(2012) 07 KAR CK 0081

In the Karnataka High Court

Case No : W.A. No''s. 3956 of 2009 and 4162 of 2009 (GM-RES)

The State of Karnataka and Another APPELLANT

Vs

South Indian Sugar Mills Association (Karnataka) and Others RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Citation : (2012) 07 KAR CK 0081

Hon'ble Judges : V. Suriappa Rao, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : M. Keshava Reddy, AGA, for the Appellant; H.N. Shashidhara, Advocate for appearing for Kesvy and Co. for R1, 2 and 4, Sri S. Sreenivasa, CGC for R3, for the Respondent

Judgement

K.L. Manjunath, J.—The legality and correctness of the order passed in W.P. Nos. 6385/08 and 6809/08 dt. 13.2.2009 is called in question in these appeals by the State of Karnataka. The facts leading to these appeals are as under:

The South Indian Sugar Mills Association (Karnataka), Sri Prabhulingesh Sugars and Chemicals Limited and Chamundeswari Sugars Ltd., filed the writ petitions to quash the order passed by the State of Karnataka on 28.3.2008 vide Annexure-K and the Order dt. 31.3.2008, wherein the State of Karnataka held that the Sugarcane growers and Sugar Factory for the season 2006-07 and 2007-08 to pay an additional sugar price of Rs. 160/- per Metric Ton in addition to the sugar minimum price determined by the Govt. of India. The writ petitions were filed on the ground that as per the provisions of the Sugarcane (Control) Order, 1966, only the Govt. of India is empowered to fix the sugarcane minimum price payable by each of the Sugar Factories to the sugarcane growers and that the State of Karnataka has no power to grant the same.

2. The Learned Single Judge allowed the writ petitions holding that the State Government has no power to fix the sugarcane price as it is beyond its competence and that the Central Government has alone jurisdictional power to fix the price of the sugarcane. This order is questioned in these appeals.

3. We have heard the Learned Counsel for the parties.

4. The Govt., Advocate relying upon the order of the State Government contends that the State of Karnataka had extended several benefits to the Sugarcane Mills and having regard to the benefits extended to the Sugar Mills in consultation with the South Indian Sugar Mills Association (Karnataka) has directed the Sugar Mills to pay a sum of Rs. 160/- per M.T., as additional sugarcane price in addition to the Sugar minimum price determined by the Government of India. According to him, even though there is no power for the State Government to fix the sugarcane minimum price under the Sugarcane Control Order, the order passed in the instant case was on account of certain benefits extended to the Sugar Mills and as a quid pro quo Sugar Mills were in turn directed to pay an additional sugar price of Rs. 160/- per M.T., in order to help sugarcane growers and the impugned order could not have been treated by the Learned Single Judge as an order passed under the provisions of the Sugarcane Control Order. According to him for the period 2007-2008 the Govt. had given concession as under:

1) Exempted to pay purchase tax from 1.4.2008 to 31.7.2008,

2) Rs. 100/- subsidy for crushing of sugarcane from 1.4.2008 to 31.7.2008 per M.T.,

3) Transport subsidy @ Rs. 21/- per K.M. per M.T., beyond 30 Kms.

4) Export subsidy of Rs. 1000 per M.T. of the sugar exported from the date of issue of G.O., till the period of Government of India''s Export concession order.

5) Liberalisation of movement of molasses and

6) Release of Rs. 100/- subsidy for the period from 1.6.2007 to 31.7.2007.

Besides the order reads that Govt., of India has also given certain concessions like interest free loan equivalent to the Excise Duty payable for the year 2006-07 and 2007-08, Export Subsidy, Buffer Stock Subsidy, etc.

5. In addition to that as there was upward trend in the price of molasses and sugar, it was all the more essential to ensure proper payment. Therefore, the Learned Govt., Advocate relying upon the order of the Govt. contends that in strict sense the order passed by the Government could not have been considered by the Learned Single Judge as an order passed under the Sugarcane Control Order and that the order should have been treated by the Court as it is a Memorandum of understanding between the South Indian Sugar Mills Association and Managing Directors of all the Sugar Factories in the State, Therefore, he contends that the order passed by the Learned Single Judge has to be modified. He fairly submits that as per the provisions of the Sugarcane Control Order, the Govt., has no right to fix the sugar minimum price.

6. Per contra, Mr. Shashidhara, the Learned Counsel appearing for the respondents contends that the order of the Learned Single Judge is justified since the State of Karnataka has no power to fix the sugar minimum price. Even

according to him, if additional sugarcane price has to be fixed, it has to be fixed by the Union of India in terms of the provisions of the Sugarcane Control Order only. Therefore, he requests the Court to dismiss the appeal.

7. The Learned Counsel appearing for the respondents has not disputed various concessions shown by the State Govt., to the Sugar Factories. If the Sugar Factories have been benefited by receiving concession shown by the State of Karnataka for the crushing years 2007-08 and 2006-07 is it open for the respondents to contend that the order passed in the instant case is beyond the scope of the provisions of the Sugarcane Control Act and that the Sugar Mills are not bound by the order.

8. We cannot find fault with the order of the Learned Single Judge in holding that the additional Sugarcane price can be fixed by the Union of India and not by the State of Karnataka. But according to us the impugned order passed by the State of Karnataka could not have been considered as an order passed under the provisions of the Sugarcane Control Order. On going through the entire order, we are of the opinion since several concessions and benefits were given to the Sugar Mills by the State as a quid pro quo the Sugar Mills were directed to pay a sum of Rs. 160/- per M.T., to the sugarcane growers in addition to the minimum price fixed by the Union of India, So in such circumstances, we are of the view that the impugned order cannot be termed as an order passed under the provisions of the Sugarcane Control Order. But it is based on the principles of quid pro quo. The Sugar Mills having received the benefits from the State of Karnataka cannot say that they are not bound by the order. If really the Sugar Mills are of the view they cannot be compelled to pay Rs. 160/- per M.T., to the sugarcane growers in respect of the supplies made by them, in all fairness it was open for the Sugar Mills to request the Government to withdraw the concession shown to them and allow them to pay the minimum price fixed by the Union of India in terms of the Sugarcane Control Order. Having accepted the concession shown by the Government, the respondents cannot challenge the order on the ground of jurisdiction. In the circumstances, these appeals are allowed. Further the findings of the Learned Single Judge that the Union of India alone is competent to fix the additional sugarcane price is confirmed. However, the order of the State to pay Rs. 160/- per M.T., to the Sugarcane growers is held as a consent order. Accordingly, the order of the Learned Single Judge is modified and Writ Petitions filed by the respondents are hereby dismissed.