

(2004) 07 UK CK 0021

In the Uttarakhand High Court

Case No : Writ Petition No. 318 of 2004 (M/B)

Vardan Linkers and Another

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 28-07-2004

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Uttar Pradesh Sheera Niyamtran Adhiniyam, 1964 — Section 8, 8(2)
Uttar Pradesh Sheera Niyamtran Niyamawali, 1974 — Rule 22

Citation : (2004) 07 UK CK 0021

Hon'ble Judges : P.C. Verma, J;P.C. Pant, J

Bench : Division Bench

Advocate : Sudhanshu Dhulia, assisted by, Puja Banja, for the Appellant; U.K. Uniyal assisted by, Shobhit Saharia, and 6 and T.A. Khan, for the Respondent

Final Decision : Allowed

Judgement

P.C. Pant, J.—By means of this writ petition moved under Article 226 of the Constitution of India, the Petitioners have prayed for a mandamus to command the Respondents No. 1 to 8 to continue the supply of molasses upto limit of 85,000 quintals to the Petitioners as per the contract entered with them. A further direction has been sought to quash the order dated 24.4.2004 (Annexure 9) passed by the Respondents No. 1 & 2 cancelling the contract.

2. Brief facts of the case as per the writ petition are that there are five sugar mills in the State of Uttaranchal, which produce molasses as bye-product, a raw material used by chemical factories and distilleries. The sale and distribution of molasses is governed by U.P. Molasses Control Act (U.P. Shira Niyamtran Adhiniyam), 1964 (applicable in Uttaranchal). The Petitioners are the authorised representatives of two scheduled distillers of Punjab (Respondents No. 9 & 10). Under the policy of Government of Uttaranchal, out of total quantity of molasses produced by the sugar factories, 20% can be exported to the other States, 10% of the total produce has been earmarked for the distilleries manufacturing

country liquor in Uttaranchal and remaining 70% are supplied to other distilleries and chemical factories situated in the State of Uttaranchal. A copy of the said policy issued from the office of Excise Commissioner is annexure 3 to the writ petition. An advertisement was published in various newspapers including Daily Hindi newspaper Amar Ujala (copy Annexure 4 & 4A) on 23.2.2004 and tenders were invited from bonafide bidders for sale and export of molasses. In response to the said advertisement, Petitioners purchased a tender form and submitted sealed tender to Assistant Cane Commissioner. Other persons also submitted their offers to the said authority. The tenders were opened in an open meeting in which bidders were asked to increase the bids on which negotiations took place and Petitioners' bid being highest at the rate of Rs. 127/- per quintal was accepted. In pursuance to the said contract, the Secretary of Molasses Committee issued a letter dated 26.3.2004 (Annexure 5) authorising the Petitioners to lift 85,000 quintals of molasses from the sugar factories at the rate of Rs. 127/- per quintal for supply to the firms M/s Patiala Distillers and Manufacturers (from sugar mills of Nadhei, Gadarpur and Doiwala) and for Chandigarh Distillers and Bottlers (from sugar factories of Sitarganj and Kiccha). Thereafter, in compliance of the said letter, the Petitioners deposited the necessary amount of Rs. 1 lac per sugar factory as the molasses were to be lifted by 31st May, 2004. The Petitioners started lifting of molasses, but after it lifted 7,465.90 quintals out of the total 85,000 quintals of molasses and made necessary payments on 9.4.2004 and 10.4.2004, the road tankers of the Petitioners were stopped at the factory gates and were not allowed to take further molasses. Aggrieved by the act of the Respondent No. 1 to 8, this writ petition was moved complaining violation of Article 19(1)(g) of the Constitution of India for mandamus to command the Respondents to continue the supply of molasses.

3. On the above writ petition, this Court passed an interim order dated 19.4.2004, whereby the Petitioners were permitted to lift further molasses of 20,000 quintals and the Government of Uttaranchal was directed to take decision in the matter. However, the said order was set aside by the Hon"ble Apex Court vide order dated 5th May, 2004 passed in Civil Appeal No. 2984-86 of 2004, which reads as under:

Permission to file SLPs is granted.

Leave granted.

Heard learned Counsel for the parties.

By consent of the parties, the impugned orders are set aside. The Respondents are permitted to amend their writ petition to challenge the Order dated 24th April, 2004. Reply, if any, including to this amendment to be filed within two weeks from today. The High Court is requested to dispose of the writ petition within a period of four weeks thereafter.

The Appeals stand disposed of accordingly. There will be no order as to costs.

4. Petitioners moved an amendment application No. 2042 of 2004, which was allowed on 18.5.2004. As such, now the Petitioners have challenged the impugned order dated 24.4.2004 (passed by Government of Uttaranchal) during the pendency of this writ petition. A copy of the said order is annexed as Annexure 9 to the affidavit filed with the amendment application. By the said impugned order, the letter dated 26.3.2004, whereby the Petitioners were allowed to lift the molasses, is cancelled.

5. The above mentioned impugned order dated 24.4.2004 cancelling the allotment of molasses to the Petitioners is challenged on the ground that it is erroneous, illegal and arbitrary being unilateral cancellation of contract. It is, alleged in the writ petition that the contract could not have been cancelled as part performance had already taken place. It is, further, alleged in the writ petition that the Petitioners' bid was the highest at the time when it was accepted and no new offers thereafter could have been considered.

6. Respondent No. 1 & 4 to 7 contested the writ petition by filing separate counter affidavits. In the counter affidavit of the Respondent No. 1 it is stated that on 25.3.2003, Government of Uttaranchal constituted a Committee under the Chairmanship of Commissioner, Kumaon Division for sale of molasses of the six sugar mills in the State. It is admitted that the General Manager of Kisan Sahkari Chini Mill Ltd., Gadarpur invited tenders for sale of export quality molasses from bonafide consumers for the sugar mills of Doiwala, Gadarpur, Nadehi, Sitarganj and Kiccha. It is also admitted that the last date for the tenders was 1.3.2004 by 3.00 P.M. It is further stated in the counter affidavit that the Petitioners submitted tender only for 15,000 quintal of molasses from Nadehi Sugar Mill and quoted the rate at Rs. 101 per quintal, however, he did not deposit Rs. 1 lac as earnest money, which was condition precedent for the tender notice. However, it is admitted in the counter affidavit that tenders were opened on 1.3.2004, but all the members of the Committee were not present in the meeting. The Petitioners also failed to file No Objection Certificate from the Excise Commissioner and were not entitled to lift the molasses. In the counter affidavit, Government of Uttaranchal has admitted that on 3.3.2004 negotiations with the tenderers were carried out and the Petitioners gave a bid of Rs. 127 per quintal for Nadehi Sugar Mill and further, put a note that if the Petitioners are allowed to lift the molasses from all the five sugar mills, Petitioners are ready to deposit the security at the rate of Rs. 1 lac within 7 days (copy of the tender is Annexure 6 to the counter affidavit). On 10.3.2004, Petitioners deposited the earnest money for all the remaining, four sugar mills except Nadehi for which the Petitioners took the plea that they had already an amount of more than Rs. 1 lac outstanding against the said mill, which is to be adjusted towards the earnest money. In the counter affidavit, the State of Uttaranchal has vehemently contended that in the meetings held on 1st March, 2004 and 3rd March, 2004, all the members of the Committee were not present. It is not denied by the Respondents that letter dated 26.3.2004 was issued by Assistant Cane Commissioner (Secretary of the Molasses Committee) on behalf of the

Committee and the Petitioners have lifted more than 7,000 quintals of molasses in pursuance thereof. However, it is alleged in the counter affidavit that later in the month of April, several other persons offered higher rates than that of Petitioners. If the Petitioners are allowed to lift molasses as allowed to them by the aforesaid letter dated 26.3.2004, the Government will suffer huge loss. As to the impugned order dated 24.4.2004, whereby the contract is cancelled, it is stated in the counter affidavit filed on behalf of the State of Uttaranchal that the said order was passed after hearing the Petitioners on 22.4.2004. It is, further, stated in their counter affidavit that on 15.5.2004, fresh advertisement has been published for inviting tenders for the sale of 52 quintals of molasses, whereby offers were to be made by 15.5.2004. And, the tenders in response thereof have been received in which more than Rs. 300 per quintal has been quoted. After negotiations, the Government has sold 10,000 quintals of molasses to be lifted at the rate of Rs. 385 per quintal to M/s Chandigarh Distillers and Bottlers from Doiwala Sugar Mill. The offers in respect of other sugar factories are also equally high mostly Rs. 370 per quintal. The Respondents have not admitted the fact that the Petitioners are authorised representatives of M/s Patiala Distillers or that of M/s Chandigarh Distillers. In para 36 and 51 of the counter affidavit of the Respondent No. 1, it is stated that since by 15th March, 2004, 5,000 quintals of molasses have been sold by Nadehi Sugar Mill to the Petitioners, as such, the agreement stands completed. In response to the paras of the affidavit with amendment application, Respondent No. 1 has stated in the counter affidavit that the Government has powers to review the decision of the Committee as the Committee has exercised the delegated powers on behalf of the Government. Respondents No. 4, 5 & 7 have also taken, more or less, the same pleas. Though Respondents No. 2 & 3 have not filed any separate counter affidavits, but they were represented through the Standing Counsel and contested the petition.

7. We have heard Mr. Sudhanshu Dhulia, learned Senior Advocate on behalf of the Petitioners and Mr. U.K. Uniyal, learned Addl. Advocate General for Respondents No. 1, 4 & 6 and Mr. T.A. Khan, learned Advocate for Respondents No. 5&7 at length.

8. Before further discussion, we would like to quote the relevant provisions of law, which include Section 8 of the U.P. Molasses Control Act (U.P. Sheera Niyamtran Adhiniyam), 1964 and Rule 22 of U.P. Molasses Control Rules (U.P. Sheera Niyamtran Niyamavali), 1974, which read as under:

8. Sale and Supply of Molasses.- (1) The Controller with the prior approval of the State Government may by order require the occupier of any sugar factory to sell or supply in the prescribed manner such quantity of molasses to such person, as may be specified in the order, and the occupier shall, notwithstanding any contract, comply with the order:

(1-a) Notwithstanding anything contained in Sub-section (1) the occupier of a sugar factory shall sell or supply forty per cent of the molasses produced in each quarter of a molasses year in the sugar factory to such chemical industries which

are actual users of molasses and are granted license under the United Provinces Excise Act, 1910:

Provided that such quantum of molasses as is not required by the said chemical industries may be sold or supplied by the occupier of the sugar factory to any other unit which is actual users of molasses with the prior approval of the Controller.

(2) The order under Sub-section (1)

(a) shall require supply to be made only to a person who requires it for his distillery or for any purpose of industrial development:

(aa) may require the person referred to in Clause (a) to utilise the molasses supplied to him under an order made under this section for the purpose specified in the application made by him under Sub-section (1) of Section 7-A and to observe all such restrictions and conditions as may be prescribed.

(b) may be for the entire quantity of molasses in stock or to be produced during the year or for any portion thereof; but the proportion of molasses to be supplied from each sugar factory to its estimated total produce of molasses during the year shall be the same throughout the State save where, in the opinion of the Controller, a variation is necessitated by any of the following factors:

(i) the requirements of distilleries within the area in which molasses may be transported from the sugar factory at a reasonable cost;

(ii) the requirements for other purposes of industrial development within such area; and

(iii) the availability of transport facilities in the area.

(3) The Controller may make such modifications in the order under Sub-section (1) as may be necessary to correct any error or omission or to meet a subsequent change in any of the factors mentioned in Clause (b) of Sub-section (2).

22. Sale or supply of molasses to distilleries and other persons for industrial development- The molasses produced in a sugar factory shall be sold or supplied only to distilleries or other persons bona fide requiring it for purposes of industrial development.

9. The word "occupier" used u/s 8 has been defined under Clause (e) of Sub-section (2) of the Act, which reads as under:

(e) "occupier" in relation to a sugar factory means the person who has ultimate control over the affairs of the factory and includes a managing agent of the factory.

10. All the sugar factories of the State are owned by the instrumentality of the State and ultimate control over the affairs of the factory is of the State

Government. Therefore, the State Government is occupier of the factory. The Molasses Controller has in exercise of power u/s 8 read with Rule 22 has laid down the policy for sale of molasses of the sugar factories of the State by the occupier of the factory, in the present case, the State Government, which is contained in Annexure 3 to the writ petition. The State Government as occupier of the factory constituted a Committee consisting of the Commissioner, Kumaon Division (as the Chairman), District Magistrate, Udham Singh Nagar (as Member), Assistant Cane Commissioner (as Principal Secretary) and all the General Managers of Cooperative/Government Sugar Industries (as Members), authorising them for sale of molasses of the sugar factories, namely, Nadehi, Gadarpur, Doiwala, Sitarganj and Kiccha. Therefore, the Committee acted as occupier of the sugar factory, which is included in the definition of the "occupier" of the factory. It is this Committee as an agent of the occupier of the factory, sold 85,000 quintal of molasses in favour of the Petitioners and vide order dated 26.3.2004 Petitioners were permitted to lift the molasses after completing the formalities as per conditions of the contract entered between the parties after the negotiations. Therefore, the main question falls for consideration in this writ petition is whether the State Government was competent to cancel the valid and completed contract between the Petitioners and the occupier of the factory.

11. Mr. Sudhanshu Dhulia, learned Senior Advocate on behalf of the Petitioners, drew attention of this Court to the letter dated 26th March, 2004 issued by the Assistant Cane Commissioner (copy annexed as Annexure 5 to the writ petition), wherein it has been categorically mentioned that on the tenders invited on 1.3.2004, negotiations were held on 3.3.2004 and after getting the approval of Commissioner, Kumaon Division (Chairman of the Molasses Committee), the Petitioners are allowed to lift 85,000 quintals of molasses by 31.5.2004. In the said letter, the name of the sugar mill, quantity of the molasses, rate and from the firm it is to be lifted, are detailed as under:

SI. No. Name of the Sugar Mill Allotted Quantity Rate per quintal Name of the Firm

1. Nadehi 15,000.00 127.00 Patiala Distillers & Manufacturers Ltd.
2. Gadarpur 15,000.00 127.00 Do
3. Doiwala 15,000.00 127.00 Do
4. Sitarganj 15,000.00 127.00 Chandigarh Distillers & Bottlers Ltd.
5. Kiccha 25,000.00 127.00 Do

Total 85,000.00

12. At the end of the said letter, the Petitioners have been directed to inform that they will have to deposit the excise fees, sales tax etc. as per the rules apart from completing the terms mentioned in the tender form.

13. It is further on behalf of the Petitioners that since during negotiations it came

out that offer of the Petitioners for purchase of molasses was the highest and the Petitioners agreed to pay the same rate provided they are allowed to lift the molasses of all the five factories. This negotiation has been verified by the Court by summoning the original record of the meeting. The minutes of the meeting, on which the approval of the Chairman of Molasses Committee was sought, is being translated and reproduced as below:

Commissioner,

It is to be informed that tenders were invited for sale of available 20% of molasses in sugar mill units of cooperatives and corporations situated in the State of Uttaranchal for export by publishing the tender notice in newspaper Amar Ujala by 1.3.2004 and publishing it widely through letters flag "A" in response to which, four tenders were received as under. Received tenders were opened on the same day before the Committee. Since the rates appeared low, negotiations took place and in first round of negotiations, following are the maximum rates:

Sl. 1. Name of the Sugar Mill Gadarpur Purchaser M/s IGL Maximum Rates Rs. 115/-

2. Nadehi M/s Vardan Linkers Rs. 119/-

3. Sitarganj M/s IGL Rs. 115/-

4. Kiccha M/s Kesar Enterprises M/s IGL RS.115/-RS.115/

5. Doiwala M/s IGL Rs. 80/-

The comparative chart of the received tenders and negotiations as mentioned is flag "B". After first round of negotiations, the above parties were asked to appear on 3rd March, 2004 at 4.00 P.M. for further negotiations before the District Magistrate. On 3rd March, 2004 all the above parties, again, appeared and negotiations were made for further increase in the rate. After negotiations, following are the maximum rates offered:

1. Gadarpur M/s Vardan Linkers, Bijnor Rs. 127.00

2. Nadehi M/s Vardan Linkers, Bijnor Rs. 127.00

3. Sitarganj M/s Vardan Linkers, Bijnor Rs. 127.00

4. Kiccha M/s Vardan Linkers, Bijnor Rs. 127.00

5. Doiwala M/s Vardan Linkers, Bijnor Rs. 127.00

Though M/s Vardan Linker, Bijnor had filled the tender form only for Nadehi and had offered rate of Rs. 127 per quintal, but they made an endorsement in the tender form that if their maximum rates are accepted by the Committee, in that case they are ready to lift molasses of all the above sugar mills for export. It is proposed that for other sugar mills required earnest money may be deposited by

them within 7 days. Rs. 126 per quintal was offered by M/s Rampur Distilleries for Gadarpur, Sitarganj and Kiccha while M/s IGL offered maximum of Rs. 117 per quintal for purchase of molasses from Doiwala.

At present, 70% molasses is being given to IGL at the rate of Rs. 117 per quintal and keeping in view that fact, the offer of Rs. 127 per quintal of M/s Vardan Linkers, Bijnor appears to be appropriate.

Please, if consented, may like to approve.

3.3.04 3.3.04

Sd Sd. Sd.

General Manager General Manager Asst. Sugar Cane Commissioner

Sugar Mil, Gadarpur Sugar Mill, Sitarganj Udham Singh Nagar

Sd. Sd.

District Magistrate Signature approved

Udham Singh Nagar Commissioner

Ace.

Please issue orders today as the bank draft has been deposited by the firm.

14. Mr. U. K. Uniyal, learned Additional Advocate General and learned Counsel for the Respondents No. 1 to 4 & 6 raised objections against the acceptance of the offer made by the Petitioners on the ground that all the members of Committee were not present at the time of meeting and also on the ground that the Petitioners' tender was only for one sugar mill i.e. Nadehi. Thirdly, that no earnest money was deposited with the tender form.

15. We will take each and every objection one after another. As to the first question, that all the members of the Committee did not attend the meeting, carries little force for the reason that it is not the fault on the part of the Petitioners if some members of the Committee, instead of being present in person, preferred to send their representatives. It is admitted that Assistant Cane Commissioner has signed the aforementioned note of the negotiations. The original note also makes it clear that the District Magistrate, Udham Singh Nagar has also signed the note on 3.3.2004, itself. The approval of the Commissioner is also not disputed on the proposal. The only objection raised by learned Addl. Advocate General is regarding the presence of General Manager, Gadarpur Sugar Mill and General manager, Sitarganj Sugar Mill. This Court summoned both the officers in the Court and recorded their statements after making enquiry from them regarding the meetings mentioned in the above note. Shri Sukhdev Pandey, General Manager of Kisan Sahkari Chini Mill Ltd., Sitarganj was examined by this Court on 20.7.2004 and he admitted that he did not personally attend the meeting, but authorised Shri H.C. Joshi, Purchase Clerk for the

meeting of 1st March, 2004 and Shri S.K. Sharma, Chief Accountant for the meeting of 3rd March, 2004. He also filed a copy of the authorisation letter in this regard. On the next day, during the arguments, Shri R.K. Aggarwal, General Manager, Kisan Sahkari Chini Mill Ltd., Nadehi was also examined. He made a statement before this Court that he did not personally attend the meeting on 1st March, 2004 and authorised one Shri Mangu Lal, Molasses Clerk to attend the meeting. He also filed copy of the authorisation letter before this Court. In para 5 of the counter affidavit of the Respondent No. 1, it is mentioned that the Committee consisted of Commissioner, Kumaon Division (as the Chairman), District Magistrate, Udham Singh Nagar (as Member) and all the General Managers of Cooperative/Government Sugar Industries (as Members) and Assistant Cane Commissioner (as Principal Secretary). As such, the original record summon by this Court shows that the meeting was attended on behalf of members of the Committee by the District Magistrate, Udham Singh Nagar, Assistant Cane Commissioner, Udham Singh Nagar, representatives of the General Managers, Gadarpur & Sitarganj and also that the Chairman approved the highest offer of Petitioners as mentioned above.

16. The sugar companies who did not attend the meeting had to explain their conduct why did they fail to attend the said meeting and it is not for the Petitioners to explain the absence of all the General Managers. In our considered view, the Respondents cannot take benefit of their own wrong. Any nonconformity with or relaxation in the prescribed standard allowed in the case of any intending tenderer, if not resulting in substantial prejudice or injustice, cannot be said to be substantial or bad in law (M/s. G. J. Fernandez Vs. State of Karnataka and others,).

17. As to the second and third objections regarding tender being filled only for Nadehi Sugar Mill by the Petitioners and for non-payment of earnest money, these objections get diluted due to the negotiations followed after the tenders were opened and the Petitioners were allowed to make offer for lifting molasses from other sugar mills also apart from that of Nadehi. Regarding the deposit of earnest money, which was the condition advertised in the newspaper, it is pertinent to mention here that the Respondents accepted the earnest money in respect of all the sugar mills from the Petitioners after the offer of the Petitioners was accepted by the Committee and the letter dated 26.3.2004 was issued. In reply to the assertions made by the Petitioners in para 19 of the writ petition, it has not been categorically denied in the counter affidavits, if the earnest money is not received by the Respondents. Requirement of depositing the earnest money with tender can be waived by the party contracting and mere irregularity does not vitiate the contract (M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others,).

18. Now, we come to the crux of the question as to whether any valid contract stands completed between the Petitioners and the Respondents or not. It is admitted between the parties that the Assistant Cane Commissioner was the

Secretary of the Committee, who has issued the letter dated 26.3.2004, whereby the Petitioners have been informed that they can lift 85,000 quintals of molasses of the five sugar mills as mentioned above on payment at the rate of Rs. 127 per quintal. Not only this, from the counter affidavit of the Respondent No. 1, it is clear that more than 7,000 quintals of molasses have already been allowed to be lifted by the Petitioners before they were stopped from lifting the molasses further. In para 23 of the writ petition, it has been clearly mentioned that the Petitioners lifted 7465.90 quintals of molasses from three sugar factories, namely, from Nadehi 4703.30 quintals, from Doiwala 1096.50 quintals and from Sitarganj 1666.10 quintals. In reply to para 23 of the writ petition, in the counter affidavit of Respondent No. 1, it is only mentioned that it pertains to the matter of record and has not been denied categorically. That being so, it is clear that the contract was not only complete, but also partly performed and acted upon. As such, the Respondents have no authority to cancel the contract in the manner it is done through impugned order dated 24.4.2004. The grounds on which the letter dated 26.3.2004 issued by the Assistant Cane Commissioner was cancelled, are not sufficient to cancel the contract, for the tender could have been rejected outright for non-payment of earnest money and in that case, the Petitioners would have been out of the Court. Secondly, another ground mentioned in the impugned order for cancellation of acceptance of offer of the Petitioners is that offers of more than Rs. 300/- per quintal were received by the Respondents in the month of April. It is pertinent to mention here that molasses are a highly volatile item and it's price never remains fixed. Once at the stage of making tenders and negotiations, parties failed to turn up in response of the advertisement made in March for lifting the molasses by 31st May, 2004, it is not open for them to make higher offers after the acceptance of the highest offer of the Petitioners. The changes in price of such items will keep on going (Asia Foundation and Construction Ltd. Vs. Trafalgar House Construction (I) Ltd. and Others,).

19. Mr. U.K. Uniyal, learned Addl. Advocate General on behalf of the Respondents submitted that the conditions in the tender were mandatory in nature and could not have been waived. But the question is whether once that is waived, is it open for the Government to cancel the contract after the acceptance made by the Molasses Committee. Counsel for the Respondents could not show us the powers by which the same can be done. Apart from this, the doctrine of legitimate expectation after part performance of the contract by the Petitioners, who have already lifted part of the molasses, support the contention of the Petitioners that the Government has not acted fairly by cancelling the contract awarded to it (Madras City Wine Merchants Association and Anr. v. State of Tamil Nadu and Anr. (1995) 5 SCC 509). Principles of law of Estoppel and law of Acquiescence are also in favour of the Petitioners.

20. In view of the above discussions, we are of the opinion that the impugned order dated 24.4.2004 (Annexure 9 to the writ petition) passed by the Secretary, Excise is not sustainable in the eyes of law and is liable to be set aside.

21. Accordingly, the writ petition is allowed. The impugned order dated 24.4.2004 is, hereby, quashed. Petitioners shall be allowed to lift the 85,000 quintals of molasses minus the quantity already lifted on the terms on which it was accepted through letter dated 26.3.2004 except the last date of 31.5.2004 as the same has already been expired. The period within which the said quantity be lifted can be the same number of days, which fall between 24.4.2004 and 31.5.2004. No order as to casts.