

M/S. Lingo-Sulphite Corporation of India Limited and Others

Vs

U.P. State Sugar Corporation Limited, Unit Bijnor and Others

United Commercial Syndicate, Allahabad

Vs

U.P. State Sugar Corporation Limited, Unit Bijnor and Others

Writ Petition No. 391 of 1980 and Civil Appeal No. 651 of 1980

(Syed M. Fazal Ali, R. B. Misra JJ)

27.01.1982

JUDGMENT

MISRA, J. –

1. Writ Petition No. 391 of 1980 under Article 32 of the Constitution and Civil Appeal No. 651 of 1980 by special raise common question of law and, therefore, we propose to dispose them of by a common judgment.
2. The circumstances leading to the writ petition and the appeal lie in a narrow compass. The appellant, United Commercial Syndicate, is the purchasing agent of M/S. Lingo-Sulphite Corporation, the petitioner in Writ Petition No. 391 of 1980 and M/S. Audubon Trading and Export Corporation of Allahabad and Calcutta, who are the manufacturers of lingo-sulphite in India.
3. Molasses is the basic raw material for the manufacture of lingo-sulphite which is an essential raw material for all basic refractories, steel plants, cement factories, carbon-black plants and many other important industries. Molasses is also used for distillation. Over the years molasses has become a valuable commodity on account of its multi use. The preservation, distribution and prices of the molasses were, therefore, controlled by a legislation, the Uttar Pradesh Sheera Niyantaran Adhiniyam, 1964 [U.P. Act 24 of 1964], hereinafter referred to as 'the Act'.
4. United Commercial Syndicate used to purchase molasses for their principals from the open market. Later on it decided to make direct purchase from the U.P. State Sugar Corporation Ltd., Unit Bijnor [a State Government Undertaking]. It entered into an agreement with respondent 1, the U.P. State Sugar Corporation Ltd., whereunder respondent 1 agreed to sell 28,300 quintals of molasses of 1977-78 production at the statutory price of Rs. 9 per quintal and duties etc. provided the appellant agreed to pay the total amount of Rs. 3 lakhs, being the total cost of molasses as estimated at the above statutory price. It was further stipulated that in case the above price was not valid in law, the appellant will have to pay the price at the rate of Rs. 25.10 per quintal inclusive of administrative charges and other taxes and duties etc. as agreed to by the appellant. There were other terms of the agreement but it is not necessary for the purposes of disposal of these cases to refer to them. A sum of Rs. 2 lakhs had been paid in pursuance of the agreement and the balance of Rs. 1

lakhs was to be paid at the earliest. Respondent 1, however, sought to calculate the price of the molasses in question at the rate of Rs. 25.10 per quintal. The appellant felt aggrieved and it took the stand that respondent 1 could not charge more than the statutory price in spite of the fact that the appellant had offered the price of Rs. 25.10 per quintal to respondent 1. The appellant filed two petitions in the High Court for a writ of mandamus or any other appropriate writ or direction declaring that respondent 1 was not entitled to charge the price for the molasses in excess of the price fixed by the act. The High Court by its order dated October 31, 1979 dismissed the petitions in limine. The appellant has come up in appeal by special leave to challenge the order of the High Court. M/S. Lingo-Sulphite Corporation of India Ltd. has also filed a petition under Article 32 of the Constitution for the same relief on the same ground as in the aforesaid appeal.

5. In order to appreciate the points involved in the case it would be appropriate to refer to the material provisions of the act and the Rules framed thereunder.

6. Section 3 of the Act authorises the State Government to constitute an Advisory Committee to advise on matters relating to the control of storage, preservation, gradation, price, supply and disposal of molasses. Section 4 provides for the appointment of a person as Controller of Molasses for the purpose of exercising the powers and performing the duties of the Controller of Molasses. Section 5 enjoins every occupier of a sugar factory to take precautions for preservation of molasses. Section 6 prohibits the occupier of a sugar factory to adulterate or allow to be adulterated any molasses produced or held in stock by him. Section 7-A [1] enjoins any person, who requires molasses for his distillery or for any purposes of industrial development to apply in the prescribed manner to the Controller specifying the purpose for which it is required. Sub-section [2] of Section 7-A authorises the Controller to make enquiries in the matter as he may think fit and to pass an order under Section 8 with due regard to the factors enumerated in sub-section [3] of Section 7-A.

7. Section 8[1] authorises the Controller to direct the occupier of any sugar factory to sell and supply in the prescribed manner such quantity of molasses to such persons as may be specified in the order and the occupier shall, notwithstanding any contract, comply with the order. Sub-section [2] [a] of section 8 enjoins that the occupier shall supply molasses only to a person who requires it for his distillery or for any purpose person specified in the order of the Controller to utilise the molasses supplied to him in pursuance of an order of the Controller for the purpose specified in the application made by him under sub-section [1] of Section 7-A and to observe all the restrictions and conditions as may be prescribed. Section 10 provides that the occupier of a sugar factory shall sell molasses in respect of which an order under Section 8 has been made at a price not exceeding that prescribed in the schedule attached to Section 10.

8. Rule 12 of the U.P. Sheera Niyamtran Niyamavali, 1974 enjoins the occupier of every sugar factory to submit to the Controller by August 31 each molasses year a statement in form M. F. 9 specifying an approximate estimate of the quantity of molasses to be produced in a sugar factory during the molasses year following, along with such other information as is required under that form. Rule 13[1] provides that every distillery in U.P. shall by August 31 each year submit to the Controller a statement in form M. F. 8 specifying its estimated requirement of molasses for the purposes of distillation during the molasses year following along with such other information as may be required under that form. Likewise, Rule 13[2] requires the Director of Industries to furnish the Controller by August 31 each year the estimated requirement of molasses for industrial purposes within the State relating to the molasses year following.

9. Rule 22 provides :

22. [1] All stock of molasses produced in a sugar factory shall be deemed to have been reserved for supply to distilleries or other persons requiring it for purposes of industrial development and not stock of molasses produced in a sugar factory shall be sold or otherwise disposed of by the occupier of any sugar factory except in accordance with an order in writing from the Controller.

[2] The Controller shall release any stock of molasses in favour of occupier of a sugar factory only when the same is not required for distilleries or for other purposes of industrial development.

10. Rule 23[1] provides :

The State Government may levy administrative charge exclusive of the price payable to sugar factory on the molasses released for sale by the Controller towards meeting the cost of establishment for supervision of control over molasses at such rate or rates as may be notified from time to time.

11. Rule 24[1] provides :

Save in pursuance of an order of the Controller, no person shall purchase any molasses from any sugar factory, or transport or possess any molasses purchased from such sugar factory, unless the said molasses has been released by order of the Controller as not required for distilleries or other purposes of industrial development and a declaration to that effect in form M. F. 13 has been obtained from the occupier of the sugar factory concerned.

12. A perusal of the relevant provisions of the act and Rules aforesaid makes it clear that the occupier of sugar factory can sell molasses to a person specified in the order of the Controller at the controlled price. The occupier of every sugar factory has to give an estimate of the molasses to be produced in the sugar factory as also the estimate of requirement of molasses for distillation and industrial purposes. If there is any surplus after meeting the requirements of the person in whose favour there is an order of the Controller, the same will be released in favour of the occupier.

13. The question for consideration in the instant case is whether the molasses released in favour of the occupier by the Controller is also to be sold at the controlled rate of it can be sold at the market price as a free commodity.

14. Shri. Garg, senior counsel contends that from the scheme of the Act and the Rule it is evident that the entire production of molasses is to be controlled by the Controller appointed under the act, at every stage. He is to take into account the estimated supply and the estimated demand of the commodity. Thereafter, he is to allot the commodity to a particular person for a particular purpose at the controlled statutory price fixed by the schedule to the act. The act and the Rules further provide that nobody will store, sell, transport or use the said commodity without the order of the Controller and the price and distribution of molasses both are controlled by the Act and the contravention of the provisions of the act have been made penal and the High Court has gone wrong in assuming that certain quantity of molasses which are covered by Rule 22[2] are immune from the restrictions and fetters of the act and the said Rules, which is erroneous and indefensible in law inasmuch as such a construction as has been put by the High Court will defeat the very purpose and object of the said Act and the Rules. As a second limb to this argument it was contended that the classification made between molasses covered by Rule 22[1] on the one hand and Rule 22[2] on the other is wholly

irrational and the very purpose of the Act is defeated. According to the learned counsel, it makes not difference whether the molasses are covered by Rule 22[1] or 22[2] inasmuch as the object of the present legislation is to ensure that the sale and distribution of molasses is controlled in an equitable manner and, therefore, to hold that Section 8 is applicable to Rule 22[1] and not to Rule 22[2] is arbitrary and violative of Article 14.

15. Shri. Rana appearing for respondent 1 on the other hand has contended that on a correct interpretation of the relevant provisions of the Act and the Rules the interpretation put by the High Court is fully warranted.

16. Section 10 of the Act which has been referred to above enjoins the occupier of a sugar factory to sell molasses in respect of which an order under Section 8 has been made at a price not exceeding that prescribed in the Schedule. A plain reading of the section makes it clear that the occupier of a sugar factory is obliged to sell molasses at the price not exceeding that prescribed in the Schedule only in respect of which an order under Section 8 has been made. But sub-rule [2] of Rule 22 authorises the Controller to release any stock of molasses in favour of an occupier of a sugar factory only when the same is not required for distilleries or for other purposes of industrial development. If a certain quantity of molasses has been released in favour of the occupier, because the same was not required for distilleries or for other purposes of industrial development, it is open to the occupier to sell that quantity of molasses in free market to any person at a price prevalent in the market. Section 10 of the Act requires an occupier of a sugar factory to sell molasses at a price not exceeding that prescribed in the Schedule only in respect of which an order under section 8 has made. No limitation or fetter has been put on the occupier of a sugar factory to sell molasses which was released in his favour. It was, therefore, open to him to sell the molasses released in his favour at the free market price.

17. The contention that the classification made with regard to molasses covered under Rule 22[1] or Rule 22[2] is an unreasonable classification cannot be accepted. There have been other enactments in which similar provision has been made, for example, the levy sugar was to be sold only at the controlled rate but free sugar was to be sold by the factories at a free market price and that has been always accepted as a valid classification. The appellant entered into an agreement with respondent 1 and agreed to pay the price of the molasses at the rate of Rs. 25.10 per quintal. Having entered into such an agreement with its eyes wide open it cannot now turn turtle and contend that it was liable to pay only at the rate of Rs. nine per quintal, the statutory price. It is true that the parties cannot be allowed to contract themselves out of law. If the law was that no molasses released in favour of the occupier of the sugar factory could be sold at a price higher than the controlled one, then the contention of the appellant would be correct. On an analysis of the relevant provisions of the Act we are quite clear that the controlled price was applicable only to the molasses for which an order has been passed by the Controller in favour of a specified person either for the purpose of distillation or for other industrial purposes. But so far as the molasses released in favour of the occupier of a sugar factory is concerned, there is no requirement of the law that the occupier should sell it only at the controlled price.

18. It was further contended that the respondent was not entitled to administrative charges. This contention loses sight of the agreement between the parties which includes administrative charges also.

19. For the foregoing discussion we find no force either in the appeal or in the writ petition under article 32. They are accordingly dismissed. There shall, however, be no order as to costs.

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