

(2004) 12 AHC CK 0145

In the Allahabad High Court

Case No : Writ Petition Nos. 5581 and 5602 (MB) of 2004

Venus Sugar Ltd., Tikaula Sugar Mills Ltd.

APPELLANT

Vs

State of U.P. & Ors.

RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 15

Citation : (2004) 12 AHC CK 0145

Hon'ble Judges : Pradeep Kant, J

Final Decision : Allowed

Judgement

1. Notice on behalf of respondents No. 1 and 2 has been accepted by the learned Chief Standing Counsel on behalf of respondent No. 3 notice has been accepted by Madhu Singh and on behalf of respondent No. 4 notice has been accepted by Sri Sushil Kumar and Dr. R.K. Srivastava.

2. After hearing the parties' Counsel, with their consent, we have proceeded to decide the writ petition finally. Since both the petitions involve the same controversy, though with respect to different cane purchase centres, and common question of law, we connect the two petitions and decide the same finally, with the consent of the parties' Counsel, the respondents being represented by their respective Counsel.

3. The dispute relates to the allotment of cane purchase centres for the crushing season 200405.

4. The petitioner, Venus Sugar Limited, a Company incorporated under the Indian Companies Act, 1956, who has filed Writ Petition No. 5581 (MB) of 2004 as a sugar factory, which is commonly known as Majhawali Sugar Factory, engaged in manufacture of sugar through vacuum pan process.

5. The reservation order was passed by the Cane Commissioner on 251004, in which cane centres BaniyatherI, BaniyatherII, Sahaspur, Bahoranpur and Dadola were assigned to the respondent No. 4, namely, D.S.M. Sugar, Asmoli, District

Moradabad. This order is contained in Annexure No. 3 to the writ petition. Soon thereafter, another order dated 291004 was passed by the Cane Commissioner stating that the petitioner Sugar Mills have made some representation on 271004, which was forwarded through the State Government to the Cane Commissioner, in which it was stated that the Sugar Mill in whose favour these centres have been assigned, feeling aggrieved by the assignment made in favour of the petitioner sugar mill, earlier i.e. in previous crushing season, had preferred an appeal, which was dismissed by the State Government, which order was upheld by the High Court as well as the Supreme Court and, therefore, these centres be assigned in favour of the petitioner.

6. The respondent No. 4, D.S.M. Sugar, Asmoli, challenged the aforesaid order dated 291004 by means of writ petition No. 5298 (MB) of 2004. The said writ petition was dismissed by a Division Bench of this Court on the ground of availability of statutory remedy of appeal under Section 15(4) of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 with a direction that in case appeal is preferred by the petitioner (respondent No. 4 in the present writ petition) within two weeks from the date of order, the appellate authority shall consider and decide the same in accordance with law, after hearing the parties within six weeks thereafter. It appears that the respondent No. 4, did not approach the appellate authority nor filed appeal but the Cane Commissioner, on the alleged demand of the farmers and public representatives, modified the aforesaid order dated 291004 and assigned the aforesaid five centres again to the respondent No. 4.

7. Before coming to the merits of the case, we find it appropriate to put on record that once a party, namely, respondent No. 4 had approached this Court under Article 226 of the Constitution of India challenging the order dated 291004, in which direction was issued to seek its remedy in appeal, it was highly improper for the Cane Commissioner to reassign the centres in question of his own in favour of the respondent No. 4, though this time apparently on the demand being made by the farmers and public representatives, whose identity has not been disclosed at all.

8. So far the plea of the Counsel for the petitioner that the respondent No. 4 instead of filing any appeal against the order dated 291004, got it amended or modified by the Cane Commissioner himself and, therefore, the order dated 291004 be restored is concerned, suffice would be to mention that the impugned order dated 91104 does not speak that the same is being passed on some representation being made by the respondent No. 4 or after hearing the respondent No. 4. Since the order was modified for another reason mentioned in the order before appeal could be filed by the respondent No. 4, the nonfiling of appeal under the liberty given by this Court in the writ petition filed by the respondent No. 4 cannot come in the way in considering their case in the present writ petition.

9. Since the learned Counsel for the State nor the Counsel for the other parties

could indicate any provisions under the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 conferring powers of review upon the Cane Commissioner of an order of reservation or assignment passed by him in accordance with the provisions of Section 15 of the Act and as we were informed that in large number of cases the Cane Commissioner had modified the orders, soon after the passing of the reservation order and that too without affording any opportunity to any of the parties, namely, sugar mills, we required the presence of the Cane Commissioner to explain the authority under which he has modified the order of reservation. The Cane Commissioner, Sri S.N. Shukla presented himself and admitted initially that no such power could have been exercised by him but he qualified his statement by saying that this has to be done in unusual circumstances. However, the Cane Commissioner felt reluctant in stating any unusual circumstances but stated that the cane growers or people's representatives come and had come in this case also, because of which these orders have been passed, though there was no written representation of any party, in this regard. He, however, had assured and undertaken that in future he would take care in passing orders and also tendered his apology for passing such orders. The statement given by the Cane Commissioner finds mention in order dated 201104.

10. The controversy involved thus need not detain us any longer, as once the reservation order was passed by the Cane Commissioner on 251004, he could not have modified the said order in favour of any other sugar mill including the petitioner on 291004 that too without affording any opportunity to the parties concerned and likewise he was having no authority or jurisdiction to remodel the order dated 291004 by passing fresh order on 91104 in favour of respondent No. 4 again. This time also no opportunity was given to either of the sugar mills before passing the order. Thus, both the orders, namely, order dated 291004 assigning the centres in question in favour of the petitioner by modifying the original reservation order dated 251004 and the order dated 91104 modifying the order dated 291004, assigning the centres to the respondent No. 4, are wholly illegal without jurisdiction and bad in law.

11. The argument of the learned Counsel for the petitioner that the order dated 291004 be restored and the order dated 91104 be quashed, as it has not been passed in accordance with law and that it is the handiwork of respondent No. 4, though under the pretext of representation being made by the farmers and public representatives, if accepted, would result into revival of an order, which itself is wholly illegal and cannot be protected under the provisions of law. In exercise of writ jurisdiction, the High Court would not restore an order, which is wholly illegal and without authority. Since both the orders dated 291004 and 91104 have been found to be bad in law and having been passed beyond the competence of the Cane Commissioner, and that too without affording opportunity to the parties, we quash the aforesaid two orders dated 291004 and 91104.

12. After finding that the order impugned dated 91104 cannot be sustained and for the same reason the order dated 291004 can also not be maintained, the question arises as to where the aggrieved person be relegated for ventilating his grievance. In view of the statement given by the Cane Commissioner that he had to pass orders under unusual circumstances, a reference of which has been made by us in the earlier part of the judgment, coupled with the fact that if any person is aggrieved by allotment/reservation of cane centres by the Cane Commissioner, he has a statutory right to file an appeal under Section 15(4) of the Act, it would be appropriate that the party, who feels aggrieved by the order of reservation, may file an appeal against the aforesaid order.

13. Even otherwise, we do not find any reason that once a reservation order has been passed by the Cane Commissioner, the party feeling aggrieved by the said reservation/assignment is though provided with right of appeal, normally should not be allowed to approach the Cane Commissioner by moving a representation or otherwise requiring him to alter the order or modify the order of reservation.

14. For the reasons stated above, while quashing the aforesaid two orders dated 291004 and 9112004, we direct that in case any party prefers an appeal against the reservation order dated 251004 or a part thereof alongwith a certified copy of this order, the same shall be decided by the appellate authority within a maximum period of ten days from the date of filing of the appeal, after affording opportunity to the parties concerned, in accordance with law.

15. So far as writ petition No. 5602 (MB) of 2004 is concerned, the reservation order was passed on 81004 under Section 15(1) of the Act in which cane purchasing centres Shahpur Batawali have been shown reserved to the petitioner at serial Nos. 22 and 23 respectively. It was not mentioned that cane purchase centre Shahpur Batawali has been bifurcated and that new cane purchase centre Shahpur BatawaliII has been assigned to respondent No. 3. However, in the reservation order of the same date i.e. dated 81004 in respect of cane purchase centre of respondent No. 3, Shahpur BatawaliII was shown as assigned to respondent No. 3 and it was also shown that cane purchase centre was created by bifurcation of Shahpur Batawali reserved sugarcane purchase centre of the petitioner. It appears that the petitioner made a representation on 151004 allegedly on the ground that the centre could not be bifurcated and it was a mistake committed by the Cane Commissioner. The Cane Commissioner without affording any opportunity to the respondent No. 3, in whose favour assignment of the aforesaid centre was made, passed an order on 181004 modifying the original order of assignment passed in favour of respondent No. 3. Later on, vide order dated 81104 on the usual ground of demand of farmers and public representatives, as in the other writ petition aforementioned, the order was again modified assigning the cane purchase centre Shahpur BatawaliII to Mawana Sugar Works, namely, respondent No. 3. This order was again passed without affording any opportunity to the petitioner. Thus, the two orders passed, after the order of reservation was passed on 81004, were passed without any

authority, that too without affording any opportunity to the parties, by the Cane Commissioner.

16. For the same reasons, which have been indicated by us while dealing with the subjectmatter of writ petition No. 5581 (MB) of 2004 of Venus Sugar Limited, the aforesaid two orders dated 181004 and 81104 also cannot be sustained.

17. Consequently, the orders dated 181004 and 81104 are also quashed with liberty to the parties to prefer appeal against the reservation order dated 181004, which shall be decided within ten days from the date of filing of the appeal in accordance with law.

18. Both the writ petitions are allowed. No order as to costs.

Let a certified copy of this order be supplied to the learned Counsel for the parties on payment of necessary charges, within 48 hours.