crushed by the factory as argued by the learned Counsel for Ramgarh Mills, the supply of the sugarcane in regard to the percentage to the capacity, was less in the percentage than the percentage of supply to the other factory. Kamlapur Factory is a new creation as argued by the learned Counsel and therefore, the same is to be feeded properly for survival. Kamlapur Factory started production on trial basis in 1999. A part of the area reserved for Kamlapur Factory had come to them from the area of Ramgarh Mills. It is also on record that Kamlapur Factory since its inception is having increased capacity/production. It is surprising that when they had already taken a big area from the other factory, how could they increase their production without properly evaluating the matter in light of availability of sugarcane in the area which can be supplied to them without hampering the production of other factory.

22. The appellate authority without properly applying its mind to the factors under Rule 22 took out certain area from areas reserved/assigned for one factory and made it over to other giving rise to a grievance to both the factories. This fact itself goes to show that orders passed by the appellate authority have been rendered without proper examination of the matter and application of mind.

23. In view of above, the writ petitions succeed and deserve to be allowed. Since the reservation/assignment was only for this season, which is likely to expire shortly, no useful purpose can be served by remanding the matter as the next year fresh reservation/assignment will be made.

24. Both the writ petitions are allowed and the orders dated 30 122004 passed in appeal are hereby quashed.