
(2016) 05 AHC CK 0127
In the Allahabad High Court
Case No : Writ-C No. 14417 of 2016

Simbhaoli Sugars Ltd.

APPELLANT

Vs

State Of U.P. And 13 Others

RESPONDENT

Date of Decision : 24-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 17, 18

Citation : (2016) 6 ADJ 295 : (2016) 118 ALR 386 : (2016) 3 UPLBEC 1958

Hon'ble Judges : V.K. Shukla, ACJ. and Umesh Chandra Srivastava, J.

Bench : Division Bench

Advocate : Rohan Gupta, Advocate, for the Appellant; C.S.C., Ravindra Singh, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Shukla, ACJ.—M/s Simbhaoli Sugars Limited a company duly incorporated under the Companies Act 1956, having its registered office at Simbhaoli, District Hapur engaged in the manufacture of white crystal sugar is before this Court challenging the demand notices, in terms of which State/ Respondents seek to recover 10% collection charges pursuant to recovery proceeding.

2. Brief background of the case is that for crushing season 2014-15 cane price and interest on the same has not been paid to cane growers, in view of this, notice has been sent to the petitioners informing that they have fallen into default in payment of cane price along with interest. Petitioner's Company was put to notice by issuing a recovery certificate dated 12.10.2015 by the office of Cane Commissioner requiring it to pay the sums mentioned therein towards cane price with interest thereon, failing which coercive action as is envisaged under Sections 17 and 18 of the U.P. Sugarcane (Regulations of Supply and Purchase) Act, 1953 was to be undertaken. Petitioners submit that sum of Rs. 18132.42

(Eighteen Thousand One Hundred and Thirty Two point Forty Two Lacs) has been directly paid to the Cane Co-operative Societies by means of cheques received by the Co-operative Cane upto 19.02.2016. Petitioners submit that they have made entire payment of balance of cane price. Thereafter, respondents authorities issued impugned demand notice dated 24.02.2016 and 18.03.2016, seeking 10% collection charges on the amount paid due to coercive process i.e. Rs. 18132.42 (Eighteen Thousand One Hundred and Thirty Two point Forty Two Lacs) directly to the Cane Co-operative Societies.

3. Petitioners on the presentation of the writ petition in question have been informed that in the citation in question, interest amount due to inadvertence has been left out and accordingly revised demand notice has also been issued and same has been subjected to challenge by means of amendment application writ petition and same has been allowed. By means of said demand notice petitioners have been informed that coercive measure has been initiated for recovery of cane dues to the tune of Rs. 18132.42 Lacs and on account of the same cane price to the tune of Rs. 16041.71 Lacs has only been deposited whereas interest on delayed payment to the tune of Rs. 2090.68 lacs has not been deposited and on the total amount due 10% recovery charges have not been paid.

4. Petitioners have also filed supplementary affidavit along with chart showing progress report of the Cane Price payment by the petitioners and other sugar mills as well as copy of the representation made before the Competent Authority for waiving of the interest for the year 2014-15 and the fact that same is pending consideration.

5. Based on pleadings available and instruction that has been so received by the State Government as well as by Cane Union, present matter has been taken up for final hearing/disposal with the consent of the parties.

6. Sri S.D. Singh, Senior Advocate, appearing with Sri Rohan Gupta, Advocate submitted before this Court that in the facts of the present case, as is provided for under sub-section (3) of Section 17, for the waiver of the interest for the crushing Season 2014-15, an application has already been moved under U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 and said application has not been disposed of, in view of this, no coercive action should be taken for recovery of interest amount and 10% amount i.e. being charged towards recovery is parse bad and in teeth of full Bench judgement rendered in the case of Mahrajwa v. State of U.P. and others 2013(1) ADJ 426, as such this Court should come to the rescue and reprieve of petitioner's Company as sugar industry is passing through a very lean phase.

7. The request that has been made on behalf of petitioners has been resisted by learned Standing Counsel as well as Sri Ravindra Singh, Advocate by submitting that it is true that principal amount has been paid but fact of the matter is that till date interest amount has not at all been paid, and once interest has not been

paid and recovery proceedings are on, then in such a situation and in this background, no interference is called for and writ petition should be dismissed.

8. Sri. Ravinder Singh, Advocate has additionally submitted that interest cannot be waived once recovery certificate has been issued and further the provision of waiver of interest is repugnant to the provision of Sugar Control Order 1966.

9. In order to appreciate the arguments that have been so advanced, this Court proceeds to examine the relevant statutory provisions holding the field for running of sugar mills, sugar and sugarcane.

"Sugarcane" is an essential commodity as defined in Section 2(b) of the Essential Commodities Act, 1955. In the leading decision *Tika Ramji v. State of Uttar Pradesh & Ors.*, (1956) 1 SCR 393 : AIR 1956 SC 676, Apex Court held that the Essential Commodities Act included within the definition of "essential commodity" "food-crops" which would include sugarcane. Again, in *A.K. Jain v. Union of India & Ors.* (1970) 1 SCR 673 : AIR 1970 SC 267, following *Tika Ramji*, Apex Court held that Section 2 of the Essential Commodities Act provided that sugarcane would be an "essential commodity" within the meaning of the Act and hence cultivation and sale of sugarcane could be regulated by law.

10. The Industries (Development and Regulation) Act, 1951 declared certain industries as controlled industries. Section 2 of the said Act enacts that it is expedient in the public interest that the Union should take under its control, the industries specified in the First Schedule. The First Schedule, inter alia, included "sugar" industry as one of the controlled industries.

11. In *M/s Triveni Engineering Works Ltd. & Anr. v. Union of India & Ors.*, AIR 1996 All 420, this Court held that the sugar industry is a controlled industry. The Government is exercising control on the sugarcane at all levels, namely; of production, distribution, pricing as also on the production and marketing of finished product of sugar.

12. Section 3 of the Essential Commodities Act empowers the Central Government to issue order providing for regulating or prohibiting the production, supply and distribution of any essential commodity if it is of the opinion that it is necessary or expedient so to do for maintaining or increasing supply of any essential commodity or in securing equitable distribution and availability at fair price. In exercise of the said power, the Central Government framed the Sugarcane (Control) Order, 1966. Clause 2 thereof defines important terms such as "factory", "khandsari sugar", "khandsari unit", "crusher", "power crusher", "producer of khandsari sugar", "reserved area", etc., whereas Clause 3 enable the Central Government to fix minimum price of sugarcane payable by producer of sugar.

13. Sub-clause (3) and Sub-clause (3-A) of Clause 3 obligates the producer of sugarcane when he purchases any sugarcane from the grower of sugarcane or from a sugarcane grower's cooperative society to ensure payment of the price of

the cane within 14 days of the date of delivery and also talks of interest on delayed payment. Sub-clause (3) and Sub-clause (3-A) of Clause 3 are extracted below;

"(3) Where a producer of sugar purchases any sugarcane from a grower of sugarcane or from a sugarcane growers? Co-operative society, the producer shall, unless there is an agreement in writing to the contrary between the parties, pay within fourteen days from the date of delivery of the sugarcane to the seller or tender to him the price of the cane sold at the rate agreed to between the producer and the sugarcane grower or the sugarcane growers? cooperative society or that fixed under sub-clause (1), as the case may be, either at the gate of the factory or at the cane collection centre or transfer or deposit the necessary amount in the bank account of the seller or the cooperative society, as the case may be.

(3-A) Where a producer of sugar or his agent fails to make payment for the sugarcane purchased within 14 days of the date of delivery, he shall pay interest on the amount due at the rate of 15 per cent per annum for the period of such delay beyond 14 days. Where payment of interest on delayed payment is made to a cane growers? society, the society shall pass on the interest to the cane growers concerned after deducting administrative charges, if any, permitted by the rules of the said society."

14. Under this very order, the way and manner of effectuating payment to sugarcane grower has also been provided for and same also provides for mechanism for recovery of the said amount towards price of sugarcane. Relevant provisions are sub-clause (4) to (14) of Clause 3 of U.P. Sugarcane Control Order is extracted below:

"(4.) Where sugarcane is purchased through an agent, the producer or the agent shall pay or tender payment of such price within the period and in the manner aforesaid and if neither of them has so paid or tendered payment, each of them shall be deemed to have contravened the provisions of this clause.

(5.) At the time of payment at the gate of the factory or at the cane collection centre, receipts, if any, given by the purchaser shall be surrendered by the cane grower or cooperative society.

(6.) Where payment has been made by transfer or deposit of the amount to the bank account of the seller or the cooperative society, as the case may be, the receipt given by the purchaser, if any, to the grower, or the cooperative society, if not returned to the purchaser, shall become invalid.

(7.) In case, the price of the sugarcane remains unpaid on the last day of the sugar year in which cane supply was made to the factory on account of the suppliers of cane not coming forward with their claims therefor, it shall be deposited by the producer of the sugar with the collector of the district in which the factory is situated, within three months of the close of the sugar year. The

Collector shall pay, out of the amount so deposited, all claims, considered payable by him and preferred before him within 3 years of the close of the sugar year in which the cane was supplied to the factory. The amount still remaining undispursed with the Collector, after meeting the claims from the suppliers, shall be credited by him to the Consolidated Fund of the State, immediately after the expiry of the time limit of three years within which claims therefor could be preferred by the suppliers. The State Government shall, as far as possible, utilise such amounts, for development of sugarcane in the State.]

(8.) Where any producer of sugar or his agent has defaulted in furnishing information under clause 9 of this Order or has defaulted in paying the whole or any part of the price of sugarcane to a grower of sugarcane or a sugarcane growers' cooperative society within fourteen days from the date of delivery of sugarcane, or where there is an agreement in writing between the parties for payment of price within a specified time and any producer or his agent has defaulted in making payment within the agreed time specified therein, the Central Government or an officer authorised by the Central Government in this behalf or the State Government or an officer authorised by the State Government in this behalf may either on the basis of information made available by the producer of sugar or his agent or on the basis of claims, if any, made to it or him regarding non-payment of prices or arrears thereof, by the concerned grower of sugarcane or the sugarcane growers' cooperative society, as the case may be, or on the basis of such enquiry that it or he deems fit, shall forward to the Collector of the district in which the factory is located, a certificate specifying the amount of price of sugarcane and interest due thereon from the producer of sugar or his agent for its recovery as arrears of land revenue.

(9.) The Collector, on receipt of such certificate, shall proceed to recover from such producer of sugar or his agent the amount specified therein as if it were arrears of land revenue.

(10.) After effecting the recovery, the Collector shall intimate to the concerned growers of the sugarcane or the concerned sugarcane growers' cooperative societies through a public notice to submit their claims in such a manner as he considers appropriate within thirty days:

Provided that the Collector may, for the reasons to be recorded in writing, allow the submission of claims after the period so specified if he is satisfied that there was sufficient cause for not submitting such claim earlier.

(11.) If the amount recovered is less than the amount specified in the certificate under sub-clause (8), the Collector shall distribute the amount so recovered among the concerned growers of the sugarcane or the concerned sugarcane growers' cooperatives in proportion to the ratio determined by the Collector on the basis of the sugarcane supplied by the concerned growers of sugarcane or the sugarcane growers' cooperative society, as the case may be.

(12.) If the amount recovered and distributed under sub-clause (11) is less than

the amount specified in the certificate under sub-clause (8), the Collector shall proceed to recover the remaining amount, as if it were arrears of land revenue till the full amount is recovered and distributed to satisfy the remaining claims.

(13.) If the amount is given to the concerned sugarcane growers cooperative societies, it shall distribute the amount through cheque/draft/or any other recognised banking instrument on any scheduled bank to the concerned sugarcane growers within ten days of the receipt of the amount from the Collector.

(14.) If the concerned sugarcane grower or the concerned sugarcane growers cooperative society do not come forward to claim or collect the amount so recovered by the Collector within three years from the date of the public notice referred to in sub-clause (10), the unclaimed amount shall be deposited by the Collector in the Consolidated Fund of the State."

15. In order to regulates the production of sugar by vacuum pan sugar factories the Central Government under Clause 3 of the Sugar (Control) Order, 1966 has delegated its authority to regulate production of sugar by vacuum pan sugar factories to the State Government under Clause 15 of the said order by the Ministry of Food and Agriculture, Community Development and Co-operative, Department of Food, Government of India and pursuant thereto the State Government for regulating production of sugar by vacuum pan sugar factories has proceeded to issue order known as U.P. Vacuum Pan Sugar Factories Licensing Order, 1969 and therein Clause 3 deals with the grant of license, Clause 4 deals with the period for which licenses to be issued, Clause 5 deals with the issue of duplicate license, Clause 6 deals with the conditions for suspension or cancellation of license and Clause 8 specifically provided that if a person contravenes any of the provisions of this order or conditions of the license he shall be punishable in accordance with the provisions of the Essential Commodities Act, 1955.

16. This Court at this juncture also proceeds to take note of the provisions as contained under the U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 wherein as stated in the preamble, the Act has been enacted with a view "to regulate the supply and purchase of sugarcane required for use in sugar factories and gur, rab or khandsari sugar manufacturing units." The object of enactment was stated to be as follows: " with the promulgation of the Industries (Development and Regulation) Act, 1951, with effect from 8/5/1952, the regulation of sugar industry has become exclusively a Central subject. The State Government are now only concerned with the supply of sugarcane to the sugar factories. The bill is being introduced in order to provide for a rational distribution of sugarcane to factories, for its development on organised scientific lines, to protect the interest of cane growers and of the industry and to put the new Act permanently on the Statute Book." Section 17 therein deals with the payment of cane price and also deals with the procedure that is to be followed for recovery of the amount in question. Relevant Section 17 is being quoted below.

"17. Payment of Cane Price:- (1)The occupier of a factory shall make such provision for speedy payment of the price of cane purchased by him as may be prescribed.

(2) Upon the delivery of cane the occupier of a factory shall be liable to pay immediately the price of the cane so supplied, together with all other sums connected herewith.

(3) Where the person liable under sub-section (2) is in default in making the payment of the price for a period exceeding fifteen days from the date of delivering, he shall also pay interest at a rate of 7? per cent per annum from the said date of delivering, but the Cane Commissioner may, in any case, direct, with the approval of the State Government, that no interest shall be paid or be paid at such reduced rate as he may fix:

[Provided that in relation to default in payment of price of cane purchased after the commencement of this proviso, for the figure "7?" the "figure 12" shall be deemed substituted.]

(4.) The Cane Commissioner shall forward to the Collector a certificate under his signature specifying the amount of arrears on account of the price of cane plus interest, if any, due from the occupier and the Collector, in receipt of such certificate, shall proceed to recover from such occupier the amount specified therein as if it were an arrear of land revenue.

(5) (a) Without prejudice to the provisions of the foregoing sub-sections, where the owner or any other person having control over the affairs of the factory or any other person competent in that behalf enters to an agreement with a bank under which the bank agrees to give advance to him on the security of sugar produced or to be produced in the factory, the said owner or other person shall provide in such agreement that a [percentage determined by such authority and in such manner as may be prescribed] of the total amount of advance shall be set apart and be available only for re-payment to cane growers or their co-operative societies on account of the price of sugarcane purchased or to be purchased for the factory during the current crushing season from those cane-growers or from or through those societies, and interest thereon and, such societies, commission in respect thereof.

(b) Every such owner or other person as aforesaid shall sent a copy of every such agreement to the Collector within a week from the date on which it is entered into.

17. On the parameters of the provision quoted and noted above, sub-section (3) of Section 17 provides where the person liable under sub-section (2) is in default in making the payment of the price for a period exceeding fifteen days from the date of delivering, he shall also pay interest at a rate of 7? per cent per annum from the said date of delivering, but the Cane Commissioner may, in any case, direct, with the approval of the State Government, that no interest shall be paid

or be paid at such reduced rate as he may fix. Proviso wherein it has been provided that in relation to default in payment of price of cane purchased after the commencement of this proviso, for the figure "7?" the "figure 12" shall be deemed substituted. Subsection (4) of Section 17 provides that the Cane Commissioner shall forward to the Collector a certificate under his signature specifying the amount of arrears on account of the price of cane plus interest, if any, due from the occupier and the Collector, in receipt of such certificate, shall proceed to recover from such occupier the amount specified therein as if it were an arrear of land revenue. Subsection (5)(a) of Section 17 provides that without prejudice to the provisions of the foregoing sub-sections, where the owner or any other person having control over the affairs of the factory or any other person competent in that behalf enters to an agreement with a bank under which the bank agrees to give advance to him on the security of sugar produced or to be produced in the factory, the said owner or other person shall provide in such agreement that a (percentage determined by such authority and in such manner as may be prescribed] of the total amount of advance shall be set apart and be available only for re-payment to cane-growers or their co-operative societies on account of the price of sugarcane purchased or to be purchased for the factory during the current crushing season from those cane-growers or from or through those societies, and interest thereon and, such societies, commission in respect thereof.

18. Thus provision in question is clear and categorical that cane payment price has to be ensured in the manner prescribed and in case there is delay in payment of price of cane purchased, then interest on the same is payable and if there is default in payment of price of cane purchased, then Cane Commissioner is entitled to forward to the Collector a certificate under his signature specifying the amount of arrears on account of the price of cane plus interest, if any, due from the occupier and the Collector, in receipt of such certificate, shall proceed to recover from such occupier the amount specified therein as if it were an arrears of land revenue.

19. Here this much is accepted position that for crushing season 2014-15 principal amount has been paid and interest has not at all been paid and shelter is being taken of the fact that an application has been moved before the Cane Commissioner for forwarding the same to the State Government, as it has been done in the past for waiving the interest and as said application is pending, as such demand raised along with 10% of the collection charges i.e. being demanded is illegal.

20. Fact of the matter is that till today, Cane Commissioner has not recommended the matter to the State Government for waiving of the interest. Authority to waive the interest vests with the State Government on the recommendation of the Cane Commissioner. Once such is the factual situation that is so emerging that till date there is no order passed by the State Government nor there is any recommendation made by the Cane Commissioner

for waving of interest, liability of interest continues to subsist. As on date liability of interest to be paid by the petitioner's company is staring on the face of it, and in view of this, once accepted position is that statutory liability in the shape of interest is there, then it cannot be presumed in favour of petitioners that as on date there is no liability in existence.

21. Sri Ravindra Singh, learned counsel for the Cane Cooperative Society has proceeded to make a mention that the provisions of Sugarcane (Control) Order, 1966 operates in the same field in which U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 applies and taken together, they wholly occupy the field of regulation of price of sugarcane and also the mode and manner in which sugarcane has to be supplied and distributed to earmarked sugar factories and both lay down comprehensive scheme of regulating purchase and sale of sugarcane to be supplied by earmarked cane-growers to earmarked sugar factories and the provision of waiving of interest is running counter to the provision of Sugarcane (Control) Order 1966.

22. Sri. S.D. Singh, Senior Advocate submitted that question of repugnancy arises when there is clear and direct inconsistency in between the two i.e. Central Law and State Law and such inconsistency is irreconcilable, and here Sugar Control Order, 1966 has been framed in exercise of authority conferred under Section 3 of Essential Commodities Act, then there is no occasion for existence of any repugnancy , as such arguments advanced has no substance.

23. Apex Court in the case of Belsund Sugar Company Ltd. v. State of Bihar 1999 (9) SCC 620, while considering akin provisions vis-a-vis. Sugarcane (Control) Order, 1966 as well as Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 took the view that both are harmoniously operating in same field and complement each other. View to the similar effect has once again been taken in the case of Krishi Upaj Mandi Samiti v. Shiv Shankar Khandsari Udyog 2012 (9) SCC 368 wherein the provisions of M.P. Sugarcane (Regulation of Supply and Purchase) Act, 1958 along with the provisions of Sugarcane (Control) Order, 1966 was being dealt with and Apex Court has found and ruled that entire field of sale and purchase of sugarcane is covered by Sugarcane Act and Control Order, which are special provisions. In the case of U.P. Cooperative Cane Union Federation v. West U.P. Sugar Mill Association 2004 (5) SCC 430, Apex Court though in the matter of fixation of price took the view that there will be no inconsistency or repugnancy as it is possible for both the orders that is Sugarcane (Control) Order, 1966 and the provisions of U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 to operate simultaneously and to comply with both of them.

24. In the present case, what we find that there is no repugnancy arising for the simple reason that under the provision of Sugarcane (Control) Order, 1966, there is no provision that empowers the authorities to waive the interest, whereas under sub-section (3) of Section 17 the State Government is empowered to waive the interest on the recommendation of the Cane Commissioner.

25. Apex Court in the case of *Yogendra Kumar Jaiswal and others v. State of Bihar* 2016(3) SCC 183 has clearly mentioned that repugnancy would arise when there is clear and direct inconsistency between Central Law and State Law and such inconsistency irreconcilable. Question of repugnancy can arise only with reference to legislation made by Parliament falling under the Concurrent list or an existing law with reference to one of the matter enumerated in Concurrent list. If a law made by the State Legislature covered by an entry in the State List incidentally touches any of the entries in the Concurrent List. Article 254 is not attracted. But where a law covered by an entry in the State List (or an amendment to a law covered by an entry in the State List) made by the State Legislature contains a provision, which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to any provision of an existing law with respect to that matter in the Concurrent List then such repugnant provision of the State law will be void. Such a provision of law made by the State Legislature touching upon a matter covered by the Concurrent List, will not be void if it can co-exist and operate without repugnancy with the provisions of the existing law. It needs no special emphasis to state that the issue of repugnancy would also arise where the law made by Parliament and the law made by the State Legislature occupy the same field.

26. On such parameters, the question of repugnancy would not at all arise and to the contrary both the provisions would Co-exist for the simple reason that under the scheme of things provided for interest has been made admissible on delayed payment under both the statutory provisions and in addition to it under State Act, State has inhered in itself authority to waive the interest on the recommendation of Cane Commissioner.

27. Exercise of authority of waving the interest has also been subject matter of challenge in Public Interest Litigation (PIL) No.64933 of 2013 (*Rashtriya Kisan Mazdoor Sangathan v. Union of India and 2 others*), decided on 09.01.2014, wherein this Court has clearly mentioned that interest in question should not be waived in a routine manner, Section 17(3) of the U.P. Sugar Cane (Regulation of Supply and Purchase) Act 1953 provides for payment of interest on the delayed payment of sugarcane price same is subservient to the wisdom of the Cane Commissioner with the approval of the State Government for waving interest. At the said point of time wisdom of the Cane Commissioner has to be fair and equitable, factory owners are not entitled to seek waiver of interest on delayed payment of sugarcane price as a matter of right, only in exceptional cases such an authority could be exercised and that too after providing opportunity to the Cane Growers, as any order of waiver of interest would be effecting the rights of Cane Growers. Such an order of waiving of interest can always be subject matter of judicial review at the behest of Cane growers.

28. Once such is the factual situation that is so emerging in the present case that till today, the request for waiver has not at all been considered and no order has been passed in black and white, then net effect of the same is that liability in

question is there and citation in question has been prepared in the said direction, then no fault could be found in the same. But we make it clear that it is always open to the Cane Commissioner and State Government to consider the request of the petitioners for waiving of the interest on the parameters noted above and, even if, citation has been issued and process of recovery is on but same has not been brought to its logical conclusion, then said amount if request is accepted by State Government could be adjusted, but as till date no orders for waiver has been passed, then liability is to be accepted as it is and recovery of amount cannot be faulted on this score.

29. Much emphasis has been laid on the fact that recovery of 10% as recovery charges is bad as law on the subject has been clarified in the case of *Mahrajwa v. State of U.P. and others* 2013(1) ADJ 426.

30. Here recovery citation is inclusive of interest amount plus 10% of the recovery charges. Recovery charges certainly has to be charged as per the law laid down in the case of *Mahrajwa* (Supra). We cannot anticipate number of things, as has been suggested by petitioner, for the reason that as on date there is no deficiency in citation nor there is any short coming in recovery proceeding. Depending on the status of payment made, and the steps undertaken for recovery of the amount, State Authorities would take a final call qua the extent of recovery charges to be charged from petitioners company, keeping in view the parameters settled in the case of *Mahrajwa* (Supra).

31. With these observations/directions, writ petition stands disposed of.