

Reserved Order

THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 199 of 2010.

L.H.Sugar Factories Ltd., Civil Line, Pilibhit, through its Company Secretary R.K.Agarwal.

... Petitioner.

Vs.

1. State of Uttarakhand through Principal Secretary, Department of Cane Development and Sugar Industries, Dehradun, Uttarakhand (Appellate Authority).
2. Cane Commissioner of Uttarakhand, Kashipur, District Udham Singh Nagar.
3. The Kisan Sahkari Chini Mills Ltd. Sitarganj, District Udham Singh Nagar, through its Secretary.
4. Majhola-Khatima Sahkari Ganna Vikas Samiti Ltd. Khatima, District Udham Singh Nagar, Uttarakhand through its Secretary.

... Respondents.

Mr. R.K.Raizada and Mr. S.S.Chauhan, Advocates, learned counsel for the petitioner.

Mr. M.C.Tiwari, Additional C.S.C. for the respondent nos. 1 and 2.

Mr. U.K.Uniyal, learned Senior Advocate with Mr. Shobhit Saharia, Advocate, counsel for the respondent no.3.

Mr. Manav Sharma, Advocate, learned counsel for the respondent no. 4.

With

Writ Petition (M/S) No. 188 of 2010.

Prakash Tiwari S/O Sri Ramesh Chandra Tiwari, R/O Village Nagla Tarai, PO Khali Mahuwat, Khatima, Udham Singh Nagar.

... Petitioner.

Vs.

1. State of Uttarakhand through Principal Secretary, Department of Cane Development and Sugar Industries, Dehradun, Uttarakhand (Appellate Authority).
2. Cane Commissioner of Uttarakhand, Kashipur, Udham Singh Nagar.
3. L.H.Sugar Factories Ltd. Civil Lines, Pilibhit through its Company Secretary.
4. The Kisan Sahkari Chini Mills Ltd. Sitarganj, District Udham Singh Nagar, through its General Manager.
5. Majhola-Khatima Sahkari Ganna Vikas Samiti Ltd. Khatima, District Udham Singh Nagar, through its Secretary.

... Respondents.

Mr. B.S.Adhikari, Advocate, learned counsel for the petitioner.

Mr. M.C.Tiwari, Additional C.S.C. for the respondent nos. 1 and 2.

Mr. R.K.Raizada and Mr. S.S.Chauhan, Advocates, learned counsel for the respondent no.3.

Mr. U.K.Uniyal, learned Senior Advocate with Mr. Shobhit Saharia, Advocate, counsel for the respondent no.4.

Mr. Manav Sharma, Advocate, learned counsel for the respondent no. 5.

Date February 26, 2010.

Hon'ble B.S.Verma, J.

Since the controversy involved in both the writ petitions is similar and the order impugned in both the writ petitions is the same, therefore, for the sake of convenience, both the writ petitions are being decided by this common order. It may be mentioned that the Writ Petition No. 199 of 2010(M/S) has been preferred by a sugar factory, while Writ Petition No. 188 of 2010 (M/S) has been filed by a cane grower challenging the same order dated 10/11-2-2010 passed by the respondent no.1.

2. Learned counsel for the parties have agreed that these writ petitions may be disposed of finally at the admission stage.

3. By means of Writ Petition No. 199 of 2010 (M/S), the petitioner has sought a writ in the nature of certiorari quashing the impugned order dated 10/11-2-2010 (Annexure-1 to the petition) passed by respondent no.1-Principal Secretary, Department of Cane Development and Sugar Industries, Dehradun, Uttarakhand as appellate authority. Petitioner has also sought a writ in the nature of mandamus commanding the respondent no.1 not to enforce the impugned order dated 10/11-2-2010 and to allow the petitioner to accept cane in pursuance of the order of reservation dated 30-11-2009 reserving the cane area of Cane Purchasing Centres –Nagla Tarai (Khali Mohat C) and Cane Purchasing Centre-Charubeta Teraghat “A” in the cane crushing season 2009-2010.

4. By the impugned order, the respondent no. 1 allowed the appeal of respondent no.3 and assigned the cane area of cane purchasing center-Nagla Tarai (Khalimohat C) and Charubeta (Teraghat-“A”) for the remaining cane crushing season 2009-2010 to the respondent no.3 and modified the order dated 30-11-2009 passed by respondent no. 2.

5. Relevant facts giving rise to these writ petitions, according to the petitioner, in brief, are that the sugar factory of the petitioner being situated in Uttar Pradesh at the border of the State of Uttarakhand and State of U.P. and in terms of the U.P. Reorganization Act, 2000, the State Government of U.P. and the State of Uttarakhand had been passing orders for reservation or assignment of cane areas under their respective jurisdictions in favour of the sugar factory of the petitioner. In the cane-crushing season 2009-2010, the respondent no.2 by his order dated 30-11-2009 assigned the cane area of cane purchasing centre Nagla Tarai (Khali Mohat C) and cane purchasing centre-Charubeta Teraghat "A" to the petitioner. The respondent no. 1, by his order dated 29/30-1-2010, without providing any opportunity of hearing to the petitioner has modified the order dated 30-11-2009 passed by the respondent no. 2 in the middle of the cane crushing season thereby the cane purchasing centres of Nagla Tarai (Khali Mohat C) and Charubeta Teraghat "A" were withdrawn from the petitioner and have been allotted to the respondent no.3.

9. Aggrieved by the aforesaid order dated 29/30-1-2010, the petitioner preferred Writ Petition No. 129 of 2010(M/S) before this Court. During the course of hearing on admission stage, it came to the notice that the respondent no. 3 had already preferred an appeal on 14-1-2010 before the State Government and no notice was issued to the petitioner. The order impugned dated 29/30-1-2010 was passed without opportunity of hearing to the petitioner. This Court by order dated 4-2-2010 directed the State Government to decide the appeal of respondent no. 3 preferably within one week and the order dated 29/30-1-2010 was ordered to be kept in abeyance till the disposal of appeal. Pursuant to the directions of this Court, the respondent no.1, after hearing the petitioner and respondent nos. 3 and 4 passed the order dated 10/11-2-2010 impugned in these petitions and modified the order of the Cane Commissioner during the crushing season.

10. In Writ Petition No. 188 of 2010(M/S) the cane grower-petitioner is aggrieved by the impugned order on the ground that the respondent no.3-sugar mill is not paying the adequate price for the cane as against the price being paid by the petitioner factory. In other words, the petitioner is interested in selling his cane on higher price.

11. Counter affidavit has been filed by respondent no.3.

12. I have heard learned counsel for the parties.

13. Learned counsel appearing for the petitioner Mr. R.K.Raizada, has vehemently urged that the power to reserve or assign any cane area by an order of reservation or assignment, any cane area can be reserved or assigned in favour of the sugar factory is exclusively vested with the Cane Commissioner and he may likewise at any time cancel such order or alter the boundaries of an area so reserved or assigned, as provided under Section 15(1) of the Sugarcane (Regulation of Supply and Purchase) Act, 1953 (*for short the Act*) and the State Government, except in its appellate jurisdiction, to be invoked by a sugar factory by filing an appeal within 14 days from the date of order of reservation or assignment at the commencement of the cane crushing season or from the date of cancellation of reservation or assignment order or alteration in the boundaries of the cane area as ordered by the Cane Commissioner under sub-section (1) of Section 15 of the Act has no statutory jurisdiction to interfere in any statutory order of the Cane Commissioner.

14. In support of his argument, learned counsel for the petitioner has placed reliance in paragraphs no. 10 and 36 of the judgment rendered by the *Allahabad High Court (Lucknow Bench)* in the case of *Govind Nagar Sugar Ltd. Vs. State of U.P. and others* [2001(1) A.W.C., 65 (L.B.)]. In paragraph no. 10 of the judgment, following observations have been made:-

“10. With a view to materialize regular supply of sugarcane in a healthy congenial and peaceful atmosphere and by avoiding any such order or action which may cause or is likely to cause any unhealthy competition between the sugar factories or cane growers or which may create or is likely to create any law and order problem or which may give an opportunity or is likely to give an opportunity to the sugar factories or cane growers to exploit their position illegally, the Cane Commissioner has been vested with the powers to reserve an area by allotting specific sugarcane centers to the sugar factories after following the procedure prescribed under the Act and the Rules. The orders so passed by the Cane Commissioner can be subjected to an appeal under Section 15(4) of the Act before the State Government. The powers of the Cane Commissioner and the State Government are coordinate and coextensive to each other. The Cane Commissioner while passing an order of reservation under Section 15(1) of the Act has to take into consideration various factors and so is the case, in appeal, when the matter is being considered by the State Government.”

15. Paragraph no. 36 reads as under:-

“36. No doubt the term ‘estimate’ denotes a rough calculation or rough assessment which may vary when actually determined but in view of opportunity given to the sugar factory for providing estimate under Section 12 (1) and thereafter the exercise to be undertaken by the Cane Commissioner who is to examine the requirement objectively before publishing the same in accordance with sub-clause (20 of Section 12 attaches an element of finality to the aforesaid determination. The finality is further reflected when an opportunity has been provided by means of statutory right of revision against the notification of the Cane Commissioner. The purpose, therefore, is that the Cane Commissioner may have an exact picture as far as possible with respect to entire cane available in the area and the requirement of every sugar factory, as in the absence of such an assessment, it may not be possible for the Cane Commissioner to make

a just order of reservation under Section 15 (1). In case every occupier of the sugar factory is permitted to ignore the estimate published under Section 12 at the time of passing of reservation order under Section 15, the whole scheme of the Act may not be effectively carried into. Thus, if the Cane Commissioner relies upon the estimate prepared under Section 12 for the purposes of declaration of reserved or assigned area under Section 15 (1) unless there is something very exceptional, it cannot be said that any illegality has been committed by him. This does not mean that even if a sugar factory bonafide requires more sugarcane than the quantity estimated for such sugar factory, would not have any right to take any additional sugarcane or Cane Commissioner would not have any authority or power to allot more sugarcane by making further reservation or area or assignment in his favour. The supply of sugarcane by means of reservation and assignment of an area is a continuous process throughout the crushing season and as and when the shortage is felt, to the satisfaction of the Cane Commissioner by a sugar factory, it can be made good either by making reservation or assignment of further area. Thus, there are two stages under the Act for declaration of reserved area or assigned area, namely (i) under Section 15 initially, i.e., at the start of crushing season when the reservation has to be made and (ii) secondly at all point of time during the entire crushing season when additional sugarcane is required by any sugar factory.”

16. It was next contended by the learned counsel for the petitioner that in the appeal, the petitioner filed objection that the appeal is not maintainable being barred by time. But without condoning the delay, the impugned order has been passed the delay was not sufficiently explained. Even though without condoning the delay, the appeal was allowed.

17. It was further contended that the appellate authority framed two points for decision as under:-

1. Whether the assignment of the two cane purchasing centres viz. Khalimohat C and Charubeta (Teraghat-A) in favour of M/s L.H.Sugar Factory Ltd. Pilibhit vide impugned order dated 30.11.2009 passed by the Cane Commissioner is justified?

2. Whether in consideration of appeal preferred under Section 15(4) of the U.P.Cane (Regulation and Purchase) Act 1953 adopted by and application in the State, in view of the cane shortage, it would be justified to allot the aforesaid two Cane Purchasing Centres namely Khalimohat C and Charubeta (Teraghat-A) for the Crushing Season 2009-10 in favour of the appellant Chini Mill?

but without addressing on Issue no. 1, the appellate authority passed the impugned order and modified the order of the Cane Commissioner during the course of crushing season.

18. In the counter affidavit filed on behalf of the respondent no. 3, the main averments made by the petitioner have been controverted. It has been asserted that the order dated 10/11-2-2010 was passed by the respondent no. 1 in pursuance of this Court's order dated 4-2-2010 passed in Writ Petition No. 129 of 2010(M/S). It was stated in reply to paragraph no. 9 of the writ petition that though in the past the State of Uttar Pradesh was assigning certain areas and centres for the sugar factories situated in the State of Uttarakhand but subsequently, the area assigned and the quantity of sugarcane for the factories situated in the State of Uttarakhand were decreased by the State of U.P. The respondent no. 3 has annexed a chart showing the year-wise supply of sugarcane to the respondent no. 3 from the State of Uttar Pradesh from the year 2002-2003 to 2008-2009 as Annexure-CA-1. In reply to the contents of para 15 of the petition wherein it is alleged that the appeal preferred by the respondent no.3 is barred by time, it has been stated that after passing of the order dated 4.2.2010 in Writ Petition No. 129 of 2010(M/S), it does not lies in the mouth of the petitioner to even otherwise say that the appeal filed by the answering respondent was barred by time inasmuch as the appeal has been decided by the respondent no. 1 in compliance of the orders

passed by this Court. It is also stated that the answering respondent moved an application citing reasons for delay in preferring the appeal and in the light of the same, the objection raised by the petitioner in respect of the appeal being barred by time has not been accepted by the respondent no.1. In reply to the contents of para 19 of the petition wherein the petitioner has hammered the jurisdiction of the appellate authority, it is stated inter alia in paragraph no. 21 of the counter affidavit that against an order passed under sub-section 1 of Section 15 of the Act of 1953, appeal is specifically and categorically provided under sub-section 4 of Section 15 of the Act.

19. On the other hand, Mr. U.K.Uniyal, learned Senior Advocate, assisted by Mr. Shobhit Saharia, Advocate, has submitted that the power of the appellate authority is coordinate and coextensive to the power of the Cane Commissioner and in the appeal, preferred by the respondent no.3, the respondent no. 1 has not committed any error in allowing the appeal on the ground of shortage of cane supply to the sugar factory. It is imperative on the part of the Cane Commissioner/State Government that during the crushing season also, the supply of cane to the factories concerned be made good. While exercising the powers under Section 15(4) of the Act, the appellate authority has also the same powers vested in the Cane Commissioner and the State Government may at any time cancel the reservation order or assignment order or alter the boundaries of an area so reserved or assigned.

20. For a just decision of the case, a reference to Section 15 and Section 16 of the Act is necessary. Relevant extract of Section 15 of the Act reads as under:-

“15. Declaration of reserved area and assigned area.-

(1) Without prejudice to any order made under Clause (d) of sub-section (2) of Section 16 the Cane Commissioner may, after consulting the Factory and Cane-growers' Co-operative Society in the manner to be prescribed:

(a) reserve any area (hereinafter called the reserved area);
and

(b) assign any area (hereinafter called an assigned area),
for the purposes of the supply of cane to a factory in accordance with
the provisions of Section 16 during one or more crushing seasons as
may be specified and may likewise at any time cancel such order or
alter the boundaries of an area so reserved or assigned.

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) An appeal shall lie to the State Government against
the order of the Cane Commissioner passed under sub-section(1).”

21. Relevant extract of Section 16 (1) of the Act reads as
under:-

“16. **Regulation of purchase and supply of cane in the
reserved and assigned areas.**-(1) The State Government may, for
maintaining supplies, by order, regulate-

(a) the distribution, sale or purchase of any cane in any
reserved or assigned area; and

(b) purchase of cane in any area other than a reserved or
assigned area.

(2) xxx xxx xxx.”

22. At the outset, it may be mentioned that the scope of writ
jurisdiction under Article 226 of the Constitution of India is very
limited. This Court cannot sit as a Court of appeal over the orders
passed by the State Government, particularly when under Section 16 of
the Act, the legislature has empowered the State Government to
regulate the purchase and supply of cane in the reserved and assigned
areas. Only the manner in which a decision has been taken by the
State Government can be seen whether the State Government has
applied its mind to the relevant facts and Rule 22 of the Rules framed
under the Act.

23. So far as the contention of the learned counsel for the petitioner that the appellate authority has not addressed itself on Issue no.1 is concerned, I have perused the impugned order. At page 7 of the judgment, the appellate authority has dealt with the point no.1 and in paragraph no. 4 at page 7, it has been held that the contention of the petitioner sugar factory to assign the two cane purchase centre, namely Tarai (Khalimohat C) and Charubeta (Teraghat-“A”) to its factory is not justified. The contention has been specifically rejected on the ground that the purchase centres were assigned to the sugar factory temporarily for the last years and these centre are not traditional reserved cane purchase centres. Merely because in the impugned order, it is not mentioned that Issue no.1 is answered against the petitioner, the finding recorded by the appellate authority cannot be lost sight of. I am of the considered view that the appellate authority has recorded its finding on appraisal of all the material placed before it.

24. Now coming to the contention of the learned counsel for the petitioner that the appeal preferred by the respondent no. 3 before the appellate authority was not within prescribed time of 14 days and the delay had not been condoned by the authority concerned, therefore, the impugned order is not tenable, I find that the appellate authority has also dealt with this plea at page 5 of its judgment. The appellate authority has declined the objection of the petitioner regarding appeal being barred by time. It has been mentioned in the order impugned that after perusing the entire evidence and after having heard the submissions made by the representatives of the petitioner sugar factory it is clear that the appeal had been filed beyond time and cause of the delay had been shown to the State Government. Moreover, after having recorded its observations on the above plea, the appellate authority framed two points for determination in the appeal at page 5 of its judgment. The appellate authority had clearly applied its mind on the point of delay and has rejected the objection of the petitioner on that point. Merely because it has not been mentioned that the delay in filing the appeal is condoned, the finding recorded on the point of

delay in filing the appeal cannot be set aside outright, particularly when it is also open to the State Government to entertain an appeal made after the expiry of the limitation of 14 days for any special reason. I do not find any merit in the argument of the learned counsel for the petitioner that the appeal had been entertained without condoning the delay.

25. The ratio of the case of Govind Nagar Ltd. (supra), which has been relied upon by the learned counsel for the petitioner is that the estimate, which was made by the Cane Commissioner under Section 12 of the Act would be for the purposes of Section 15(1) of the Act, while making reservation order prior to the crushing season. The Cane Commissioner as well as the State Government may regulate the distribution and supply of the sugarcane. The estimate prepared under the order of the Cane Commissioner himself under Section 12 of the Act has to be adhered to by the Cane Commissioner at the time of passing the order of allotment under Section 15(1) of the Act. It is always open to the Cane Commissioner to allot more reserved area or assign further area if he is satisfied about the necessity of providing more sugarcane to any factory during the crushing season.

26. Learned counsel appearing for the petitioner has vehemently urged that if during the crushing season, shortage of sugarcane is felt by the factory owner, then he may approach the Cane Commissioner first and if the Cane Commissioner refused to cancel such order or alter the boundaries of an area so reserved or assigned, as has been provided in the latter part of Section 15(1)(b) of the Act, an appeal may also be preferred under Section 15(4) of the Act against such order passed by the Cane Commissioner during crushing season. Learned counsel contended that the respondent no. 3 directly approached the State Government by filing an appeal and assailed the order of the Cane Commissioner dated 30-11-2009, whereby the order of reservation/assignment was made at the beginning of the crushing season. The grounds of appeal shows that the only grievance raised

by the respondent no. 3 is regarding shortage of sugarcane during the crushing season.

27. Here in the case at hand, the question to be answered is different- whether the Cane Commissioner can only reserve or assign for the purposes of the supply of cane to a factory in accordance with the provisions of the Act during one or more crushing seasons as may be specified and may likewise at any time cancel such order or alter the boundaries of an area so reserved or assigned, when additional sugarcane is required by any sugar factory or whether the State Government can also exercise such powers.

28. From a careful reading of the provisions of Sections 15 and 16 of the Act coupled with the provisions of Rule 22 of the Sugarcane (Regulation of Supply and Purchase) Rules 1954 it is obvious that the powers of the Cane Commissioner and the State Government are coordinate and co-extensive and I am of the view that apart from the provisions of Section 15(1) of the Act, the State Government has independent power to regulate the distribution, sale or purchase of any cane in any reserved or assigned area. Having given my anxious thought to the relevant provisions of the Act and the Rules, I am of the considered view that the appeal preferred by the respondent no. 3 under Section 15(4) of the Act is fully maintainable before the State Government and it is well within the competence of the State Government to pass the order impugned thereby modifying the original order dated 30-11-2009 passed by the Cane Commissioner. It is for the State Government to discharge its duty within the legal frame. I am fortified in my view by the observations made by the Allahabad High Court in the case of Govind Nagar Sugar Ltd., rendered by the Lucknow Bench of Allahabad High Court, which has been relied upon by the learned counsel for the petitioner himself. In paragraph 10 of the judgment, it has been observed that “the powers of the Cane Commissioner and the State Government are coordinate and coextensive to each other.” The Cane Commissioner while passing an

order of reservation under Section 15(1) of the Act has to take into consideration various factors and so is the case, in appeal, when the matter is being considered by the State Government.” The last line of paragraph 36 of the judgment which has been reproduced above goes to show that there are two stages under the Act for declaration of reserved area or assigned area, namely; (1) under Section 15 initially, i.e. at the start of crushing season and (ii) secondly at all point of time during the entire crushing season when additional sugarcane is required by any sugar factory.

29. It is also pertinent to mention that in paragraph no. 37 of the said judgment, it has been inter alia held that “Section 16 provides for regulation of supply and purchase of sugarcane in a reserved or assigned area and it has been enacted with a view to maintain the supply and for that purpose the State Government has been empowered to regulate the distribution and supply of sugarcane in any reserved or assigned area and its purchase. The power of reservation and assignment includes also, the power of cancellation and alteration of such areas.”

30. From a perusal of the impugned order (Annexure-1), it is obvious that the State Government has recorded a clear-cut finding that that the respondent no.3-appellant sugar mill is facing acute shortage of sugarcane as against the crushing capacity of the sugar-mill after having considered all the relevant provisions of the Act referred to above, namely, Section 15 and Section 16, coupled with the provision of Rule 22 of the Sugarcane (Regulation of Supply and Purchase) Rules 1954 and after having considered all the relevant factors in that behalf has passed the order thereby allowed the appeal preferred by the respondent no.3. It reveals that the State Government after applying its mind in exercise of its jurisdiction under Section 15(4) as well as considering the provisions of Section 16 of the Act has passed the order dated 10/11-2-2010. The order impugned has been passed on appraisal of the material on record. In the case at hand, it

cannot be said that the order passed by the State Government is without application of mind and without jurisdiction. There is no perversity in the impugned order. The writ petition No. 199 of 2010(M/S) preferred by the petitioner L.H.Sugar Factories Ltd. bears no force and deserves to be dismissed at the threshold. Since in Writ Petition No. 188 of 2010(M/S) the same order passed by the State Government has been assailed, therefore, this petition too is liable to be dismissed in terms of the above order.

31. Accordingly, both the writ petitions are dismissed at the admission stage.

32. Interim order dated 19-2-2010 passed by this Court in Writ Petition No. 199 of 2010 (M/S) is vacated.

33. Let certified copy of this order be issued to the learned counsel for the parties today on payment of usual charges.

(B.S.Verma,J.)

RCP

