

(1997) 03 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5053 of 1997

Siel Ltd.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 13-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 15(4)

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

Citation : (1997) 03 AHC CK 0117

Hon'ble Judges : M.Katju, J

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed against the impugned order dated 14197 Annexure1 to the writ petition which has been passed by the State Government under Section 15 (4) of the U. P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to Act).

2. Heard Sri Sudhir Chandra learned senior Advocate and Ms. Bharati Sapru for the petitioner, and Sri Vineet Saran for respondent No. 2 as well as learned Standing Counsel. None appeared for respondent No. 3 although notice was served personally on it.

3. The facts of the case are that the petitioner is a company registered under Indian Companies Act which has a sugar factory at Mawana in District Meerut known as the Mawana Sugar Works. The dispute in the present case relates to allotment of cane centre Shivpuri to respondent No. 2 under Section 15(1) of the Act. This cane centre was assigned in the reserved area of the petitioner by order dated 91196 Annexure3 to the writ petition. But on the appeal of the respondent No. 2 the said order was set aside by the impugned order dated 14197 and the cane centre Shivpuri was assigned to respondent No. 2, hence this writ petition.

4. Sri Sudhir Chandra learned counsel for the petitioner submitted that the cane

centre Shivpuri was originally part of the cane centre Kailashpur in the reserved area of the petitioner for more than 47 years. In 1978 this cane centre Kailashpur was bifurcated into cane centre Kailashpur and cane centre Shivpuri and it is alleged that from 1992/93 cane centre Shivpuri was being assigned to the petitioner as alleged in paragraph 7 of the writ petition.

5. Sri Sudhir Chandra learned counsel for the petitioner submitted that in the years 1993/94, 1994/95 and 1995/96 the crushing capacity of the Mawana unit of the petitioner was only 5000 T.C.D. per day, but the crushing capacity in 1996/97 has gone up to the 9,000 T.C.D. and hence the petitioner's unit requires more cane. He has stated that the amount of cane, crushed by the petitioner's unit at Mawana has been increasing from 1993/94 to 1995/96 every year. In paragraph 17A of the writ petition it has been stated that in 1994/95 0.18 lakh quintal was purchased by the petitioner's unit, while in 1995/96 0.19 lakh quintal was purchased during the period mentioned in para 17A. In para 18 of the writ petition it is stated that the petitioner expressed need of 1.62 lakh quintal of sugar cane. In para 39 of the writ petition it is stated that in a period of 58 days the petitioner had purchased 0.22 lakh quintal of Sugar cane from cane centre Shivpuri. In para 42 of the writ petition it is stated that respondent No. 2 has 41 cane centres reserved to it with the crushing capacity of 10,000 T.C.D. while the petitioner has only 90 cane centres reserved to it having crushing capacity 9,000 T.C.D.

6. Sri Sudhir Chandra contended that cane centre Shivpuri is at a distance of only 31 Km. from the petitioner's Mawana unit whereas it is at a distance of 37 Km. from the factory of the respondent No. 2 as stated in para 17 of the writ petition. On the basis of these submissions learned counsel for the petitioner submitted that Rule 22 of the U. P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 has been violated by the impugned order.

Rule 22 of the said Rule stated as follows:

"22. In reserving an area for or assigning an area to a factory or determining the quantity of cane to be purchased from an area by a factory, under Section 15, the Cane Commissioner may take into consideration

- (a) the distance of the area from the factory,
- (b) facilities for transport of cane from the area,
- (c) the quantity of cane supplied from the area to the factory in previous year,
- (d) previous reservation and assignment orders,
- (e) the quantity of cane to be crushed in the factory,
- (f) the arrangements made by the factory in previous years for payment of (purchase tax) cane price and commission,
- (g) the views of the Canegrowers' Cooperative Society of the area,

(h) efforts made by the factory is developing the reserved or assigned area)."

7. Learned counsel for the petitioner relied on the decision of a learned Single Judge of this Court in *U. P. State Sugar Corporation Ltd. v. State of U.P.*, 1995 AWC, 637 : 1995 (2) JCLR 844 (SC). He has also relied on the decision of Division Bench of this court in *M/s. Basti Sugar Mills Co. Ltd. v. State of U. P. and others*, 1995 AIR, All, 309, and the decision of a learned Single Judge of this Court in *M/s. Basti Sugar Mills Co. Ltd. v. State of U.P. and others* in Writ Petition No. 6700 of 1994, decided on 30/3/94.

8. In reply to the submission of the learned counsel for the petitioner Sri Vineet Saran appeared for respondent No. 2 and has relied on his counter affidavit and supplementary counter affidavit. Sri Vineet Saran disputed the allegation in paragraph 17 of the writ petition that cane centre Shivpuri is at a distance of 31 Km. from the petitioner's factory and at a distance of 37 Km. from the factory of respondent No. 2. Sri Vineet Saran invited my attention to page 40 of the supplementary counter affidavit which he has filed. In this supplementary counter affidavit the respondent No. 2 has annexed an application of the petitioner, copy of which is also Annexure 2 to the writ petition, but it is alleged in the supplementary counter affidavit that the copy annexed to the writ petition is not a complete copy, and a complete copy is the one filed along with the supplementary counter affidavit. In this application said to have been submitted by the petitioner it is alleged that the Kailashpur cane centre is at a distance of 40 Km. from the Mawana Sugar Works while Shivpur cane centre is said to be 31 km. from that unit. Sri Vineet Saran invited my attention Annexure CA1 to the main counter affidavit of the respondent No. 2. This annexure is also a document of the petitioner and in this document Shivpur cane centre is shown at a distance of 38 Km. from the Mawana unit while the Kailashpur cane centre is shown to be at a distance of 40 Km. Sri Vineet Saran submitted that these documents of the petitioner thus show that the allegations of the petitioner in paragraph 17 and 32 of the writ petition are not correct.

9. Sri Vineet Saran then submitted that for the last three years the cane centre Shivpur has been assigned to the respondent No. 2 as is mentioned in the impugned appellate order. Hence he submitted that a factually wrong averment was made in paragraph 7 of the writ petition that from 1992/93 cane centre Shivpur was being assigned to the petitioner.

10. Sri Vineet Saran pointed out that for the year 1993/94 the cane centre Shivpur though allotted initially to the Morna Sugar Mills was assigned to respondent No. 2 as stated in paragraph 6 of the counter affidavit and Annexure CA2 thereto. The appeal of the petitioner against the said order in favour of respondent No. 2 was dismissed on 14/12/93 vide Annexure CA3.

11. For the year 1994/95 the said cane centre Shivpuri was again assigned to the respondent No. 2 on 9/11/91, but in the appeal against that order by the petitioner by order dated 28/1/95 it was left open to the cane growers to supply sugarcane

to either of the mills.

12. In 1995⁹⁶ the Shivpur cane centre was by order dated 1910⁹⁵ assigned to the petitioner, but the respondent No. 2 filed an appeal against that order and that appeal was allowed on 1812⁹⁵ by the State Government vide AnnexureCA5 and the Shivpur cane centre was assigned exclusively to respondent No. 2.

13. Sri Vineet Saran also contested the claim of the petitioner that the crushing capacity of the petitioner's Mawana unit has gone up. He has submitted that the petitioner has not got any licence to crush 9,000 T.C.D. sugarcane and it has only got a letter of intent as stated in paragraph¹⁸ and 29 of the counter affidavit. He submitted that the respondent No. 2 unit has accepted whatever sugarcane was supplied to it for crushing. He further submitted that the cane growers have no grievance against the impugned order as they have neither challenge the same nor even appeared in this Court although they were served notices. Sri Vineet Saran further submitted that the respondent has been carrying on development activities in respect of the farmers attached to Shivpuri cane centre. He submitted that in 28 days the respondent No. 2 purchased 11 Lac quintals sugarcane from 231⁹⁷ when the cane centre of respondent No. 2 was setup, and respondent No. 2 has been operating the cane centre after investing Rs. 4 lac as stated in paragraphs¹¹ and 42 of the counter affidavit.

14. Having heard learned counsels for the parties. I am not inclined to interfere in this case.

15. As rightly held by this Court in U. P. State Sugar Corporation Ltd. v. State of U.P and others (supra), while passing an order assigning or reservation under Section 15 of the Act various factors mentioned in Rule 22 have to be taken into consideration, and the order can not be passed only on the basis of one solitary consideration. It is for the authorities who are the experts in the field to take into consideration all these factors after balancing them and pass appropriate orders which best subserve the interest of the sugar factories and the cane growers. The purpose of the Act is to ensure the maintenance of reasonable supply of the sugarcane to the sugar producers. The authorities passing the reservation order have a duty to balance between the competing interests Le. of the sugar factories and the sugar cane growers' societies.

16. In my opinion an order under Section 15 is an order which should not be lightly interfered with by this Court unless it is clear that some serious illegality has been committed. Basically it should be left to the authorities under the Act to pass the reservation/assignment order, broadly taking into consideration the factors mentioned in Rule 22.

17. I am not going into the question about the conflicting versions about the distance of the petitioners factory and the factory of the respondent No. 2 from the cane centre Shivpuri, the crushing capacity of the petitioner's factory, etc. These are disputed questions of fact. However, even assuming the version of the petitioner to be correct this only means that the respondent No. 2's unit is only a

few kilometre further away from the cane centre as compared to the petitioner's unit, but that by itself can not vitiate the impugned order. Distance is only one of the factors which has to be taken into consideration, and moreover, relatively there is not much difference between the distance of the petitioner's sugar factory and the respondent No. 2's sugar factory from the cane centre, even if the version of the petitioner is taken to be correct.

18. In matters such as reservation under Section 15 this Court should not be over technical and should not scrutinise the impugned order too minutely so as to look for minor mistakes. As long as the order is broadly in consonance with the Rule 22 this Court should not interfere. Regarding such orders the law is wellsettled that the Court should only see whether the authority has acted fairly from a broad point of view vide *National Institute of Mental Health v. K.K. Raman*, AIR 1992, SC, 1806 (vide paragraph 8), *G. B. Mahajan v. Jalgaon Municipal Council*, AIR 1991, SC, 1153 etc. If it has so acted, this Court should not try to pick holes in the order, otherwise almost every order may have to be upset.

19. As observed by the Supreme Court in *Fasih Chaudhary v. D. G. Doordarshan*, 1989 (1) SCC, 89, while fair play in such matters is an essential requirement, free play in the joints" is also a necessary concomitant for an administrative body functioning in an administrative sphere.

20. It must be realised that in such matters the authorities under the Act have expertise regarding the subject, while judges do not. Hence, this Court should realise its limitations in such matters and should only interfere where some gross or palpable illegality has been committed. Writ jurisdiction is discretionary jurisdiction, and it should not be exercised for correcting minor mistakes.

21. Moreover, it settled law that judicial review is not so much concerned with the decision as the manner of reaching that decision, vide *Tata Cellular v. Union of India*, AIR 1996, SC 11, *Sterling Computers* \\M& N publications, AIR 1996, SC 51, *H.B. Gandhi v. Gopinath & Sons*, 1992 Supp. (2) SCC, 312, etc. In *Sterling Computers* (Supra) the Supreme Court has quoted "Wilde's Administrative Law "The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the discretion of the public authority. Within the bounds of legal reasonableness is the area in which the deciding authority has genuine free discretion.....The Court must therefore resist the temptation to draw the bounds too tightly." In *U. P. Financial Corporation v. Gem Cap (India) Pvt. Ltd.*, AIR 1993 SC 1435, the Supreme Court observed that administrative authorities have a certain amount of discretion ie. "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions." The Court can not substitute its judgment for that of the administrative authorities.

22. In my opinion, apart from there being highly disputed questions of fact

involved in this case, I am not inclined to exercise my discretion and interfere in this matter as I do not find any gross or palpable error of law in the impugned order. Hence, there is no force in this writ petition. The writ petition is dismissed.