

The Saharanpur Co-Operative Cane Development Union Ltd.

Vs

The Lord Krishna Sugar Mills Ltd. and Others

And

The Collector, Saharanpur and Others

Vs

The Lord Krishna Sugar Mills Ltd. and Another

Civil Appeals Nos. 1407(N) and 1408(N) of 1972

(A. N. Grover, A. K. Kukherjea JJ)

13.09.1972

JUDGMENT

MUKHERJEA, J. -

1. These two appeals on special leave are directed against an order, dated May 11, 1972 of the Division Bench of the Allahabad High Court confirming an earlier interim order passed ex parte on March 31, 1972. The interim order challenged by the appellants was passed under the following circumstances.

2. The Lord Krishna Sugar Mills Ltd., the respondent No. 1 in both these appeals, is a company owning and operating a sugar factory in the District of Saharanpur in Uttar Pradesh. For the sake of convenience we shall hereafter refer to the Lord Krishna Sugar Mills Ltd. briefly as the petitioner. Between November, 1971 and March, 1972 the petitioner received certain supplies of sugarcane from the Saharanpur Co-operative Cane Development Union Ltd. (hereinafter referred to as the Cane-growers' Society). The supply of sugarcane in Uttar Pradesh is governed by various statutory provisions, namely the Sugarcane (Control) Order, 1966 (hereinafter referred to as the Order of 1966), the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as the Act of 1953) and the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 (hereinafter referred to as the Rules of 1954). Without going into details at this stage we may indicate that the net effect of these statutory provisions is that specific areas are earmarked for all sugar factories by the Cane Commissioner, U.P. One such area was allotted to the petitioner company which was bound to take all its supplies from the cane-growers in that area. The supply of sugarcane is made through the Cane-growers' Society. The Government of India has a right to fix the statutory minimum sugarcane price for any particular season and during the crushing season 1971-72 with which we are concerned in these appeals, the Government of India had fixed the minimum sugarcane price for the petitioner's sugar factory at Rs. 7.37 p. per quintal. There was also a statutory provision under which it was incumbent on the Cane-growers Society to offer its crop of sugarcane to the petitioner who in turn was bound to accept the offer within 14 days. It was further provided that any factory which buys sugarcane which the cane-growers offer to it in the manner

indicated above has to pay the price of the sugarcane within 14 days and if the payment of cane-price falls in arrears, the Cane Commissioner is to send a certificate to the Collector indicating the amount of arrears together with interest that may be due from any particular sugar factory. Upon the receipt of such a certificate from the Cane Commissioner, the Collector can proceed to recover from the factory concerned the amount certified as if it were an arrear of land revenue.

3. We now turn to what actually happened in this case. During the crushing season 1971-72 the petitioner purchased sugarcane from the Cane-growers' Society between November 14, 1971 and March 7, 1972. Prior to this purchase the Society has sent an offer for supply of 14 lakh quintals of sugarcane. The petitioner accepted that offer and the price agreed between the parties was Rs. 11.44 p. per quintal. Altogether 12,07,987.64 quintals of sugarcane were sold by the Society to the petitioner for which the price payable at the contracted rate was Rs. 86,76,026.89 p. The petitioner contends that due to several factors over which the petitioner had no control but for which both Government and the Cane-growers' Society are responsible, the petitioner's financial position deteriorated and the petitioner was not in a position to pay off the cane dues. On March 24, 1972 the petitioner received from the Cane Commissioner at Recovery Certificate which showed that a sum of Rs. 53,28,668.86 p. was the outstanding due of the petitioner for the price of sugarcane and commission thereon for the period ending February 29, 1972. On March 24, 1972 the actual outstanding dues from the petitioner amounted, according to the petitioner to Rs. 21,25,877.19 p. We are told that on March 21, 1972, the Collector, Saharanpur attached the cash credit account of the petitioner with the Central Bank of India, Saharanpur and also its accounts with the Punjab National Bank and the State Bank of India, Saharanpur. On the very next day i.e., on March 22, 1972, the Tehsildar of Saharanpur attached the entire stock of sugar which the petitioner had pledged with his banks. On March 27, 1972 the petitioner received a revised Recovery Certificate in respect of the cane dues for the period ending March 15, 1972. This Certificate put the figure of the petitioner's dues at Rs. 32,43,877. The petitioner explains the discrepancy between those figures of the Recovery Certificates and its own statement of dues as on March 25, 1972 by saying that both the Recovery Certificates do not - as in fact they possibly could not, take note of certain payments made by the petitioner subsequent to the dates up to which the Recovery Certificates calculated the dues. The petitioner, thereafter, moved a writ petition before the High Court of Allahabad challenging the validity of both the Recovery Certificates, dated March 20, 1972 and March 25, 1972, respectively as well as the order, dated March 22, 1972 of the Tehsildar by which the said officer sought to attach the stocks of sugar pledged with the petitioner's banks. Three principal grounds on which the Recovery Certificates were challenged by the petitioner are as follows :

(a) The Cane Commissioner could not issue Recovery Certificates for any amount in excess of the statutory cane price and since the petitioner had paid for the entire supply of cane received by it from the Cane-growers' Society at the rate of the statutory price, Recovery Certificates for realising the excess price contracted between the parties were not valid.

(b) After the Sugarcane (Control) Order of 1966, came into force the Collector was not entitled to recover the dues from the petitioner as arrears of land revenue by taking resort to a procedure which was introduced by the Act of 1953, but which according to the petitioner stood repealed by the provisions of the Control Order of 1966.

(c) The Cane-growers' Society was not entitled to charge any amount for the sugarcane supplied by it during the 1971-72 season in excess of the statutory cane

price and consequently the recovery proceedings for the realisation of such amount were illegal.

4. It appears that the High Court by an order, dated March 31, 1972, directed the issue of a notice against the respondents in that application who are the appellants in the two appeals before us. The High Court also passed an interim order of stay in the following terms :

"Until further orders the operation of the orders, dated March 21, 1972, and March 22, 1972, attaching the movables of the petitioner company shall remain stayed on the condition that the petitioner deposits a sum of Rs. 3 lakhs by April 30, 1972 and further it continues to deposit the same amount each monthly on the 22nd of the month till the entire amount due from the company is paid up. In case of any default the interim order shall stand automatically discharged."

5. The interim order was confirmed by the Division Bench on May 11, 1972, after hearing the petitioner as well as the present respondents.

6. The present appellants have now come on appeal with special leave against the order, dated May 11, 1972 by which the earlier stay order, dated March 31, 1972, was confirmed.

7. The learned counsel for the Cane-growers' Society sought to challenge the order the High Court on the ground that the High Court should not have by an interim order postponed a payment which under the statute was to be made within 15 days. On the assumption that a sum of Rs. 32.41 lakhs was the outstanding due of the petitioner company to the Cane-growers' Society, the High Court order provides for the payment of the entire sum by February, 1973. For all practical purposes, all that the High Court has done is to stay the operation of the recovery proceedings initiated by the Collector and sanctioned by the Statute and allow the petitioner company to pay the dues in easy instalments. The High Court has, therefore, by its order nullified the effect of sub-clause (3) of Clause 3 of the Sugarcane (Control) Order, 1966 which was intended to protect the interests of the cane-growers and which after an amendment made on May 18, 1968 reads as follows :

"(3) Where a producer of sugar purchases any sugarcane from a grower of sugarcane or from a sugarcane growers Co-operative Society, the producer shall, unless there is an agreement in writing to the contrary between the parties, pay within fourteen days from the date of delivery of the sugarcane to the seller or tender to him the price of the cane sold at the rate agreed to between the producer and the sugarcane growers or sugarcane grower's Co-operative Society or that fixed under sub-clause (1) as the case may be, either at the rate of the factory or at the cane collection centre or transfer or deposit the necessary amount in the Bank account of the seller or the Co-operative Society, as the case may be."

It was argued that the High Court has apparently accepted the claim of the Cane-growers' Society that the entire amount for recovery of which certificates had been issued was due to be recovered, and having done so the High Court had no jurisdiction to order payment by instalments spread over a long period even though there were statutory provisions to the effect that the same was to be paid off within fifteen days of delivery of the sugarcane and in default to be recovered by the special certificate procedure. Though this was, in substance, the main argument in law of the learned Counsel appearing for the Cane-growers' Society he took great pains to emphasise the prejudice that would be caused to a very large body of cane-growers if they were deprived of the benefit of

statutory provisions calculated to enforce immediate payment of the price. We were told that the entire scheme of sugar control was devised to meet two difficulties. One was that it was not to the interest of the cane-growers to grow cane and that the cane-growers would much rather grow some other crops which are nor more profitable. In the interest of the sugar-industry and also in the wider interests of the public, the cane-growers are now compelled by Government to cultivate sugarcanes and to sell them to special factories to which the various areas of cane production were assigned. At the same time, the interests of the cane-growers had to be protected by ensuring a statutory minimum price limit for the canes produced and also by ensuring quick payment of the cane price by the factories after they had received the supplies. The interim order passed by the High Court has, it was argued, completely defeated all the statutory provisions that have been made to ensure a smooth working of the scheme and the order by delaying the payment which is due from the factory is calculated to cause widespread suffering to the cane-growers.

8. As against the above contentions urged on behalf of the Cane-growers' Society it was contended on behalf of the petitioner that the special recovery procedure by the issue of certificates was applicable only for the recovery of the minimum statutory price. If the agreed price exceeded the statutory minimum, then it was not open to the cane-growers to have recourse to the certificate proceedings for recovery of the entire price agreed between them and the factory. The cane-growers were in that case to resort to ordinary action in the civil courts for recovery of the price in excess of the statutory minimum. Our attention was drawn to the provisions of Clause 3 of the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 which provide for compulsory purchase of cane of the part of the occupier of a factory from a reserved area. Sub-clause (3) of that clause provides that the occupier of the factory for which an area has been reserved shall within fourteen days of the receipt of the offer enter into an agreement in Form B or Form C of the Appendix with the cane-growers or the Cane-growers Co-operative Society as the case may be, in respect of the cane offered. The Form that is relevant in the instant case, is Form B. Section 17 of the U.P. Sugarcane of Supply and Purchase) Act, 1953 provides that "the occupier of a factory shall make such provision for speedy payment of the price of cane purchased by him as may be prescribed". The word "prescribed" has been defined in clause (1) of sub-section (2) of the Act of 1953 to mean "prescribed by rules". Section 17 of the Act of 1953 further provides that upon the delivery of cane the occupier of a factory is liable to pay immediately the price of the cane so supplied together with all other sums connected therewith and if the person liable is to default in making the payment of the price for a period exceeding fifteen days from the date of delivery he will also pay interest at a rate of 7 1/2 per cent. per annum from the date of delivery. Sub-section (4) of that Section provides that the Cane Commissioner shall forward to the Collector a certificate under his signature specifying the amount of arrears on account of the price of cane plus interest, if any, due from the occupier of the factory and the Collector, on receipt of such a certificate, shall proceed to recover from such occupier the amount specified therein as if it were an arrear of land revenue.

9. We are told that though the Act of 1953 contemplates an agreement in Form B between the parties, the recovery procedure by certificate as provided for in the Act of 1953 does not apply in respect of the entire price agreed between the parties. In any case, it is alleged that after the original agreement to supply 14 lakh quintals, the Cane-growers' Society resiled from that agreement and caused damage to the petitioner company. This fact itself, it is contended, exposes the claim of the Cane-growers' Society to serious objections as to its quantum and makes it doubtful if the entire amount claimed could be recovered from the petitioner by the application of certificate procedure.

10. It was also urged before us on behalf of the petitioner that the responsibility for the petitioner's default in the matter of payment lies on the Cane-grower's Society as well as on the Government.

The argument was more or less on the following lines. Though the statute provided that the occupier of a factory and the sugarcane growers either operating individually or through a society may come to an agreement for the supply of sugarcane at the statutory sugarcane price fixed by the Central Government which in this case was Rs. 7.37 p. per quintal, the Cane-growers' Society coerced the petitioner to accept for the crushing season 1971-72 supply of sugarcane at the price of Rs. 11.44 p. per quintal. In other words, while the statutory price was Rs. 86,76,026.80 p., they are being made to pay Rs. 1,20,64,429.04 p. which really meant that the petitioner was being made to pay a sum of Rs. 33,88,402.15 p. in excess of the statutory price fixed by the Government. While this caused hardship to the petitioner, the Cane-growers' Society made it worse by not making full supply of the offered quantity and consequently by compelling the petitioner to close its crushing season prematurely and abruptly. The petitioner complained that though the normal crushing season during a particular year would be about 180 days, the season for 1971-72 was only of 115 days. On top of this, we were told, the Central Government on May 25, 1971 gave up the policy of partial control on sugar price. At the advent of the Indo-Pak War all the sugar factories including the petitioner's made a voluntary offer to the Central Government that they would supply 60 per cent. of the sugar produced by them at a fixed price of Rs. 150 per quintal so that this sugar could be sold through the fair price shops. The remaining 40 per cent. of the sugar produced by the factories was to remain with the sugar factories to be sold in the free market at the prevalent prices. Following the usual trade practice the petitioner obtained finances from banks by pledging the sugar produced by them. The banks while advancing loans on the pledged sugar charge a commission of 15 per cent. on the loans advanced. For this purpose, the banks fix the price of sugar at a uniform rate of Rs. 150 per quintal and do not take notice of the fact that only 60 per cent. of the petitioner's produce has to be sold at Rs. 150 per quintal. This subjects the petitioner in common with other factory-owners to the payment of heavy commission to the banks. Finally, since the Central Government does not allow the sugar factories to sell sugar at once but compels them to release the supplies in accordance with monthly 'release orders' issued by the Government from month to month, the company's receipts against sales of sugar are spread over a period of at least 12 months. These are the main reasons, according to the petitioner which have been responsible for the petitioner's failure to pay the dues of the Cane-growers' Society in time.

11. The only point of law which was raised on behalf of the petitioner in support of the said order of the High Court was that the Cane-growers' Society was not entitled to recover any amount over and above the minimum sugarcane price fixed by the Central Government by taking resort to the recovery proceedings sanctioned under the Act of 1953.

12. Mr. Dikshit appearing for the Collector, the Cane Commissioner and the Tehsildar who have field one of these appeals argued that the Act of 1953 was framed in the interest of the cane-growers the sugar factories as well as the State. Mr. Dikshit supported the stand taken by the learned Counsel appearing on behalf of the Cane-growers' Society.

13. After hearing learned advocates appearing for the different parties we have no doubt in our mind that this is a case where we should not interfere with the stay order passed by the High Court. For one thing it is only in the most exceptional circumstances that this Court ever agrees to interfere with an interim working order passed by the High Courts. The principal contentions of the different parties in this case are yet to be heard and adjudicated by the High Court. It is not desirable that in delivering this judgment we make any observation which might influence the High Court in any manner in passing the final order in the writ application. Both the parties have sought to make out before us that the stand they are taking in this matter is the only possible stand that one can possibly take in the light of the relevant statutory provisions. It is apparent that the time for deciding which

of these rival contentions is correct has not yet come. In the circumstances, we do not see how we can interfere with the interim order passed by the High Court. The High Court apparently took into consideration the fact that any indefinite postponement of the payment of the outstanding dues of the petitioner might seriously prejudice the cane-growers. The High Court must have considered at the same time that to allow the certificate proceedings to be completed would have rendered to writ application made by the petitioner completely infructuous. They, therefore, passed a working order protecting the interests of the cane-growers and at the same time keeping open issues which can be brought out at the time of adjudication. It was suggested to us on behalf of the Cane-growers' Society that the proper order for the High Court in such circumstances would have been to maintain the status quo and to keep the attachments undisturbed until the disposal of the writ petitions and at the same time to insist on the petitioner depositing the entire amount in court, so that the interests of the cane-growers could be protected in the event of dismissal of the writ petition. While we are not in a position, in the absence of a judgment in this matter, to contemplate the reasons which induced the High Court to pass the instant order in its present form, it is impossible for us not to appreciate the fact that even if the High Court had passed an order asking the petitioner to deposit the entire amount at once that would not have helped the immediate needs of the cane-growers which according to the counsel of the Society are so pressing that it is incumbent on us to interfere even with an interim order passed by the High Court. At one stage, we considered the feasibility of making an order by which the petitioner could be compelled to make a deposit in court of a sum of Rs. 8.26 lakhs which, according to the petitioner, is the amount that is still outstanding if one take into account the various payments made by the petitioner after the issue of the certificates either on its own or in terms of the order of the High Court. We however, refrain from passing such an order for the simple reason that such an order would make very little difference to the parties. This sum would in any case be payable by the petitioner in course of a little over two months time. Had we passed such an order we would have only expedited the realisation of the outstanding dues of the cane-growers by an insignificantly short period. This we are unwilling to do. This cannot help any of the parties and there can be hardly any point in taking the extraordinary step of interfering with an interim order of the High Court when such interference cannot serve the interests of any party whatsoever. In this view of the matter these appeals fail. In the particular facts and circumstances of the case we make no order as to costs.

14. Before parting with this case we must point out that it has been our intention not to make any comment or observation regarding the merits of this case. In fact, we have deliberately refrained from examining the merits of the different contentions and we make it clear that nothing that we have said here should be taken as an expression of our opinion on the merits of the case or the correctness of the figures relating to the amount due from the petitioner. We would also, like to indicate that in matters of this nature, it was open to the parties to move the High Court for a very expeditious disposal of the writ petition itself and we have no doubt that owing to the urgency of giving a decision, there being other similar petitions stated to be pending, the High Court would have ordered a very early hearing of the writ petition itself.

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