**(2000) 01 AHC CK 0048**

**In the Allahabad High Court**

**Case No :** C.M.W.P. No''s. 54711 and 54853 of 1999

Triveni Engineering and Industries Ltd. APPELLANT

Vs

State of U.P. and others RESPONDENT

**Date of Decision :** 13-01-2000

**Acts Referred:**

Constitution of India, 1950 — Article 226
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 15, 15(1), 15(4), 16, 17
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 12, 2, 22

**Citation :** AIR 2000 All 177 : (2000) 2 AWC 1014

**Hon'ble Judges :** G.P. Mathur, J;Bhagwan Din, J

**Bench :** Division Bench

**Advocate :** Vineet Saran, Krishan Murari and Shanti Bhushan, for the Appellant; S.C., S.P. Gupta and Tarun Gupta, for the Respondent

## Judgement

G.P. Mathur, J.—Both the writ petitions are directed against the same orders passed by Special Secretary, Government of U. P. and Cane Commissioner. U. P., therefore they are being disposed of by a common order. Writ Petition No. 54711 of 1999 shall be treated as the leading case.

2. M/s. Triveni Engineering and Industries Limited (Petitioner of Writ Petition No. 54711 of 1999) has a Sugar Mill at Khatauli in the district of Muzaffarnagar while M/s. SEIL Limited (Petitioner of Writ Petition No. 54853 of 1999) has a Sugar Mill at Mawana in the district of Meerut. M/s. Tikaula Sugar Mills Ltd., respondent No. 4 has set up a new Sugar Mill in TIkaula in the district of Muzaffarnagar, which started production in the year 1998-99. U. P. Sugarcane (Regulation of Supply and Purchase) Act. 1953 (hereinafter referred to as the Act) has been enacted to regulate the supply of sugarcane required for use in sugar factories. The Cane Commissioner. U. P. exercising powers u/s 15 of the Act passed an order on 25.10.1999 assigning purchase centres to various Sugar Mills including the petitioners of the two writ petitions and respondent No. 4. Feeling aggrieved by

 

the aforesaid order of the Cane Commissioner, the two petitioners as well as respondent No. 4 preferred separate appeals before the State Government under sub-section (4) of Section 15 of the Act. The appeal preferred by respondent No. 4 was allowed by the order dated 18.12.1999 and the order dated 25.10.1999 of the Cane Commissioner was set aside. The Cane Commissioner was directed to reconsider the matter and pass a fresh reservation order with regard to certain purchase centres originally assigned to Mawana and Khatauli Sugar Mills in the light of the discussion and facts mentioned in the appellate order. Thereafter, the Cane Commissioner passed a fresh order on 20.12.1999 whereby the purchase centers mentioned in the operative part of the order passed by the State Government and which had earlier been assigned in favour of Mawana and Khatauli Sugar Mills were assigned in favour of Tikaula Sugar Mills Ltd. (respondent No. 4).

3. M/s. Triveni Engineering and Industries Limited filed writ petition No. 54711 of 1999 impleading (1) State of U. P., (2) Special Secretary. Government of U. P., Chini Udyog Anubagh-3, (3) Cane Commissioner, U. P. and (4) M/s. Tikaula Sugar Mills Ltd. as respondents. The prayer clause of the writ petition has some bearing on the controversy raised and, therefore, it is being reproduced below :

(a) issue a writ, order or direction in the nature of certiorari calling for the records of the case and to quash the impugned order dated 18.12.1999 passed by the appellate authority (respondent No. 2) filed as Annexure-8 to the writ petition ;

(b) issue a writ, order or direction in the nature of certiorari calling for the records of the case and to quash the impugned order dated 20.12.1999 passed by the respondent No. 3 filed as Annexure-9 to the writ petition ;

(c) issue a writ, order or direction in the nature of mandamus directing the Cane Commissioner to modify the reservation order for the year 1999-2000 and thereafter so that the cane area reserved for each factory is proportionate to their individual requirements of sugar cane :

(d) pass such other or further suitable orders as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case ;

(e) award costs in favour of the petitioners.

4. Feeling aggrieved by the order of the Cane Commissioner, the petitioners preferred the present writ petitions in which the following order was passed by the Division Bench :

"Hon''ble A. A. Desai, J.

Hon''ble Bhagwan Din, J.

Heard Sri S. C. Maheshwari assisted by Srt Vineet Saran, counsel for the petitioner, learned chief standing counsel appearing for respondent Nos. 1, 2 and 3 and Sri Rakesh Dwivedi appearing for respondent No. 4 and perused the papers.

Learned counsel appearing for the petitioner made a statement that he is confining to relief No. 2 and giving up relief No. 1.

The respondent No. 4 is granted 10 days time to file counter-affidavit. This chief standing counsel may file counter affidavit on behalf of respondent No. 3 within the same time.

List on 12th January. 2000.

Till then the operation of the order dated 20.12.1999 passed by the Cane Commissioner shall remain stayed.

23-12.1999."

Exactly similar order was passed in Writ Petition No. 54853 of 1999.

5. We have heard Sri Shanti Bhushan, learned senior counsel for the petitioners. Sri S. P. Gupta learned senior counsel for the respondent No. 4 and have perused the record.

6. Learned counsel for the petitioners has challenged the order passed by the State Government on 18.12.1999 on several grounds and has urged that looking to the production capacity of the petitioners and their requirement of sugarcane, the Impugned order allowing the appeal preferred by respondent No. 4 and remitting the matter to the Cane Commissioner for passing a fresh order with regard to certain purchase centres which had earlier been reserved in favour of the petitioners is wholly Illegal. The submission made by the learned counsel relates to relief (a) claimed in the writ petition. The order dated 23.12.1999 passed by this Court shows that the learned counsel for the petition has made a statement that he was giving up the aforesaid relief and he was confining to the second relief at the time when the petition was heard. In view of the aforesaid statement made by the counsel, we are of the opinion that it is not open to the petitioner to assail the validity of the order dated 18.12.1999 passed by Appellate Authority (respondent No. 2).

7. Shri Shanti Bhushan next urged that the Cane Commissioner passed the impugned order dated 20.12.1999 without giving any opportunity of hearing to the petitioner and, as such, the same was passed without complying with the provisions of the Act and was also contrary to principles of natural justice. It is urged that the order of the appellate authority was passed on 18.12.1999, which was a Saturday and the file reached the Cane Commissioner on 20.12.1999 (Monday) and on the same day he passed the impugned order. The validity of the order has also been assailed on merits and it has been urged that the factors relevant for assigning an area in favour of a sugar factory as enumerated in Rule 22 of U. P. Sugar Cane (Regulation of Supply and Purchase) Rules. 1954 (hereinafter referred to as the rules) have not been taken into consideration and consequently the same is liable to be quashed.

 

8. Paragraph 37 of the writ petition reads as follows :

"That the impugned order dated 20.12.1999 passed by the respondent No 3 is an ex parte order without any notice or opportunity of hearing to the petitioner. The said order has been passed mechanically, without any application of mind by the respondent No. 3 and is wholly against the provisions of the Act and the Rules besides being against the principles of natural justice."

The reply to paragraph 37 of the writ petition has been given in paragraph 89 of the counter-affidavit filed on behalf of M/s. Tikaula Sugar Mills Ltd. [respondent No. 4) and it reads as follows :

"That contents of para 37 of the said writ petition are not admitted and specifically denied. The order of respondent No. 2 is self-contained, which was to be complied with by respondent No. 3 and the same have been complied with. Question of hearing or opportunity at the level of respondent No. 2 does not arise. However, no prejudice could be or has been caused to the petitioner in view of the fact that appellate order is no more under challenge."

9. The reading of paragraph 89 of the counter-affidavit does not show that any opportunity of hearing was given to the petitioners of the two writ petitions as a plea has been raised that the question of giving opportunity of hearing did not arise and that no prejudice had been caused to the petitioner. The date of the order as well as sequence of events themselves show that the Cane Commissioner passed the impugned order without giving opportunity of hearing to any party. The State Government (Appellate Authority) passed the order on Saturday and the Cane Commissioner passed the impugned order on the very next working day i.e., on Monday. In fact, the learned counsel appearing for respondent No. 4 did not dispute the assertion of the petitioner that the Cane Commissioner had passed the impugned order without giving any opportunity of hearing to the two writ petitioners.

10. At this stage, it will be convenient to refer to certain provisions of the Act and Rules which have a bearing on the controversy in issue. Under sub-section (1) of Section 15, the Cane Commissioner may, after consulting the Factory and Cane growers Cooperative Society in the manner to be prescribed, reserve and assign any area for the purposes of supply of cane to a factory in accordance with the provisions of Section 16 and may likewise at any time cancel such order or alter the boundaries of an area so reserved or assigned. Section 16 confers powers upon the State Government to regulate the sale or purchase of cane in any reserved or assigned area. It also confers power to regulate the manner in which cane grown in the reserved area or the assigned area shall be purchased by the factory for which the area has been so reserved or assigned. Section 17 provides that the occupier of a factory shall make such provision for speedy payment of the price of cane purchased by him and upon the delivery of cane he shall be liable to pay immediately the price thereof. Section 5 of the Act lays down the manner in which Development Council will be constituted and Section 6 lays

 

down the functions thereof basically for improving the quality and yield of sugarcane. In exercise of powers conferred by Section 28 of the Act, the State Government has framed U. P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954. Rule 2 (f) defines ''Purchase Centre'' and it means any place at which cane is purchased, supplied, delivered, weighed, or paid for and includes such portion of the premises of a factory as is used for any of these purpose. Rule 22 of the Rules reads 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, u/s 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 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 Cane-growers'' Co-operative Society of the area ;

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

Chapter IX of the rules gives in detail the procedure for payment of price of cane supplied to a sugar factory.

11. A perusal of the Section 15 of the Act would show that the order assigning or reserving any area has to be made after consulting the Factory and Cane-growers'' Co-operative Society. The ownership of the cane vests with the producer and normally he is entitled to sell the same to any one he likes. Naturally, he would like to sell the sugarcane to the person who offers him the best price without any delay. The Act, however, imposes a restriction upon him and by virtue of an order issued under sub-section (1) of Section 15, the cane-grower is compelled to sell his sugarcane to the factory to whom his area has been assigned or reserved. The Legislature has enacted Section 17 which makes provision for immediate payment of price to the seller of sugarcane. Therefore, the promptness with which the price is paid is a very Important factor which has to be kept in mind at the time of passing of an order assigning or reserving any area in favour of a sugar factory. The Cane-growers'' Co-operative Society Is expected to watch the Interest of the producers and it is for this reason that it is obligatory upon the Cane Commissioner to consult the Society before passing any order of assignment or reservation.

12. Rule 12 gives some guidelines as to how the power of assigning or reserving any area has to be exercised by the Cane Commissioner. It mentions several

 

factors which have to be taken into consideration. Apart from the distance of the area from the factory, the facility of transport, previous reservation and assignment orders, quantity of cane to be crushed in the factory, views of the Cane-growers'' Co-operative Society, arrangements made by the factory for payment of price, etc. in previous years and efforts made by the factory in developing the area have also to be taken into consideration. Sub-rule (b) lays emphasis upon facilities for transport which is also important inasmuch as in a given case, an area may be at a short distance from one factory than another but on account of better facility of transport, it may be more convenient for the cane-growers to supply sugarcane to the factory which is at a greater distance. Similarly, sub-rule (f), which makes the payment of price in earlier years relevant, is very important from the point of view of cane-growers. If the factory has defaulted in payment of price and the dues of the cane-growers are not paid for a long time, they would not be willing to supply their produce to such a factory. Prompt payment of price is of primary importance to the cane-growers as it takes almost a year before sugarcane crop is ready for harvesting. The cane-growers who have nurtured their crop for about a year would not like to wait for further period if they have made the supply to the sugar factory. Under sub-rule (h), effort made by the factory in developing the area for producing more and better quality of cane also becomes relevant. If a factory has invested heavy amount in developing an area as a result whereof the quality of sugarcane has improved, naturally it would like the said cane to be supplied to its factory. The provisions of the Act and Rules show in unmistakable terms that the order for assignment or reservation of an area has to be passed after taking into consideration various factors and it cannot be based upon one solitary consideration. May be in a given case one single factor may far outweigh the effect of all other remaining factors. For example, an area may be right at the gate of the Sugar Mill and in such a situation, distance alone can be taken into consideration for assigning or reserving that area in favour of that sugar factory. It is for the authorities, who are experts in the field, to take into consideration all the factors and after balancing them pass appropriate orders which best subserve the interest of the sugar factory and the cane growers.

13. The impugned order dated 20.12.1999 of the Cane Commissioner shows that he merely made reference to the findings recorded by the appellate authority in the order dated 18.12.1999 and thereafter passed the operative portion of the order assigning all the purchase centres in favour of respondent No. 4. No doubt, the Cane Commissioner had to take into consideration the observations made in the order of the appellate authority but he was also legally bound to take, into consideration the factors mentioned in Rule 22 of the Rules. Once the matter had been remanded to him, he could not base his order entirely upon the order of the appellate authority as if it was a direction to him to assign, the purchase centres in favour of a particular Sugar Mill and to Ignore the statutory provision.

14. In Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, , the Apex Court has ruled that if a statutory tribunal exercises its discretion on the basis of

 

irrelevant considerations or without regard to relevant considerations, certtorari may be issued to quash its order. As mentioned earlier, the impugned order has been passed without giving any opportunity of hearing to the petitioners. Sub-section (1) of the Section 15 of the Act, enjoins a duty upon the Cane Commissioner to pass a reservation order after consulting the Factory and Cane-growers'' Cooperative Society. The manner in which the impugned order has been passed clearly shows that neither any notice was issued to Cane-growers'' Cooperative Society nor any opportunity of hearing was given to them. For these reasons, the impugned order is clearly illegal and has to be set aside.

15. At the fag end of the arguments, an application was filed wherein a prayer has been made to (a) permit the petitioner for pursuing relief No. 1 in a separate writ petition before the single Judge, (b) clarify that relief Nos. (c), (d) and (e) have not been given up and continue in the present writ petition.

16. We are of the opinion that in view of the statement made by the counsel for the petitioner and liberty having not been granted to them to file a separate writ petition for seeking relief No. 1 (in fact relief No. (a)), such a prayer cannot be granted. We are fortified in our view by a decision of the Apex Court in Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, . The other prayer regarding clarification of the order can only be granted by the same Bench which heard the matter on 23.12.1999.

17. In the result, both the petitions succeed and are hereby allowed. The impugned order dated 20.12.1999 of Cane Commissioner (Annexure-8 to the writ petition) is quashed. The Cane Commissioner is directed to pass a fresh order after giving opportunity of hearing to all the parties concerned and in accordance with law.

18. The petitioners and respondent No. 4 are directed to appear before the Cane Commissioner. U. P. on 18.1.2000. The Cane Commissioner shall make endeavour to pass final order expeditiously preferably by 31.1.2000. Learned counsel for respondent No. 4 has undertaken that his client will personally serve all the parties as may be directed by the Cane Commissioner.

19. It is being made clear that it should not be understood that this Court is expressing any opinion regarding merits of the claim of any party. The Cane Commissioner shall exercise his independent judgment after taking into consideration all the relevant factors and shall pass orders in accordance with law.