
(2015) 03 AHC CK 0024
In the Allahabad High Court
Case No : Writ C. No. 8808 of 2015

Triveni Engineering and Industries Ltd.	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Citation : (2015) 3 ADJ 619 : (2015) 109 ALR 830 : (2015) 2 AWC 1872

Hon'ble Judges : B. Amit Sthalekar, J.

Bench : Single Bench

Advocate : Diptiman Singh and S.D. Singh, for the Appellant; Ravindra Singh and V.K. Upadhyay, Advocates for the Respondent

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J.—This is a writ petition filed by the petitioner-Sugar Mill seeking quashing of the order dated 23.1.2015 with a further prayer that the sugar cane centers Dalhedi-II and Sirsali-I be allotted to the petitioner and respondent No. 4 be restrained from purchasing sugarcane from these cane centers.

2. The case of the petitioner, briefly stated, is that Dalhedi-II and Sirsali-I were reserved in favour of the petitioner through Reservation Order dated 18.10.2014 passed by the Cane Commissioner, U.P. Lucknow. After assignment of these two cane centers to the petitioner mill, it was purchasing sugarcane from these centers. In the meantime aggrieved by the order of the Cane Commissioner dated 18.10.2014 the respondent No. 4 filed appeal No. 33 of 2014, which has been allowed by the Special Secretary, Government of U.P. by order dated 23.1.2015. It is stated that the Cane Commissioner by his order dated 11.10.2014 notified the sugarcane requirement of the petitioner mill at 151.84 lac quintals. Reservation Order was passed by the Cane Commissioner and only 188.49 lac quintals of sugarcane was reserved for the petitioner-mill and assigned at the drawal rate of 81%. The petitioner filed appeal No. 27 of 2014 for modification of the Reservation Order by which the cane centre of the

petitioner namely Baduli Chandpur-Sahji and Badgon-II had been assigned to the Kisan Sahkari Chini Mill Ltd. Nanauta, Saharanpur, respondent No. 4. The respondent No. 4, also aggrieved by the Reservation Order dated 18.10.2014 assigning Dalhedi-II and Sirsali-I sugarcane center to the petitioner, had filed appeal No. 33 of 2014. Both the appeals were decided by the common order dated 23.1.2015. The petitioner's appeal No. 27 of 2014 has been rejected and appeal No. 33 of 2014 filed by the respondent No. 4 has been allowed and the sugarcane centers of Dalhedi-II and Sirsali-I have been withdrawn from the petitioner and assigned to the respondent No. 4.

3. I have heard Sri S.D. Singh, learned Senior Counsel assisted by Sri Diptiman Singh for the petitioner, Sri Ravindra Singh, learned counsel for the respondent No. 4 and Sri Mata Prasad, learned Additional Chief Standing Counsel for the respondent No. 1 to 3.

4. Sri Mata Prasad has adopted the submissions of Sri Ravindra Singh and submits that since the dispute is essentially between the petitioner and the respondent No. 4, it is not necessary for the State to file any counter affidavit.

5. The submission of Sri S.D. Singh, learned Senior Counsel is that since the year 2007-08 these two sugarcane centers of Dalhedi-II and Sirsali-I have been reserved/assigned to the petitioner and it is only this time that the same has been taken away from the petitioner for reasons, which cannot be sustained in law or on facts. Submission is that in the previous year the petitioner was allotted 207.14 lac quintals of sugarcane out of which 80.41 lac quintals was crushed and 123 crushing days were completed by the petitioner-mill. In the current crushing season the petitioner has been allotted 188.49 lac quintals of sugarcane and as per the Notification of the Cane Commissioner their requirement is 151.84 lac quintals. It is submitted that for the same period the respondent No. 4 was allotted 115.61 lac quintals out of which 58 lac quintals were crushed and drawal was 50.16% and for the current year drawal is 77.12%.

6. It is further submitted by the learned counsel that as regards payment of cane price is concerned, the petitioner has paid the entire cane dues of the previous year 2013-14 and as on 29.1.2015 the petitioner mill has paid 92% of cane price for the present crushing season whereas the respondent No. 4 has paid only 64% of cane price.

7. Learned counsel therefore submitted that considering the above factors namely the requirement of sugarcane and the drawal, the Cane Commissioner had assigned the sugar cane centers of Dalhedi-II and Sirsali-I to the petitioner-mill and therefore, there was no justification for revisiting the earlier order 18.10.2014 and withdrawing the above two sugar cane centers from the petitioner, since the facts recorded in the order of assignment dated 18.10.2014 remained unchanged and there were no new mitigating circumstances before the State Government in appeal to justify a contrary decision.

8. Sri S.D. Singh also submitted that in another appeal No. 48 filed by the

petitioner it has been mentioned that 4.25 lac quintals of sugar from the purchasing centers of Badhedi, Vijopura, Medpur and Kutesara Shankerpatti had been taken from the Indian Potash Ltd., Rohankala and given to the petitioner-mill because the petitioner-mill was facing shortage which also finds mention in the impugned order and yet the sugarcane centers of Dalhedi-II and Sirsali-I have been taken away from the petitioner and given to respondent No. 4.

9. He further submits that this Court has held that once a particular sugar cane center has been reserved for a particular mill that order attains finality. Reference has been made to a decision of a learned Single Judge of this Court reported in Govind Nagar Sugar Ltd. Vs. State of U.P. and others, wherein this Court had dealt with the powers of the Cane Commissioner, under Section 12 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as "the Act, 1953").

Section 12 reads as follows:--

"12. Estimates of Requirements.-(1) The Cane Commissioner, may for purpose of Section 15, by order, require the occupier of any factory to furnish in the manner and by the date specified in the order to the Cane Commissioner an estimate of the quantity of cane which will be required by the factory during such crushing seasons [or crushing seasons] as may be specified in the order."

(2)The Cane Commissioner shall examine every such estimate and shall publish the same with such modifications, if, any as he may make.

(3) An estimate under sub-section (2) may be revised by an authority to be prescribed."

10. From a perusal of the provisions of Section 12 of the Act what emerges is that the Cane Commissioner may require the occupier of any factory to furnish in the manner and by the date specified in the order to the Cane Commissioner an estimate of the quantity of cane which will be required by the factory during such crushing season as may be specified in the order and he shall examine every such estimate and shall publish the same with such modifications, if, any as he may make.

11. Sri Ravindra Singh, learned counsel for the respondent No. 4 on the other hand submitted that the initial order dated 18.10.2014 was itself contrary to the Act, 1953 inasmuch as if the petitioner was in need of two purchase centers of Dalhedi-II and Sirsali-I he ought to have applied for reservation or assignment of these areas to his factory as provided under Rule 21 of the U.P. Sugarcane(Regulation of Supply and Purchase) Rules, 1954 (hereinafter referred to as "the Rules, 1954"). It was submitted that in the absence of any application submitted by the petitioner there was absolutely no occasion for the Cane Commissioner to reserve or assign sugarcane centers of Dalhedi-II and Sirsali-I to the petitioner-mill by the order dated 18.10.2014.

12. Next it was submitted by learned counsel for the respondent No. 4 that

against the requirement of 151.84 lac quintals of sugarcane as determined by the Cane Commissioner the petitioner-mill had been allotted 188.49 lac quintals and its drawal came to 81% whereas in the case of respondent No. 4 against an allotted requirement of 71.61 lac quintals he was allotted 100.27 lac quintals of sugarcane which came to 77% which was below to that of the petitioner-mill. It was submitted that in the previous crushing season against requirement of 207.14 lac quintals, the petitioner-mill was able to crush only 80.41 lac quintals which came to 38.82% of the allocated sugarcane whereas in the case of respondent No. 4-mill, against an allotment of 115.61 lac quintals 58 lac quintals of sugarcane had been crushed and its percentage came to 50.17% which was more than that of the petitioner and it was considering these factors that the State Government took away the sugarcane purchase centers of Dalhedi-II and Sirsali-I from the petitioner-mill while deciding the appeal.

13. He further submits that the petitioner never applied for reservation. He further submits that the petitioner had not complied with the provisions of Rule 21 of the U.P. Sugarcane (Regulation of Supply and Purchase) Rules 1954 (hereinafter referred to as "the Rules 1954") and therefore no assignment of cane centers of Dalhedi-II and Sirsali-I could have been made to it under the order dated 18.10.2014.

14. Rule 21 of Rules 1954 reads as follows:--

"21. (1) The occupier of a factory shall apply to the Cane Commissioner in Form I. Appendix-III for the reservation or assignment of an area for supply of cane to the factory for one or more crushing seasons falling over the period of reservation and assignment.

(2) Every such application shall be accompanied by a Treasury receipt showing that a fee at the rate of Rupees One thousand for each crushing season has been deposited in local treasury."

(3) Every such application shall be accompanied by a Treasury receipt showing that a fee of rupees two has been deposited in the local treasury."

15. No doubt the language of the Rule 21 at first blush may give the impression that the same is mandatory but that in my opinion is not so. The reason is that the sugarcane industry being a regulatory industry operating in a particular season crushing should continue uninterrupted during the crushing season which is absolutely essential for the economic welfare of not only the labour force engaged in the industry but also of the farmers whose economic condition is directly dependent upon such industry and one can only imagine the plight of the farmers if their crop of sugar cane is not lifted by a sugar mill. Another reason why the provisions of Rule 21 cannot be held to be mandatory is because Section 12 of the Act, 1953 itself permits the Cane Commissioner to require the occupier of any factory to furnish in the manner and by the date specified in the order to the Cane Commissioner an estimate of the quantity of cane which will be required by the factory during such crushing season/seasons. Therefore, the

mere fact that the petitioner-mill had not applied for reservation of Dalhedi-II and Sirsali-I sugarcane centers would not be fatal to the order dated 18.10.2014 whereby these two cane centers were assigned to the petitioner. Even otherwise, in the facts of the present case it was not required of the petitioner to apply for reservation or assignment of the cane purchasing Centres of Dalhedi-II and Sirsali-I as these have been assigned to the petitioner since 2007-08 till the passing of the impugned order.

16. The impugned order 18.10.2014 shows that the Cane Commissioner had taken into consideration the fact that the petitioner had been allotted 188.49 lac quintals of sugar cane against a notified requirement of 151.84 lac quintals and for this purpose it would require 29135 hectares of land for growing sugar cane.

17. The order dated 18.10.2014 also shows that the Cane Commissioner had taken into consideration the geographical condition of the petitioner-sugar mill, the distance of the purchasing centers from the petitioner-mill, the means of transportation carrying sugarcane to the petitioner-mill, the allotment area of the mill for purchasing of sugarcane in the current year, the requirement of quantity of sugarcane by the mill, the determination of value of sugarcane and payment by the petitioner-mill. The requirement made by the Cane Cooperative Development Society and the development works were carried out by the mills to the allotted area.

18. In the impugned appellate order the State Government has taken into consideration the respective grounds and objection thereto by the petitioner as well as the respondent No. 4. The distance from the mill to the Dalhedi-II and Sirsali-I purchasing centers has been made note of but minor variations of distance have not weighed decisively upon the State Government.

19. The appellate authority has also noted that the Dalhedi-II and Sirsali-I purchasing sugarcane centers have been allotted to the petitioner from the year 2007-08 continuously. The only factor which weighed with the State Government for upsetting the reservation/assignment order dated 18.10.2014 is that the drawal of the petitioner-mill is 81% and that of respondent No. 4 is 77%. However, the scheme of the Act nowhere provides that there must be an absolute parity in the matter of drawal percentage between the various sugar mills. No doubt there may be a sincere intention on the part of the State Government to keep the drawal ratio as close as possible and there should be no sharp distinction but parity has not been contemplated as fairly admitted by the learned counsel for the respondent No. 4 during the hearing of the case.

20. Sri S.D. Singh, learned Senior Counsel for the petitioner also provided to the Court a copy of Groupwise/Ekal Swamitwa Millo ka Ganna Mulya Dey, Bhugtan evam Avshesh, Perai Satra 2013-14, which was also shown to the learned counsel for the respondents. This is a list of sugar mills, which are running in arrears of cane dues for the year 2013-14. In this list the name of the petitioner-mill does not appear and at the bottom of the sheet, there is a note which says

that the payment of cane dues for the remaining sugar mills is 100%. This document has not been disputed by Sri Ravindra Singh, learned counsel for the respondent No. 4 and therefore it goes to show that so far as the cane dues are concerned, the petitioner is not in arrears of cane dues.

21. Learned counsel for the petitioner has also referred to the provisions of Rule 22 of the Rules, 1954 and his submission is that the Cane Commissioner while determining the quantity to purchase sugarcane from an area by a factory has to take into consideration of the various factors mentioned in Clause (a) to (i) of Rule 22 of the Rules, 1954.

22. Rule 22 of the Rules, 1954 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, 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 factory,
- (f) the arrangements made by the factory in previous years for payment of cess, cane price and commission,
- (g) the view of the Cane-Growers" Co-operative Society of the area,
- (h) efforts made by the factory in developing the reserved or assigned area,
- (I) efforts made by the factory to provide information to the farmers pertaining to survey, supply tickets, weighment, payment etc. through the use of website, Short messaging Service (SMS), Interactive Voice Response System (IVRS), Hand Held Computer (HHC), Global Positioning System (GPS), electronic weigh-bridge etc."

23. The submission is that a particular sugar mill to which cane purchase area has been assigned/reserved, same should not be withdrawn merely on non-fulfillment or want of any one factor.

24. In support of his contention reliance has been placed upon a decision of a Division Bench of this Court reported in Triveni Engineering and Industries Ltd. Vs. State of U.P. and others, wherein the Division Bench, interpreting the provisions of Rule 22, has held that the provisions of the Act and Rules in unmistakable terms provide 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.

25. Para 12 of the said judgment reads as follows:--

"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." 26. As already noted above the impugned order is based only on a comparative statement of the drawal percentage of the petitioner and the respondent No. 4. It is only on this factor that the Dalhedi-II and Sirsali-I sugarcane purchase centers have been withdrawn from the petitioner and given to the respondent No. 4, which in view of the law laid down by the Division Bench of this Court in the case of Triveni Engineering (supra) is unsustainable.

27. Learned counsel for the respondent next submitted that even though the Dalhedi-II and Sirsali-I sugarcane centers were assigned to the petitioner-mill from 2007-08 continuously till passing of the impugned order but appeals had

been filed against all such assignments in the past.

28. Sri Ravindra Singh, however, very fairly stated that in all the cases those appeals had been dismissed as having become infructuous and in this context he has also referred to the document filed as Annexure-1 to the short counter affidavit.

29. Thus on the conspectus of facts of the case and the law, the impugned order dated 23.1.2015 is absolutely illegal and arbitrary and unsustainable in law and is accordingly quashed.

30. The writ petition is allowed.

31. The matter is remitted to the State Government to reconsider the appeal of the petitioner in the light of the observations made above specifically with regard to the provisions of Rule 22 of the Rules, 1954. This exercise shall be completed by the Appellate Authority within a period of two months from the date a certified copy of this order is received in his office.