

(1972) 09 AHC CK 0065
In the Allahabad High Court
Case No : Sp. A. No. 473 of 1972

State of U.P. and Others

APPELLANT

Vs

Om Prakash and Another

RESPONDENT

Date of Decision : 19-09-1972

Acts Referred:

General Clauses Act, 1897 — Section 8

Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 — Section 4

Citation : (1972) 42 AWR 812

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Advocate : N.C. Rajvanshi, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This special appeal has been filed by the State of Uttar Pradesh. It is directed against the judgment of a learned Single Judge allowing the writ petition and restraining the Appellants from interfering with the Respondents working his power crusher for manufacturing Gur even though he has no licence for it.

2. The Respondents filed a writ petition to challenge the order of the Assistant Sugar Cane Commissioner refusing to grant a licence to the Respondents under the U.P. Khandsari Sugar Manufacturing Licensing Order, 1967. This, order was challenged principally on the ground that the Respondents were existing licence holders. They had applied for renewal of their licence. Such an application for renewal of licence could be refused only after affording a reasonable opportunity. No such opportunity was ever afforded to the Respondents and as such the order was void.

3. The learned Single Judge repelled this submission. He held that it was doubtful whether the Respondents held a licence previously and as such it cannot be said that the Respondents were entitled to any hearing before rejection of their

application The order of the Assistant Sugar Cane Commissioner cannot, therefore, be challenged on that ground.

4. Before us, learned Counsel appearing for the Respondents sought to challenge the order of refusal on an additional ground. It was urged that the finding given in the order of refusal is that the granting of the licence to the Respondents for working a power crusher to produce Gur will result in the utilisation of reserved sugar-cane and will adversely affect the supply of the sugarcane to the Upper India Sugar Mills, Khatauli within whose reserved area the place where the Respondents reside and wanted to work their power crusher is situate. In the order of refusal it was also stated that the village where the power crusher was intended to work is within 10 miles of the reserved area of the aforesaid mills. The issuance of a new licence will result in the utilisation of the reserved sugarcane and that it was not in public interest to grant a new licence to the Respondents. This finding is sought to be challenged on the allegations contained in paragraphs 4 and 21 of the writ petition. In paragraph 4 emphasis was laid by the learned Counsel on the allegation that last year sugarcane crop of an area of 30 bighas was left unutilised have no relevance to the situation, as obtaining in the current year. There are no allegations about the situation of production of sugarcane with reference to this Mill in the current year or about the capacity of the mill to crush the sugarcane of the reserved area. In order to show that the production was much more than the buying or crushing capacity of the Mills. The allegation in paragraph 21 of the writ petition is that the Respondents intended to crush their own sugar cane crop and that no purchase from or outside the reserved area was made by the Respondents. Thus fact too has no material bearing on the finding recorded by the Assistant Sugarcane Commissioner in the impugned order. We are unable to hold that the Impugned order suffers from any manifest error of law.

5. It appears that on 9th February, 1972, the Khandsari Inspector visited the village and inspected the power crusher installed by the Respondents. Finding that the same was being run without licence, he sealed the power-crusher and Engine belonging to the Respondents and also took into custody the Gur and Sugarcane lying there. This action was challenged in the writ petition. On an interpretation of Section 4 of the U.P. Sugarcane (Purchase Tax) Act, 1961 the learned single Judge accepted this plea. This section provides that:

No unit other than a unit, which has obtained a licence under the U.P. Khandsari Sugar Manufacturing Licensing Order 1960 shall, without obtaining a licence from the Sugar Commissioner, carry on or undertake any process connected with the manufacture or production of gur or rab.

The learned Single Judge observed that:

....before gur could be manufactured by a unit, it is necessary for it to have a licence under the U.P. Khandsari Sugar Manufacturing Licensing Order, 1960 and further a licence from the Sugar Commissioner. It is common ground that the

Licensing Order 1960 has been repealed by 1963 Order and is no longer in force. That-being so, it is not possible for any one to get a licence, as before the Sugar Commissioner can issue a licence for the manufacture of gur, it is necessary that the unit should also have a licence under the U.P. Khandsari Sugar Manufacturing Licensing Order 1960. The Licensing order of 1960 is no longer in force and as such the provisions for obtaining a licence from the Sugar Commissioner for carrying out manufacture of gur has become redundant and unworkable.

We are unable to agree with this interpretation of the S.A. unit which has not obtained a licence under the U.P. Khandsari Sugar Manufacturing Licensing Order, 1960 shall not carry on the manufacture or production of gur or rab without obtaining a licence from the Sugar Commissioner. The two provisions for licence alternatives, for two different situations. Before undertaking any process connected with the manufacture or production of gur or rab the unit must have a licence either under the 1960 Order Or from the Sugar Commissioner for the purpose. This section does not require the having a licence under the 1960 Order as well as from the Sugar Commissioner. The requirement of obtaining a licence from the Sugar Commissioner applies to units other than the unit which has obtained a licence under 1960 Order. Under the circumstances, a unit not having a licence under 1960 Order can carry on the business of manufacturing gur or rab after obtaining a licence from the Sugar Commissioner. Merely because the 1960 Order has been repealed, the section does not become unworkable and no person can carry the manufacturing business or production of gur or Rab without obtaining the licence from the Sugar Commissioner.

6. The 1960 Order was repealed by the 1963 Order which in turn was repealed and re-enacted by the U.P. Khandsari Sugar Manufacturing Licensing Order, 1967. The Respondents made an application under the 1967 Order. That was refused. The Respondents were not entitled to work their power crusher without the requisite licence.

7. The learned Single Judge further held that Section 8 of the General Clauses Act cannot be of any help to the Appellant State for the proposition that references to the Licening Order 1960 must be taken to be to the Order of 1967. Here again we are unable to agree with the learned Single Judge. Section 8 of the General Clauses Act provides that where any Act repeals and re-enacts with or without modification any provision, reference in any other provision of the provision so repealed shall, unless a different intention appears, be construed as reference to the provision so re-enacted. It is well settled that the principles underlying Section 8 is applicable to enactments which are not in the nature of Acts or Regulations made by the Legislature. See *Mistra Nand Kaushik v. State of U.P.* AIR 1965 All. 204 and *Union of India v. Mohd. Usman* AIR 1968 All. 269. So Section 8 will apply to the repeal and re-enactment of the 1960 Order. The 1960 Order was repealed and re-enacted by 1963 Order. On this repeal, Section 4 would be read as if in place of the 1960 Order, the section referred to the Licensing Order of 1963. That effect of Section 8 of the General Clauses Act upon

Section 4 of the Purchase Act having taken place, it will continue so long as the 1963 Order remains in force. In the event of repeal and re-enactment of 1963 Order, the same process will become applicable again on the basis that Section 4 at the time of repeal and re-enactment referred to the 1963 Order. On coming into force of the 1967 Order, Section 4 will be deemed to refer to the 1967 Order, instead of the 1963 Order, the 1960 Order having been obliterated in 1963. Thus read Section 4 requires a licence under the 1967 Order.

8. In the result the appeal succeeds and is allowed. The judgment of the learned Single Judge is set aside and the writ petition is dismissed. We make no order as to costs.