

Shri Janki Sugar Mills & Co.

Vs

Commissioner of Meerut Division Meerut and Others

Civil Appeal No. 1083 of 1969

(V. D. Tulzapurkar, R. S. Sarkaria JJ)

14.12.1978

JUDGMENT

TULZAPURKAR, J. –

1. This appeal by certificate is directed against the judgment rendered by the Allahabad High Court on December 5, 1967 in Special Appeal 1068 of 1967 and raises a short question whether the appellant is entitled to the benefit of certain concessions (deductions) in the minimum price by the Cane Commissioner in his order issued on June 1, 1955 ?

2. The appellant (Shri Janki Sugar Mills & Company) is a partnership firm carrying on the business of manufacturing sugar. By an order passed on November 1, 1954 under Section 15 of the Uttar Pradesh Sugar Cane (Regulation of Supply and Purchase) Act, 1953, the Cane Commissioner reserved certain sugarcane centers for the appellant's sugar factory. On November 12, 1954 (i.e. within 14 days of the reservation of the sugarcane centres) respondent 4 (Laskar Cooperative cane Development Union Ltd.) made an offer for the 1954-55 crushing season for the supply of 6 lac maunds of sugarcane out of a total estimated yield of 12 lac maunds of sugarcane from certain centres. The offer was accepted by the appellant-firm on November 27, 1954 (i.e. within 14 days of the receipt of the offer) and an agreement in the prescribed Form 'C' was duly executed on February 9, 1955. It contained the usual term that the appellant-firm will pay for the sugarcane supplied to it "at the minimum price notified by the Government subject to such deductions, if any, as may be notified by the Government from time to time". On March 22, 1955 respondent 4 made another offer for supplying additional quantity of 2 lac maunds of sugarcane to the appellant-firm, which offer was also accepted on May 4, 1955 and a composite agreement in prescribed Form 'C' was entered into on that very day for the supply of 8 lac maunds of sugarcane (inclusive of the initial 6 lac maunds). This agreement also contained the usual term with regard to the payment being made "at the minimum price subject to such deductions as may be notified by the Government from time to time." By a press Note dated May 23, 1955 the Government of India notified its decision that certain deductions in the minimum cane price, on the basis of recovery of sugar from sugarcane, will be allowed to sugarcane factories in Uttar Pradesh on the cane supplied to them on and after May 1, 1955 but that the deductions will be allowed only on "unbonded cane" crushed by each factory and not on "bonded cane", the latter of which shall have to be purchased by each factory at the minimum cane price already fixed for the season. In exercise of the powers under Section 3 of the Essential Commodities Act, 1955 (delegated to him by the Government of India under a Notification dated April 25, 1955), the cane commissioner, Uttar Pradesh issued a Notification on June 1, 1955 whereunder "the producers of sugar by vacuum pan process were allowed to make deductions as specified in the Schedule thereto from the minimum price of per maund of cane fixed for the season 1954-55 in respect of the unbonded sugarcane crushed on and after May 1, 1955".

The appellant-firm, taking advantage of this Notification granting concessions in the minimum price, made payments to respondent 4 after making deductions in respect of the two lac maunds of sugarcane supplied to it, in respect whereof the offer had been made to it on March 22, 1955. However, on December 21, 1955 the Cane Commissioner, Uttar Pradesh issued a Recovery Certificate under Section 17 and 18 of U.P. Sugar Cane (Regulation of Supply and purchase) Act, 1953 against the appellant-firm for a sum of Rs. 53,878.10 being the amounts deducted by the appellant-firm while making payments to respondent 4. The appellant-firm disputed the legality of the Recovery Certificate on the ground that it had the right to make the deductions in view of the Cane Commissioner's Notification dated June 1, 1955. The said dispute was referred by the Cane Commissioner to the District Cane officer, Bulandshahr as the sole arbitrator under Rule 108 of the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954. By his award dated May 30, 1962, the District Cane officer held that the appellant-firm had wrongly made the deductions in respect of the supply of two lac maunds of sugarcane which was "bonded Cane" and that the appellant-firm was liable to pay the minimum price therefor.

3. Aggrieved by the award the appellant-firm preferred an appeal to the Divisional Commissioner, Meerut under Rule 118 of the said Rules, but the appeal was dismissed on March 30, 1963. The appellant-firm challenged the legality of the award of the District Cane officer as also the appellate order of the Divisional Commissioner by means of a writ petition in the Allahabad High Court being Civil Miscellaneous Writ 2003 of 1963. The learned Single Judge who heard the writ petition dismissed the same by his Judgment and order dated October 24, 1967. A further Special Appeal 1068 of 1967 carried by the appellant-firm to the Division Bench of that Court also proved unsuccessful on December 5, 1967. The appellant-firm has come up in appeal to this Court.

4. The only contention that was urged by counsel for the appellant-firm before us in this appeal was that the supply of two lac maunds of sugarcane made by respondent 4 to the appellant-firm was not bonded sugarcane at all and as such the appellant-firm was entitled to the concessions (deductions) in the minimum price payable in respect thereof to respondent 4 in view of the Cane Commissioner's Notification dated June 1, 1955. In support of this contention counsel relied upon sub-clauses (2) and (3) of Clause 3 of the U.P. Sugarcane supply and purchase Order, 1954 issued under Section 16 of the U.P. Sugarcane (Regulation of Supply and purchase) Act, 1953 and it was pointed out that under sub-clause (2) within 14 days of issue of the order reserving certain areas for a factory, a cane-grower or a Cane-growers' Cooperative Society has to make an offer to supply Cane grown in the reserved area to the occupier of the factory and under sub-Clause (3) it was obligatory upon the occupier of the factory for which such area has been reserved to accept the same within 14 days of the receipt of the offer and enter into an agreement in the prescribed form and it was urged that unless such offer was made within 14 days as prescribed by sub-clause (2) and was accepted within 14 days as prescribed by sub-clause (3) the supply of sugarcane thereunder could not be regarded as supply of bonded sugarcane. Counsel pointed out that the offer of two lac maunds of sugarcane in the instant case was made by respondent 4 long after the expiry of 14 days from the issuance of the order reserving certain areas for the appellant-firm's factory and that offer had been accepted not within the limit prescribed in sub-clause (3) and, therefore, the sugarcane so supplied by respondent 4 to the appellant-firm was not bonded sugarcane but ought to be classified as 'unbonded sugarcane' and as such the appellant-firm was entitled to the concessions in the minimum price notified in the Cane Commissioner's Notification dated June 1, 1955. It was further pointed out that though under sub-clause (4) of Clause 3 of the U.P. Sugarcane supply and purchase Order, 1954, the Cane Commissioner had the power to extend the date for making offers in respect of any reserved area, no such extension had been granted by the Cane Commissioner in the instant case, and, therefore, the offer of two lac maunds of sugarcane which was made by respondent 4 on

March 22, 1955, long after the expiry of 14 days from the issuance of the order of the Cane Commissioner on November 1, 1954 reserving certain sugarcane centres for the appellant's factory under Section 15 of the Act, could not culminate into an agreement under the statute or the U.P. Sugarcane Supply and Purchase Order, 1954, that the agreement entered into between the parties on May 4, 1955 in respect of the said supply must be regarded as an ordinary contract under the Indian Contract Act and that the sugarcane supplied under such ordinary contract must be regarded as unbonded sugarcane. In other words, the contention was that only such sugarcane as would be supplied by a cane-grower or a Cane-grower' Cooperative Society under an agreement made in strict compliance of sub-clause (2) and (3) of Clause 3 of the U.P. Sugarcane supply and purchase order, 1954 could be regarded as bonded sugarcane.

5. The question raised in the appeal really turns upon what is meant by the expression "unbonded sugarcane" occurring in the Cane Commissioner's Notification dated June 1, 1955 and the true effect of sub-clause (2) and (3) of clause 3 of the U.P. Sugarcane supply and purchase Order, 1954. It must be stated however, that neither the expression "bonded sugarcane" nor "unbonded sugarcane" has been defined either in the statute or in the U.P. Sugarcane Supply and purchase Order, 1954 and, therefore, regard must be had to the ordinary dictionary meaning of the said expressions. In shorter Oxford English Dictionary the legal and technical meaning of the expression "bond" is given as "a deed by which the obligor binds himself, his heirs, executors, or assigns to pay a certain sum to the obligee." In Stroud's Judicial Dictionary (4th Edn.) the expression "bond" is explained as : an obligation by deed". It will thus be clear that the expression "bonded sugarcane" must mean sugarcane secured by a bond or deed. Under the Notification of the Cane Commissioner dated June 1, 1955 certain deductions from the minimum price per maund of cane fixed for the season 1954-55 had been notified in respect of the "Unbonded sugarcane" crushed on or after May 1, 1955. In other words, the concession is granted in respect of the supply of 'unbonded sugarcane' in contradistinction with supply of 'bonded sugarcane'. There is nothing in the Notification to suggest that any particular bond or a bond in accordance with the provisions of the U.P. Sugarcane Supply and Purchase Order, 1954 was intended and therefore supply of 'bonded sugarcane' would mean supply of sugarcane which has been secured by a bond or agreement and such supply will not be entitled to the concession. On a plain reading of the Notification in question, therefore, it will appear clear that since the supply of two lac maunds of sugarcane made by respondent 4 to the appellant-firm had been secured by the agreement that was entered into between the parties on May 4, 1955 the said supply will have to be regarded as supply of 'bonded sugarcane' and as such the appellant-firm was not entitled to the concession in the minimum price payable in respect thereof to respondent 4.

6. Considering the question in the context of sub-clauses (2) and (3) of clause 3 of the U.P. Sugarcane Supply and Purchase Order, 1954 also we clearly of the view that the appellant-firm was not entitled to the benefit of the Cane Commissioner's Notification dated June 1, 1955. For this purpose it will be necessary to refer to Section 15 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 and set out clause 3 of the U.P. Sugarcane Supply and Purchase Order, 1954. Under Section 15(1) of the Act power has been conferred upon the Cane Commissioner after consulting the factory and the cane-grower/Cane-growers Cooperative Society to (a) reserve any area (hereinafter called the reserved area) or, (b) assign any area (hereinafter called an assigned area) for the purpose of the supply of sugarcane to a factory in accordance with the provisions of Section 16 during one or more crushing seasons as may be specified. It was under this provision that the cane Commissioner had passed order dated November 1, 1954 reserving certain sugarcane centers (reserved area) for the appellant-firm for the 1954-55 season.

7. Clause 3 of the U.P. Sugarcane Supply and Purchase Order, 1954 runs thus :

3. Purchase of cane in reserved areas. - (1) The occupier of a factory shall estimate or cause to be estimated by the 31st day of October or such later date in a crushing season, as, on an application being made to the Cane Commissioner by the occupier of a factory, may be fixed by the Cane Commissioner, the quantity of cane with each grower enrolled in the Grower's Register and shall on demand submit the estimate to the Cane Commissioner and the Collector.

(2) A cane-grower or a Cane-grower's Cooperative Society may within 14 days of the issue of an order reserving an area for a factory, offer in Form A of the Appendix, to supply cane grown in the reserved area, to the occupier of the factory.

(3) 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-grower or the Cane growers Cooperative Society, as the case may be in respect of the cane offered :

Provided that any purchase of cane made before the execution of the prescribed agreement shall be deemed to have been made in accordance with such agreement.

(4) The Cane Commissioner may, for reasons to be recorded in writing extend the date for making offers in respect of any reserved area.

On a fair reading of the sub-clauses (2), (3) and (4) of Clause 3 of the order two or three things become at once. In the first place sub-clause (2) uses the expression 'may' and provides that a cane-grower or Cane growers' Cooperatives Society may within 14 days of the issue of an order reserving an area for a factory make an offer to supply the cane grown in the reserved area to the factory. That the period of 14 days mentioned in this sub-clause is not imperative or mandatory is also clear from sub clause (4) which confers power upon the Cane Commissioner to extend the date for making offer in respect of any reserved area. Secondly, sub-clause (3) uses the expression 'shall' indicating that an imperative obligation is cast upon the factory to accept the offer within 14 days from the receipt of the offer. Reading the two sub-clause together, it becomes clear that if a Cane-growers' Cooperative Society makes an offer within 14 days mentioned in sub-clause (2) it is obligatory upon the occupier of the factory to accept that offer within 14 days of the receipt of the offer; this only means that if the offer is made by the cane-grower or Cane-growers' Co-operative Society beyond the period specified in sub-clause (2) or the extended time under sub-clause (4) it would not be obligatory but optional for the occupier of the factory to accept the said offer but if such offer made beyond the prescribed or extended period is accepted by the occupier of the factory binding agreement comes into existence between the parties and sugarcane supplied thereunder would be 'bonded sugarcane', more so when the agreement is entered into in the prescribed from. Merely because the offer from the cane-grower or Cane-growers' Cooperative society emanates after the expiry of the period mentioned in sub-clause (2) it does not mean that the parties are prevented from entering into an agreement in the prescribed from and if they do enter into an agreement in the prescribed from, as was the case here, the sugarcane supplied thereunder would be 'bonded sugarcane'. It is not possible to accept the contention of learned Counsel for the appellant that sugarcane supplied by the cane-growers or Cane-growers' Cooperative Society could be regard as 'bonded sugarcane' only if offer of the cane-grower or the Cane-growers' Cooperative Society emanates within the period prescribed by sub-clause (2) and the same is accepted by the occupier

within the period prescribed by sub-clause (3). As stated earlier, the true effect of sub-clause (2) and (3) read together is that the compulsion or obligation to accept the offer on the part of the occupier of the factory arises only when the offer is made by the cane-grower or Cane-growers Cooperatives Society within the time prescribed by sub-clause (2) or the extended time under sub-clause (4) but if the offer is made after the expiry of that period it is optional for the factory occupier to accept or not but in case where he accepts such offer a binding agreement comes into existence, and the sugarcane supplied thereunder becomes "bonded Sugarcane". In the instant case the offer of additional quantity of two lac maunds of sugarcane was undoubtedly made long after the expiry of the period of sub-clause (2) but the same was accepted by the appellant-firm and a binding agreement came into existence and what is more that a binding agreement was executed by the parties in the prescribed From 'C' Further, the conduct on the part of the appellant-firm in referring the dispute to arbitration and filing an appeal against the arbitrator's award under the relevant rules clearly show that the parties, particularly the appellant-firm treated the agreement dated May 4, 1955 as one under the Act and the U.P. Sugarcane Supply and Purchase Order, 1954.

8. We are, therefore, of the view that the authorities below were right in coming to the conclusion that the said additional supply of two lac maunds of sugarcane by respondent 4 to the appellant-firm was the supply of "bonded sugarcane" and, therefore, the appellant-firm was not entitled to benefit of the Cane Commissioner's Notification dated June 1, 1955. In the result the appeal fails and is dismissed with costs.

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