

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 134/2010 (M/S)

Laxmi Sugar Mills Co. Ltd.

...Petitioner

Versus

State of Uttarakhand and others.

...Respondents

Shri Navneet Kaushik, Advocate for the petitioner,
Shri U.K. Uniyal, Senior Advocate assisted by Shri Sandeep Kothari, Advocate for
respondent nos. 1 & 2,
Shri Sharad Sharma, Senior Advocate assisted by Shri Vikas Pandey, Advocate for
respondent no.3,
Shri Paresh Tripathi with Shri C.K. Sharma, Advocates for respondent no.4,
Shri Gopal Narayan, Advocate for respondent nos. 5 & 6.

Dated: February 26, 2010

Hon'ble V.K. Bist, J.

The petitioner is an incorporated company under the Companies Act having its registered office at Ikbalpur, District Haridwar and owns a vacuum pan sugar factory at Ikbalpur, District Haridwar. On 07.10.2009 the Cane Commissioner, Uttarakhand, in exercise of his powers conferred under Section 12(2) of the Sugar Cane (Regulation of Supplies and Purchase) Act, 1953 (*hereinafter referred to as the 'Act'*), determined 64.00 lac quintals of sugarcane as the requirement of petitioner sugar mill for the crushing season 2009-10. On 30.11.2009 the respondent no.2 passed an order reserving and assigning the cane area to various sugar mills. The sugar mill of the petitioner was allotted 66.79 lac quintals of sugarcane. By this order several cane centres were assigned to the petitioner but four centres, namely, Budhahedi (Budhaedi A), Raipur Dareda (Budhahedi B), Nagla Khurd-A and Nagla Khurd-B were taken away from the petitioner and were assigned to respondent no.3. Aggrieved by the order dated 30.11.2009, the petitioner preferred an appeal against four centres being taken away

and being given to respondent no.3 under Section 15(4) of the 'Act'. On 30.01.2010, the respondent no.1 passed an order whereby seven more cane purchasing centres, namely, Margubpur, Dhanderi-B, Kasampur, Alipur-C, Malakpur, Sudoli-B and Bahadarpur Jat-C have been withdrawn from the petitioner and six of these centres have been allotted to respondent no.3 and one of these centres were allotted to respondent no.4. Being aggrieved by the order dated 30.01.2010, the petitioner has filed present petition.

2. Heard Shri Navneet Kaushik, Advocate for the petitioner, Shri U.K. Uniyal, Senior Advocate assisted by Shri Sandeep Kothari, as Special Counsel for respondent nos. 1 & 2, Shri Sharad Sharma, Senior Advocate assisted by Shri Vikas Pandey, Advocate for respondent no.3, Shri Paresh Tripathi with Shri C.K. Sharma, Advocates for respondent no.4 and Shri Gopal Narayan, Advocate for respondent nos. 5 & 6.

3. Learned counsel for the petitioner submitted before the Court that though petitioner had filed an appeal before respondent no.1, but respondent no.1 instead of deciding the same has passed the order dated 30.01.2010. He further submitted that the order impugned also does not refer the serial number of the appeal preferred by the petitioner and does not indicate that order is being passed on the appeal of the petitioner. He argued that the order dated 30.01.2010 is an illegal order as before passing the order dated 30.01.2010, no opportunity of hearing was offered to the petitioner. It is further submitted by him that, in fact, the petitioner was expecting decision on his appeal in respect of four centres,

which were taken away from the petitioner vide order dated 30.11.2009 and the petitioner was not, at all, aware about the fact that objection raised by other sugar mills, in respect of seven more centres, was being considered by respondent no.1. He submitted that respondent no.1 before passing the order dated 30.01.2010 neither supplied the copies of appeals filed by respondent nos. 3 and 4 to the petitioner nor afforded any opportunity of hearing. Learned counsel for the petitioner argued that since no opportunity of hearing was provided to the petitioner, the order dated 30.01.2010 is illegal and deserves to be quashed. He further argued that the Cane Commissioner alone has the power to alter cane centres and the Govt. has limited powers in deciding the appeal, therefore, the order passed by respondent no.1 is without jurisdiction. In support of his arguments the learned counsel for the petitioner relied upon the decisions reported in 1969 (1) SCC-308, (2006) (24) LCD-172 and judgment dated 04.02.2010 passed in Writ Petition No. 129 of 2010 (M/S).

4. Counsel for the respondents, on the other hand, submitted that petitioner has not averred any single word in the writ petition nor there is any whisper or murmur regarding submitting any representation against the order dated 30.11.2009 passed by the Cane Commissioner under Section 15 (1) of the 'Act' and there is no provision under the statute, except an appeal under Section 15 (4) of the 'Act' against the order of the Cane Commissioner under Section 15 (1) of the 'Act', hence the words mentioned as representation in the order dated 30.01.2010 should be read as appeal, more particularly when it is nobody's case that they did not prefer any

appeal but prefer the representation. This Court is quite convinced with the arguments advanced by the learned counsel for the respondents that order dated 30.01.2010 was passed on the appeals of the parties.

5. In reply to the argument of the petitioner's counsel regarding denial of opportunity of hearing, the learned counsel for all the respondents advanced common reply that no opportunity of hearing is required under Section 15(4) of the 'Act' by the State Govt. while deciding the appeal preferred against an order of the Cane Commissioner passed under Section 15(1) of the 'Act' and the consultation etc. is a condition precedent for the Cane Commissioner while exercising the powers under Section 15(1), but no such condition has been prescribed for deciding the appeal under Section 15(4) of the 'Act' more particularly when no prejudice has been caused for the reason that the quantity of the petitioner i.e. 64 lac quintals as determined by the Cane Commissioner under Section 12(1) of the 'Act' has not been reduced nor there is any allegation to the said effect in the writ petition, hence if the opportunity is held to be required, the same would be a futile exercise as no prejudice is shown by the petitioner in the writ petition.

6. In addition Shri Paresh Tripathi, the learned counsel for respondent no.4 submitted that on 07.10.2009, the respondent no.2 in exercise of the powers conferred under Section 12(2) of the 'Act' has determined the requirement of the sugarcane of the various sugar mills for the crushing season 2009-10 whereby assessment for the petitioner was made as 64 lac quintals and for respondent no.4 as 112 lac quintals. Against the

order dated 07.10.2009 passed by respondent no.2 under Section 12 (2) of the 'Act', respondent no.4 preferred a revision under Section 12 (3) of the 'Act' before respondent no.1 but no such revision was preferred by the petitioner. He argued that since the order dated 07.10.2009 by which the cane quantity for the petitioner company was finally determined as 64 lac quintals and against which no revision was preferred by the petitioner under Section 12 (3) of the 'Act' and there being no whisper in the writ petition about the quantity being reduced below 64 lac quintals, hence no opportunity of hearing was given to the petitioner who has not suffered any prejudice or loss. He also submitted that the centres in question i.e. Bahadurpur Jat-C is approximately at a distance of only 16 kms. from the company of the respondent while the same is approximately 32 kms. away from the petitioner's company and, as such, the same has rightly been allotted to respondent no.4. Similarly, Shri Sharad Sharma, the learned Senior Counsel for respondent no.3 emphatically contended that no prejudice is caused to the petitioner in passing the order dated 30.01.2010 by respondent no.1 whereby seven centres, namely, Margubpur, Dhanderi-B, Kasampur, Alipur-C, Malakpur, Sudoli-B and Bahadarpur Jat-C were taken away from the petitioner company because there is nothing on record to substantiate the version of the petitioner about the alleged crushing capacity and there is no basis to say that the petitioner requires 72 lac quintals of sugarcane particularly when the capacity of petitioner's company has been determined to be about 64 lac quintals vide the order of the Cane Commissioner. He argued that the entries made in column nos. 6 & 7 in the order dated 30.11.2009 passed by the Cane Commissioner nowhere

indicate that the centres taken away from the petitioner were ever reserved for the petitioner, rather these centres were reserved for respondent nos. 3 & 4. In this regard the learned Senior Counsel for respondent no.3 placed emphasis on sub Section (3) of Section 12 of the 'Act' and contended that if any industry is aggrieved by the allocation made under sub Section (1) of Section 12 of the 'Act', it can file a revision before the Prescribed Authority as in the case in hand, the crushing capacity of the petitioner company as per the orders under sub Section (1) of Section 12 of the 'Act' has to be about 64 lac quintals, but the allocation made by the Cane Commissioner i.e. 67 lac quintals is beyond the crushing capacity.

7. For proper appreciation of the arguments of learned counsel for the parties, Section 15 of the 'Act' is being reproduced hereunder:-

“Section 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 consultation 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) Where any area has been declared as reserved area for a factory, the occupier of such factory shall, if so directed by the Cane Commissioner, purchase

all the cane grown in that area, which is offered for sale to the factory.

(3) Where any area has been declared as assigned area for a factory, the occupier of such factory shall purchase such quantity of cane grown in that area and offered for sale to the factory as may be determined by the Cane Commissioner.

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

8. Section 15 (1) of the 'Act' provides that while reserving an area for a sugar factory, the Cane Commissioner is required to consult the factory and Cane-growers' Co-operative Society in the manner to be prescribed. The Cane Commissioner can cancel such order or alter the boundaries of an area so reserved or assigned but before doing so he/she is required to consult the factory and Cane-growers' Co-operative Society. Thus, it is clear that the Cane Commissioner, before cancelling or altering any boundaries of any area so reserved or assigned shall provide opportunity of hearing to the concerned parties. Sub-Section 4 of Section 15 of the 'Act' provides an appeal to the State Government.

9. Counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of The Purtabpore Company Ltd. vs. Cane Commissioner of Bihar and others reported in (1969) 1, S.C.C.-308. This judgment of the Supreme Court is not applicable in present case, as in the aforesaid case there was an order passed by the Cane Commissioner under Section 15(1) (b) of the 'Act' whereas in the present case order has been passed by the Appellate Authority under Section 15 (1) (b) of the 'Act'. Another case law relied upon by the petitioner

in the case of Rai Bahadur Narain Singh Sugar Mills Ltd. Vs. State of Uttarakhand and another 2009 (2) UD 118 will not help the petitioner as in that case also order of Cane Commissioner was under challenge and not the order of State Government under Section 15(4) of the 'Act'. Another case law cited by the learned counsel for the petitioner reported in 2006 (24) LCD 172 helps the petitioner. In that case, the Hon'ble Single Judge of the Allahabad High court has held that opportunity of hearing is to be afforded while deciding the appeal.

10. It is true that Sub-Section 4 of Section 15 of the 'Act' does not expressly provide for giving opportunity of hearing to the parties, but in my view if appellate authority is purposing to take decision against a sugar factory, the appellate authority should provide reasonable opportunity of hearing to such sugar factory. But on the basis of facts and circumstances of the present case and overall assessment of entire material available on record, this Court is of the view that no prejudice is being caused to the petitioner for the reason that the quantity of sugarcane i.e. 64 lac quintals as determined by the Cane Commissioner under Section 12(2) of the 'Act' has not been reduced. There is also no such pleading in the writ petition. Petitioner has also not pleaded in the writ petition that determination of quantity for the petitioner company by the Cane Commissioner under Section 12 (2) of the 'Act' was challenged by the petitioner by preferring revision. Therefore, no fruitful purpose will be served by sending the matter back to the State Government for deciding the appeal afresh by providing opportunity of hearing to the petitioner specially when crushing season of the year 2009-10 is coming to an end.

11. Accordingly, the writ petition is dismissed. Interim order dated 18.02.2010 passed by this Court is hereby vacated.

12. Costs easy.

(V.K. Bist, J.)
26.02.2010

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