(2002) 07 AHC CK 0023

In the Allahabad High Court

Case No : C.M.W.P. No. 1970 of 2002

Sarva Krishna Ajay Kumar Agrawal APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 21-07-2002

Acts Referred:

Uttar Pradesh Sheera Niyantran Adhiniyam, 1964 — Section 7A

Citation : (2002) 5 AWC 3899

Hon'ble Judges : S.K. Sen, C.J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Arun Tandon, for the Appellant; Chandra Shekhar Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri Arun Tandon counsel for the Petitioner and Sri Chandra Shekhar Singh learned standing counsel appearing for the State Respondents.

2. This writ petition has been filed by the Petitioner praying for quashing of the order dated 27th May, 2002 passed by the Controller of Molasses/Excise Commissioner, U.P., Allahabad. A further prayer has been made commanding the Respondents to reconsider the application of the Petitioner afresh for grant of permission u/s 7A of the Uttar Pradesh Sheera Niyantran Adhiniyam, 1964.

3. Brief facts giving rise to this writ petition are as follows:

Petitioner is a firm registered under the U.P. Sales Tax Act. Petitioner claimed to be dealer/ handling agent of molasses. Petitioner claims that earlier by the order of Controller molasses, he was allotted different quantity of molasses. Petitioner further claims that he has also been granted. "No objection" certificate for export of molasses out of the State. Petitioner filed an application u/s 7A of the U.P. Sheera Niyantran Adhiniyam, 1964, praying that he be granted permission for 1,00,000 quintals of molasses. He has stated in his application that the said molasses will be sold to the distilleries and the industrial establishments of the State of Uttar Pradesh and outside the State of Uttar Pradesh. The Petitioner had also filed a Writ Petition No. 1751 of 2002 after filing the aforesaid application. When the writ petition came for hearing on 15.5.2002 learned standing counsel made statement that the order has already been passed on the application of the Petitioner which shall be communicated. The writ petition was dismissed with liberty to the Petitioner to challenge the said order in appropriate proceedings. After the aforesaid order Petitioner was issued letter dated 27.5.2002 intimating that his application u/s 7A has been rejected. In the order dated 27.5.2002, it has been stated that u/s 7A of the Act, only such person can give an application who required molasses for its distilleries or for industrial development. Order further states that the application given by the Petitioner does not come u/s 7A since the Petitioner has not claimed that he required for his own distillery or for industrial development. The said order dated 27.5.2002 has been challenged in this writ petition.

4. Sri Arun Tandon counsel for the Petitioner challenging the aforesaid order dated 27.5.2002 made following submissions:

(1) u/s 7A there is no prohibition in granting an application of a person who is a dealer and requires the molasses for it being sold for purposes of industrial development. The Respondents have misinterpreted Section 7A and have illegally rejected the application.

(2) The Petitioner and other similarly situated dealers in earlier years were granted permission, reference has been made to the orders of the Controller dated 11.4.1989, 20.6.1989, Annexures-11 and 12 to the writ petition.

(3) State of Uttar Pradesh by Government order has lifted control on price and distribution of molasses hence no restriction can be imposed in free sale of molasses.

5. Learned standing counsel refuting the submissions of the counsel for the Petitioner supported the order dated 27.5.2002 and contended that u/s 7A the Petitioner is not eligible for grant of any permission for molasses. It was contended that u/s 7A no dealer or handling agent can be granted permission to lift the molasses. The standing counsel contended that only that person can apply who requires molasses for his distillery or for any purpose of industrial development. It was contended that since the Petitioner does not require the molasses for his distillery or for any purpose of industrial development by himself, he cannot make an application.

6. We have heard counsel for the parties and perused the record. The main issue which has arisen in this writ petition is regarding true scope and meaning of Section 7A of the Uttar Pradesh Sheera Niyantran Adhiniyam, 1964. For considering the submission raised by the counsel for the Petitioner, it is necessary to examine the provisions of Section 7A and other provisions of the Act and the Rules to find out the real object and scope of the Act and the Rules.

Uttar Pradesh Sheera Niyantran Adhiniyam, 1964 (hereinafter called as the Act, 1964) was enacted to provide in public interest for the control of storage, gradation and price of molasses produced by Sugar Factories in Uttar Pradesh and the regulation of supply and distribution thereof. Section 2 (d) of the Act defines molasses which means the heavy, dark coloured viscous liquid produced in the final stage of manufacture of sugar by vacuum pan, from sugarcane or gur, when the liquid as such or in any form or admixture contains sugar. Section 5 provides preservation of molasses by the occupier of sugar factory. Section 7A of the Act deals with manner and procedure regarding application for molasses. Section 7A is quoted below:

7A. Application for molasses. -

(1) Any person who requires molasses for his distillery or for any purpose of industrial development may apply in the prescribed manner to the Controller specifying the purpose for which it is required.

(2) On receipt of an application under Sub-section (1) and after making such inquiries in the matter as he may think fit, the Controller may make an order u/s 8.

(3) In disposing of an application under Sub-section (1) the Controller shall consider:

(a) the general availability of molasses ;

(b) various requirements of molasses ;

(c) the better utilisation to which molasses may be put in the public interest ;

(d) the extent to which the requirements of the applicant are genuine ;

(e) reasonable likelihood or otherwise of the molasses that may be obtained by the applicant being diverted to purposes (other than those specified in the application and where the application is rejected in whole or in part, he shall record reasons therefor).

(4) The occupier of a sugar factory shall be liable to pay to the State Government in the manner prescribed, administrative charges at such rate, not exceeding five rupees per quintal as the State Government from time to time may notify, on the molasses sold or supplied by him.

(5) The occupier shall be entitled to receive from the person to whom the molasses is sold or supplied an amount equipment to the amount of such administrative charges, in addition to the price of molasses.

7. Section 8 of the Act deals with sale and supply of molasses. u/s 8, the Controller of molasses requires the occupier of sugar factory to sell and supply in the prescribed manner such quantity of molasses to such person as may be specified in the order. Section 8 of the Act is quoted as below:

8. Sale and supply of molasses.-

(1) The Controller (with the prior approval of the State Government by order) may require the occupier or any sugar factory to (sell or supply) in the prescribed manner such quantity of molasses to such person, as may be specified in the order, and the occupier shall, notwithstanding any contract, comply with the order:

(a) shall require supply to be made only to a person who requires it for his distillery or for any purpose of industrial develop-ment ;

(aa) may require the person referred to in Clause (a) to utilise the molasses supplied to him under an order made under this section for the purpose specified in the application made by him under Sub-section (1) of Section 7A and to observe all such restrictions and conditions as may be prescribed ;

(b) may be for the entire quantity of molasses in stock or to be produced during the year or for any portion thereof ; but the proportion of molasses to be supplied from each sugar factory to its estimated total produce of molasses during the year shall be the same throughout the State save where, in the opinion of the Controller, a variation is necessitated by any of the following factors:

(i) the requirements of distilleries within the area in which molasses may be transported from the sugar factory at a reasonable cost ;

(ii) the requirements for other purposes of industrial development within such area

(c) The Controller may make such modifications in the order under Sub-section (1) as may be necessary to correct any error or omission or to meet a subsequent change in any of the factors mentioned in Clause (b) of Sub-section (2).

8. Section 10 deals with maximum price of molasses. Sections 11 and 12 deal with offences and penalties. Section 17 of the Act provides for maintenance of accounts and furnishing of returns etc. by sugar factory and other persons to whom molasses is supplied. Section 17 is quoted below:

17. Maintenance of accounts and furnishing of returns, etc.-... Every occupier of a sugar factory and every person to whom molasses is supplied by such occupier shall be bound....:

(a) to maintain such registers, records, instruments and reagents as may be prescribed ;

(b) to furnish all such information and returns relating to the production and disposal of molasses in such manner, to such persons and by such dates as may, by order, be prescribed by the Controller ;

(c) to produce, on demand by an Excise Officer not below the rank of a Sub-

Inspector (Excise), registers, records, documents, instruments and chemical reagents which he is required to maintain under the provisions of this Act or the rules or orders made thereunder.

9. Rules have been framed, namely, Uttar Pradesh Sheera Niyantran Niyamavali, 1974 (hereinafter to be referred as "Rules, 1974). Chapter II of the Rules deals with preservation of molasses. Chapter III deals with supply and distribution. Rule 12 provides that the occupier of every sugar factory shall submit to the Controller by August 31st each molasses year, a statement in Form M. F. 9 specifying an approximate estimate of the quantity of molasses to be produced in a sugar factory during the molasses year. Rule 13 deals with estimate of requirement of molasses for distillation and industrial purposes. Rule 16 deals with arrangement for the lifting of molasses by the allottee. Rule 22 is relevant for the purpose. Rule 22 as amended by notification dated 16th August, 1993, is quoted as below:

22. Sale or supply of molasses to distilleries and other persons for industrial development. - The molasses produced in a sugar factory shall be sold or supplied only to distilleries or other persons bona fidely requiring it for purposes of industrial development.

Prior to the aforesaid amendment, Rule 22 was as under:

22. Reservation of entire stock of molasses for distillation and other purposes of industrial development (Section 8).-

(1) All Stock of molasses produced in a sugar factory shall be deemed to have been reserved for supply to distilleries or other persons requiring it for purposes of industrial development and no stock of molasses produced in a sugar factory shall be sold or otherwise disposed of by the occupier of any sugar factory except in accordance with an order in writing from the Controller.

(2) The Controller shall release any stock of molasses in favour of occupier of a sugar factory only when the same is not required for distilleries or for other purposes of industrial development.

10. Rule 29 provides for manner of taking samples and procedure for settlement of dispute relating to grades of molasses. Rule 29 (4), which is relevant for the present purposes, is extracted below:

29 (4) In the case of transport by road, if the allottee receiving molasses from a sugar factory is not satisfied with the grade declared by the sugar factory it may apply in writing to the Sub-Inspector, Excise or the Excise Inspector, molasses of the area in which the sugar factory is situated along with the testing fee to get the molasses of the storage tank from which the molasses was supplied by the sugar factory or the molasses was loaded in lorry or thela tested by the officer authorised under Sub-rule (3) for declaration of its correct sugar contents. The price shall be according to the grade declared by such authorised officer. In case a lower grade is declared, the sugar factory will be bound to refund the allottee

any extra payment realised along with the testing fee of such authorised officer. The provisions of sub-rules (1) to (3) shall also apply in the cases regarding taking of samples by the Resident Sub-Inspector, Excise or Excise Inspector, as the case may be.

11. Rule 33 provides for registers to be maintained and statements to be submitted by distilleries, out-still licensees and other allottees. Rule 33 is quoted below:

33. Register to be maintained and statements to be submitted by distilleries, out-still licensees and other allottees, ...

(1) The owners of distilleries shall maintain a record of all molasses received, utilised for distillation and the balance in a register in Form M. F. 6, Parts I and II as appended to these rules and shall submit to the Controller a true monthly abstract, of the receipt, utilisation and balance at the distillery each month in Form M. F. 10 on the 5th of each month following.

(2) In the case of allottee other than distilleries (except out still) the accounts of molasses shall be kept in a register in Form M. F. 6 Part III as given in appended forms and allottees shall submit a correct monthly abstract of the same to the Excise Inspector in whose circle the industrial unit lies.

(3) Out-still licensees shall maintain accounts of molasses in Form M. F. 6 Part III as given in appended forms and shall submit a correct monthly abstract of the same to the Excise Inspector in whose circle the shop lies.

12. Rule 35 provides for inspection book for inspecting officer.

13. We have extracted the relevant provisions of the Act and the Rules for purpose of considering the object and scheme of the Act and the Rules which is relevant for understanding the scope and object of Section 7A. The key words in Section 7A are:

Any person who requires molasses for his distillery or for any purpose of industrial development may apply ....

14. The first part of the above sentence, i.e., ''who requires molasses for his distillery'' is very clear and admit no doubt that only that person can apply who requires molasses for his distillery. Thus, application by dealer or handling agent for purpose of any distillery is ruled out. The contention of counsel for the Petitioner is that his application is on behalf of those units which will deal molasses for industrial development. The contention of the counsel is that since he, after getting permission, will supply to only those units which will use it for industrial purpose, his application is not beyond the scope of Section 7A. Section 7A uses the word "require". The Law Lexicon by P. Ramnatha Aiyar, 1997 Second Edition defines the word "require" in following words:

"Require" means to make necessary ; to demand ; to ask as of right.

Further, the word "require" is defined in following words at page 1665:

The word "require" is something more than the word ''desire''. Although the element of need is present in both the cases, the real distinction between ''desire'' and ''require'' lies in the insistence of that need. There is an element of "must have" in the case of "require" which is not present in the case of mere "desire". Naresh Vs. Kanai Lal Roy Chowdhury, (W. B. Premises Rent Control (Temporary Provisions) Act 38 of 1948, Section 11 (1) (f).

The word "require" is equivalent to "requisite" or "necessary".

15. It is well-settled that for finding out the meaning and purpose of a word used in a statute the context in which it is used in relevant. The definition of word "require" as quoted above means that person applying u/s 7A must have necessity or need for such requirement. A need for molasses can be by distillery or by any unit for its industrial development. Although in Section 7A word "who requires molasses for his" has been used before distillery but the said words have also to be read while interpreting the other clause that is "for any purpose of industrial development." Thus, the person applying should either require for his distillery or for his any purpose of industrial development. From a reading of Section 7A it is clear that a dealer cannot apply for distillery because before distillery the words "who requires molasses for his" have been used. The contention of the Appellant is that there is no prohibition in applying by a dealer if his application is for the persons who require molasses for industrial development. The object of Section 7A has been to check and to provide for supply of molasses to only those persons who are thought fit by Controller of Molasses to be supplied the molasses. Two purposes have been mentioned in Section 7A, i.e., for distillery and for purpose of industrial development. Idea is to supply molasses to limited category of persons who will use for distillery and industrial development. This has been provided so that the distillery and industrial development do not suffer in their cause by non-supply of molasses since quantity produced in sugar factory is limited. Due to this purpose, Section 7A was enacted so that check be made and molasses be not diverted to any other use. If the interpretation, as put up by the counsel for the Petitioner, is accepted, then it will be open to any dealer to take all quantity of molasses from sugar factory which is to be used for industrial development and to make them available on a price on his sweet will or not to supply to the persons needing for industrial development according to their reasonable requirement. It will lead to hardship to the persons engaged in industrial development as well as the industrial growth of the State.

16. Analysis of provisions of Act, 1964 further re-enforces our view that the application by a dealer u/s 7A is ruled out. Section 8, Sub-clause (2) (aa) provides that Controller of molasses may require the person applying for his distillery or for any use of industrial development to utilise the molasses supplied to him for the purposes specified in the application and to observe all such restrictions and conditions as may be prescribed. If the dealer is to be treated as

allottee of the molasses who in his turn sells it out to a third person, the observance of the restriction and conditions cannot be observed since molasses are with third persons who are not allottees and are not bound by restrictions provided for in Section 8. The Act intends to put restriction and conditions on the person allotted molasses under the Act. The Act does not contemplate observance of the restriction and condition by a third person to whom allottee sells the molasses. The observance of provisions of Section 8 (2) (aa) will become impossible by a dealer since after sale of it, to a third party, he cannot observe any condition and restriction which are attached to supply of molasses. Section 11 provides for penalty or contravention of the provisions. Section 17 of the Act as quoted above provides for maintenance of accounts and furnishing of return which is to be done by both occupier of the factory or every person to whom the molasses are supplied by such occupier. Testing the provision on the basis of interpretation put up by the counsel for the Petitioner, it will mean that the third party who are sold molasses by a dealer can always take stand that they are not bound to maintain the accounts and furnish the returns since they have not been supplied molasses by occupier. This provision again suggests that the documents, accounts and registers has to be maintained by a person who is supplied molasses which in turn means that the supplier is the person who is using the molasses and has to submit accounts and returns regarding supply. The analysis of the aforesaid provision clearly indicates that the provision did not contemplate supply of molasses to a dealer. It contemplates supply of molasses to a distillery or to a person using the molasses for his industrial development and said person is required to maintain accounts, returns and has to observe conditions and directions issued regarding supply.

17. Analysis of provisions of 1974 Rules also leads to the same conclusions which we have drawn from the analysis of the provisions of the Act, 1964. Rule 22 of the Rules make it clear that person applying for molasses should bona fide require the molasses. Rule 22 has been amended and a comparison of amended and unamended Rules suggests that the amended Rule 22 has clarified that the molasses shall be sold or supplied only to distilleries and other persons bona fide requiring it for the purposes of industrial development. The dealer cannot be said to bona fide require the molasses for industrial development. The dealer may require molasses for earning the profits in his business which is not the object of the Act and the Rules. Further Rule 29 (4) provides that in case of transport by road, if the allottee receiving molasses from a sugar factory is not satisfied with the grade declared by the sugar factory, it may apply in writing to the Sub-Inspector, Excise or the Excise Inspector, molasses of the area in which the sugar factory is situated along with the testing fee to get the molasses of the storage tank tested. Dealer after supply to a third party may not be interested for testing and the third party who is not allottee will face difficulty in proving his right to get molasses tested. The scheme of Rule 29 (4) again suggests that it is allottee who is required to use molasses for his purpose and object to the Grade of molasses. Rule 33 further requires that all registers to be maintained and the

statement to be submitted by an allottee. The allottee is required to submit monthly extract of the registers in Form M. F. 6 Part III. The dealer who has been supplied the molasses cannot comply the said provisions since he will sell it to third party. Under the scheme of the Act and the Rules, allottee will be only person who is allotted molasses under the orders of the Controller of Molasses. Rights have been given to the allottee for protecting his interest. Further, Rule 35 provides for inspection book for inspecting officer, dealer cannot maintain inspection book and the requirements of the rule is to maintain inspection book by allottee.

18. The above discussed provisions of the Act and the Rules clearly spell out that the allottee of the molasses has to be a person using the molasses for his distillery or for his any other industrial development. Thus, the interpretation of Section 7A as submitted by the counsel for the Petitioner cannot be accepted. It is held that the Section 7A contemplates application by a person who requires the molasses for his distillery or for his industrial development. Application by a dealer is ruled out u/s 7A in view of the scheme of the Act and the Rules.

19. In view of the aforesaid discussion, the first submission of the counsel for the Petitioner is not acceptable and Section 7A of the Act cannot be interpreted as suggested by the counsel for the Petitioner.

20. Coming to second submission of the counsel for the Petitioner that the Petitioner and other similarly situated dealers were granted permission in earlier years but the fact that in earlier years, Petitioner was granted permission by Controller of molasses, cannot be a basis of right for issue of writ of mandamus. In view of interpretation of Section 7A which we have taken that dealer cannot make an application for allotment of molasses u/s 7A. The Apex Court in Chandigarh Administration and another Vs. Jagjit Singh and another, , has held in paragraph 8 as under:

Generally speaking, the mere fact that the Respondent authority has passed a particular order in the case of another person similarly situated can never be a ground for issuing writ in favour of the Petitioner on the plea of discrimination. If the order in favour of other person is found to be contrary to law and not warranted in the facts and circumstances of the case, such order cannot be made basis of issuing a writ compelling the Respondent authority to repeat the illegality or pass another unwarranted order.

21. In view of what has been said above, the second submission of the counsel for the Petitioner can also not be accepted.

22. Coming to the last submission of the counsel for the Petitioner that the molasses has now been decontrolled. No restriction can be made on the sale and supply of molasses. The Petitioner has relied to the order of the Controller of molasses dated 7.7.2000 Annexure-8 to the writ petition by which paragraph 5 (2) of the earlier order issued by the Controller of molasses was modified. A mere look to the order dated 7.7.2000 Annexure-8 to the writ petition shows

that it refers to G.O. dated 26.6.2000, according to which control of price and distribution of molasses has been lifted. The fact that the price is not controlled by the State Government is not relevant for the purpose of Section 7A. The order dated 5.7.2000, also refers that control of distribution has been lifted. A copy of the said Government order, dated 26.6.2000, has not been brought on record by the counsel for the Petitioner. Further the order dated 7.7.2000, is an order shown to have been issued in exercise of power u/s 8 of the Act by the Controller. The Petitioner himself has brought on record the order of the Controller after the order dated 7.7.2000, i.e., order dated 22.12.2000 and 3.1.2001 of the Controller of molasses Annexures-9 and 10 to the writ petition. Looking to the aforesaid order dated 3.1.2001, it is clear that the State Government for the year 2001-2002 has made sale of molasses 100% free which means that all the molasses can be sold by sugar factories. The said order, however, has put certain restriction on the import of molasses and regarding payment of administrative fee. Section 8 empowers the Controller of molasses to require occupier of the sugar factory to sell and supply in the prescribed manner such quantity of molasses as specified in the order. However, from the orders issued even subsequent to 22.6.2000, it is clear that the control is still exercised by the Controller of molasses regarding sale and supply of molasses. In any view of the matter, Section 7A is still in force. The Petitioner himself has made an application u/s 7A. The question in the writ petition has arisen as to Petitioner''s application has rightly been rejected or not. For the reasons which we have given above, we are satisfied that the application of the Petitioner was rightly rejected. The fact that sugar is hundred per cent free and there is no control on the price can in no manner dilute the applicability of Section 7A. Petitioner''s claim in the writ petition is to be considered in accordance with Section 7A. From the fact that the Petitioner himself has made an application u/s 7A, it is clear that the Petitioner is conscious of applicability of Section 7A and he can succeed only when his application comes within the four corners of Section 7A. Thus, the third submission of the counsel for the Petitioner can also not be accepted and we hold that the application of the Petitioner was rightly rejected.

23. In view of the foregoing discussions and the reasons given above, we do not find any merit in the writ petition. The writ petition is accordingly dismissed. No order as to cost.

