Bhopal Sugar Industries Limited

Vs

State of Madhya Pradesh and Others

Civil Appeal No. 504(N) of 1971

(A. N. Sen, V. D. Tulzapurkar JJ)

23.03.1982

JUDGMENT

TULZAPURKAR, J. –

1. Two questions were raised for our determination in this appeal by a certificate :

> (a) Whether the Sugar-cane Development Council, Sehore (respondent 2) can charge commission under Section 21(1) of the Madhya Pradesh Sugar-cane (Regulation of Supply and Purchase) Act, 1958 on purchases of sugar-cane made by the appellant Company from outside the "reserved area" ? and
>
> (b) Whether the Sugar-cane Growers' Development Cooperative Union Ltd., Sehore (respondent 3 : the concerned Cane Growers' Cooperative Society) can charge commission under Section 21(1)(a) of the Act in respect of the purchases of sugar-cane made by the appellant through the Union when there is no quid pro quo by way of rendering any services by Union to the appellant Company ?

2. The short facts giving rise to the above questions may be stated : The appellant Company crushes sugar-cane in its factory at Sehore in Madhya Pradesh. For its business it purchases sugar-cane from 'reserved area' as well as from outside both directly from the cane growers as well as through respondent 3, a Cane Growers' Cooperative Society, Sehore. Section 21 of the Act imposes an obligation upon the appellant Company to pay commission on all its purchases of cane at prescribed rates and it has to pay such commission in respect of purchases made through the Society to the Society and the Development Council and in respect of purchases made directly from the cane growers to the Development Council. According to the appellant Company judicial decisions rendered by Madhya Pradesh High Court as well as this Court have settled the position that the commission chargeable under Section 21 of the Act is in the nature of a fee the imposition of which is supported on the basis of quid pro quo in the shape of services rendered by the Development Council to a factory (vide Jaora Sugar Mills (P) Ltd. v. State of M.P. ((1966) 1 SCR 523 : AIR 1966 SC 416 : (1967) 1 SCJ 98)). It appears that during the seasons 1960-61 to 1964-65 the appellant Company purchased cane directly from the cultivators of 'reserved area' as well as from the cultivators of 'non-reserved area' and respondent 2 (Development Council, Sehore) made a demand of commission from the appellant Company in respect of such purchases both from 'reserved area' as well as from 'non-reserved area'. Similarly, during the crushing seasons 1963-64 to 1966-67 the appellant Company made purchases of cane from or through respondent 3 (Cooperative Society) in respect whereof a demand of commission was made by respondent 3 from the appellant Company. By a writ petition (being Miscellaneous Petition No. 246 of 1967) filed in the Madhya Pradesh High

Court at Jabalpur the appellant Company challenged the validity of the demand made by respondent 2 insofar as it related to purchases made from non-reserved area on the ground that it (Council) was established for the reserved area of the appellant Company's factory and its functions were confined to that area and as such no commission (fee) could be recovered by it in respect of purchases made by appellant Company from non-reserved area; similarly, the demand made by respondent 3 (Cooperative Society) was challenged on the ground that no services of any kind whatsoever were rendered by it to the appellant Company, and the charge would be invalid in the absence of the any quid pro quo. The High Court negatived both the contentions and dismissed the petition. It is this decision of the High Court that is challenged before us in the appeal and counsel for the appellant Company raised the two questions mentioned at the commencement of the judgment.

3. Section 21, which deals with commission on purchase of cane, runs thus :

> 21. (1) There shall be paid by the occupier a commission for every one maund of cane purchased by the factory -
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> (a) where the purchase is made through a Cane-growers' Cooperative Society, the commission shall be payable to the Cane-grower's Cooperative Society and the Council in such proportion as the State Government may declare; and
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> (b) where the purchase is made directly from the cane-growers, the commission shall be payable to the Council.
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> (2) The Commission payable under clauses (a) and (b) of sub-section (1) shall be at such rates as may be prescribed provided, however, that the rate fixed under clause (b) shall not exceed the rate at which the commission may be payable to the Council under clause (a).

Section 30 confers power on the State Government to make rules for the purpose of carrying into effect the provisions of the Act and under clause (j) of sub-section (2) such rules may provide for "the rate at which and the manner in which commission shall be paid to the Cane Growers' Cooperative Society on the supply of cane by them". Under the aforesaid provisions certain rules called the Madhya Pradesh Sugar-cane (Regulation of Supply and Purchase) Rules, 1959 have been framed by the State Government. Rules 45 and 46 occurring in Chapter X of the Rules are material and they are as follows :

> 45. The occupier of factory shall pay a commission for the cane purchased at the following rates, namely :
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> (i) Where the purchase is made through a Cane Grower's Cooperative Society, at the rate of 5 naya paise per maund out of which 2 naya paise shall be payable to the Society and 3 naya paise to the Council;
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> (ii) Where the purchase is made directly from the cane-growers, at the rate of 3 naya paise per maund, payable to the Council.
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> 46. In determining the proportion to which payments out of commission shall be made to the Council and the Cane-growers' Cooperative Society of an area the State Government may take into consideration the financial resources and the working requirements of the Council and the Cane-growers's Cooperative Society.

4. It is thus clear from the aforesaid statutory provisions that every factory is under an obligation to pay commission on all its purchases of cane at the prescribed rates and it has to pay such commission at the rate of two naya paise per maund to the Society and three naya paise to the Council in respect of purchases made through a Cane Growers' Cooperative Society and at the rate of three naya paise per maund to the Council where the purchases are made directly from the cultivators or can growers. It cannot be and was not disputed by counsel on behalf of the respondents that the levy under Section 21 of the Act though called 'commission' is really in the nature of a fee, the imposition of which is supportable only on the basis of quid pro quo in the shape of rendition of services to the factory in the matter of cane purchased by it and counsel accepted this position as emerging from this Court's decision in Jaora Sugar Mills case ((1966) 1 SCR 523 : AIR 1966 SC 416 : (1967) 1 SCJ 98).

5. Now, turning to the first question raised before us counsel for the appellant Company contended that respondent 2 Council has been established for the 'reserved area' of the appellant's factory so declared under Section 15 of the Act, that respondent 2 Council is required to discharge its statutory functions and duties under Section 6 of the Act confined to the 'reserved area' meant for the appellant's factory and as such the demand for commission (fee) in respect of purchases of cane made by the appellant-factory from non-reserved areas (which it is entitled to make along with its purchases from the 'reserved area') would be illegal and without any authority of law because in respect of such purchases there is no quid pro quo in the shape of rendering of services by respondent 2 to the appellant-factory. It is not possible to accept this contention for more than one reason. In the first place there are no qualifying words to be found in Section 21 of the Act which limit the imposition of commission (fee) to purchases of cane made by a factory from reserved area only; the imposition is on every maund of cane purchased by a factory irrespective of the area from where such purchases may have been made. Secondly, and this is important, if the relevant provisions of Sections 5 and 6 of the Act are carefully examined it will appear that the functions and duties of the Development Council are not confined to the 'reserved area' of a factory as urged by the counsel for the appellant Company. Under Section 5 "there shall be established, by notification, for the reserved area of a factory a Cane Development Council which shall be a body corporate..... provided that where the Cane Commissioner so directs, the Council may be established for a larger or smaller area "than the reserved area of a factory" and sub-section (2) provides that "the area for which a Council is established shall be called a zone". In other words, the zone (area of operation) of a Council could be larger than the 'reserved area' of a factory i.e. would include areas outside the reserved area of the factory. Further, the functions and duties of the Council are indicated seriatim in clauses (a) to (g) of sub-section (1) of Section 6 and these include functions like considering and approving development programmes for the zone, devising ways and means for execution of development plan in all its essentials such as cane varieties, cane-seed, sowing programme, fertilizers and manures, taking steps for the prevention of diseases and pests and rendering all help in soil extension work, etc. etc. and it will be noticed that some of these functions under clauses (b), (d) and (e) are of general character and not confined even to the zone of the Council. In other words, the functions and duties of the Council which are in the nature of rendering services in the matter of better cane production, distribution and supply thereof to the factory are not confined to the 'reserved area' so declared for a factory under Section 15 of the Act. If that be so it is difficult to accept the contention that in the matter of cane purchases made by the appellant's factory from non-reserved areas no services are rendered by respondent 2 Council to the appellant's factory. The quid pro quo being there the imposition of a fee on such purchases from non-reserved areas would be proper and justified.

6. As regards the demand and recovery of commission (fee) by respondent 3 under Section 21(1)(a)

in respect of purchases of sugar-cane made by the appellant's factory through it, the contention of counsel for the appellant Company has been that respondent 3 is the concerned Cane Growers' Cooperative Society in the area, one of the objects of which is to sell cane grown by its members to the appellant's factory, that the said Society does not render any services to the appellant's factory under the Act or otherwise and hence is not entitled to recover any fee from the appellant Company. It is pointed out that respondent 3 is meant for helping its members and in fact renders various types of services to its cultivator-members so that they are not exploited. In fact in the matter of supplies of cane made through respondent 3 it is the Society which deals with its members who receive their price from the Society. Counsel pointed out that even in the return filed by respondent 3 to the writ petition, respondent 3 enumerated four types of services which it claimed was rendering to the appellant's factory, namely, (a) it made arrangements for lump-sum cane supply on lump-sum demand from the factory; apart from convenience this resulted in economy to the factory as it had to maintain less staff; (b) it undertook equitable distribution of quota and the factory had not to undertake this function; (c) it undertook the maintenance of the records of individual growers for cane supplies and the factory had not to undertake this function and (d) it made payment to the suppliers though the factory is required to make payments for supplies effected immediately and in actual practice mostly the factory made payments late at its convenience but the Society made payments to the suppliers regularly according to the programme drawn by it; the appellant's factory thus benefited by the existence of this Society. But according to counsel for the appellant Company none of these items referred to above really amounts to rendering any service to the appellant's factory by way of conferring on it some special benefit having a direct, close or reasonable correlation to its transactions of purchase of cane and, if at all, all these items referred to in the return are really for the benefit of cultivator-members of the Society and in this behalf, counsel relied upon a decision of this Court in Kewal Krishan Puri case (Kewal Krishan Puri v. State of Punjab, (1979) 3 SCR 1217 : (1980) 1 SCC 416) where in the context of enhanced market fee levied under Punjab Agricultural Produce Markets Act, 1961 this Court has observed that the quid pro quo by way of rendering services must result in the conferral of some special benefits to the persons charged which have a direct, close and reasonable correlation between such persons and their transactions and that any indirect or remote benefit to them would in no sense be such benefit. Counsel for the appellant Company, therefore, urged that since in everything that is being done by it respondent 3 is rendering services to its own members and no services resulting in any special benefit to the appellant's factory are rendered, no charge by way of any fee would be legally recoverable by respondent 3 from the appellant's factory.

7. In our view having regard to the scheme of the Act and the activities which respondent 3 has been undertaking in the discharge of its normal functions, it will be difficult to accept the contention urged by counsel for the appellant's factory that no services of any kind whatsoever resulting in conferral of special benefits on the appellant's factory in regard to its transactions of purchases of cane are rendered by respondent 3 to the appellant's factory. The scheme of the Act is that under Sections 15 and 16 a declaration of reserved and assigned areas for purchase and supply of sugar-cane is made by the Cane Commissioner for every factory after consulting in the manner prescribed the occupier of the factory and the Cane Growers' Cooperative Society, if any, in that area and upon declaration of such areas an obligation is cast upon the occupier of the factory, in the case of 'reserved area', to purchase all cane grown in such area which is offered for sale and in respect of 'assigned area' to purchase such quantity of cane grown therein and offered for sale for the factory as may be determined by the Cane Commissioner. Further, under Section 19 the State Government can by order regulate the distribution, sale and purchase of cane within any 'reserved and assigned area' as also from areas other than 'reserved and assigned areas' and under clause (b) of sub-section (2)

such order made by the State Government may provide for the manner in which cane grown in the 'reserved area' or the 'assigned area' shall be purchased by the factory and the cane grown by a cane grower shall not be purchased except through a Cane Growers' Cooperative Society. In other words the scheme of the Act contemplates situations where the appellant's factory may have to purchase cane from within reserved or assigned areas only through respondent 3 Society. Moreover in its return respondent 3 has averred that under its bye-laws the Society is established to develop scientific methods of sugar-cane growing and calls on its members to introduce modern means of implements for cultivating sugar-cane which unquestionably makes for assured bulk supply of uniformly good quality cane through its members to the appellant's factory. In other words this function undertaken by respondent 3 is of a nature or kind similar to that undertaken by the Council and therefore it cannot be said that no service conferring special benefit on the appellant's factory in the matter of its purchases of cane are rendered by respondent 3 to the appellant's factory. Having regard to the aforesaid position it is not possible to accept the contention that in respect of purchases of cane made through respondent 3 Society there is no element of quid pro quo in the shape of rendering services by respondent 3 to the appellant's factory.

8. In the result both the questions are answered against the appellant Company and the appeal is dismissed with costs.

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