

SUPREME COURT OF INDIA

West U.P. Sugar Mills Association

Vs.

State of U.P.

C.A.No.9453 of 1996

(V.N. Khare, S.N. Phukan and Ashok Bhan JJ.)

07.02.2002

JUDGMENT

V.N. Khare, J.

1. Appellant nos. 4 to 22 before us are the companies incorporated under the Indian Companies Act and are engaged in the business of production and sale of sugar. These appellants own sugar factories (hereinafter referred to as 'sugar factories') which are located in various parts of the State of Uttar Pradesh. One of the raw materials required for production of sugar is sugarcane which is purchased from sugarcane growers through sugarcane cooperative societies - Which are the respondents in these matters. The purchase of sugarcane by the sugar factories is regulated under the provisions of *U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953* (hereinafter referred to as the Act). In exercise of power conferred under Section 28 of the Act, the State Government has framed rules known as the *U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954* (hereinafter referred to as the Rules). Section 18 of the Act requires the sugar factories to pay a commission known as society commission to the cooperative cane societies a share of which is also transferred to the Cane Development Council. The rate at which the said commission is payable is left to be determined and prescribed by the State Government by the statutory Rules. The share of commission which comes to the cooperative societies is to cover their administrative costs, which include mainly the maintenance of staff deputed for undertaking various cooperatives activities connected with the sale of sugarcane to the sugar factories.

2. In the year 1985, the government of Uttar Pradesh by amending rule 49 of the Rules raised the society commission to .50 paise per quintal vide notification dated 11.7.85. Subsequently, the government of Uttar Pradesh by a subsequent notification dated 1.6.91 again amended rule 49 and revised the rate of society commission from the existing rate of .50 paise per quintal to 5% of the minimum statutory cane price fixed by the Central Government. After the existing rate of commission was enhanced, the appellants jointly submitted representation before the State Government, inter alia, contending that enhancement is excessive and arbitrary. Simultaneously, the appellants also filed writ

petition challenging the enhancement of society commission. However, in January 1992, the writ petition was withdrawn.

3. It appears, the State Government on the representation of the appellants reduced the rate of society commission from 5% of the minimum statutory price of sugarcane to 2.69% of the minimum statutory price of sugarcane which worked out to .70 paise per quintal. This was done by the amendment of rule 49 of the Rules by notification dated 24.4.92. The notification dated 24.4.92 runs as under:

"1. (1) These rules may be called the Uttar Pradesh Sugarcane (Regulation of supply and Purchase) (Amendment) Rules, 1992.

(2) They shall remain in force with effect from 1.10.91 to 30.9.92.

2. In the Uttar Pradesh Sugarcane (Regulation of Supply and Purchases) Rules, 1954, for the rules set out in column 1 below, the rules as set out in column 2 shall be substituted :-

Column 1

Column 2

Existing Rules

Rules as hereby substituted

49. The occupier of a factory shall pay a commission on cane purchased at the rate of five per cent of the minimum statutory cane price fixed by the Govt. of India, out of which seventy five per cent shall be payable to the cane growers' co-operative society and twenty five percent to the Council.

49. The occupier of a factory shall pay a commission on cane purchased at the rate of 2.69% of the minimum statutory cane price fixed by the Govt. of India, out of which seventy five per cent shall be payable to the cane growers' co-operative society and twenty five per cent to the Council.

Amount thus calculated at the rate of 2.69% per quintal will be calculated to the nearest round figure to facilitate maintaining proper accounts."

(Emphasis is mine)

4. The effect of the aforesaid notification was that existing rule 49 was deleted and in its place new rule 49 was substituted. However, the substituted rule remained operative from 1.10.91 to 30.9.92. It is not disputed that the appellants herein continued to pay the society commission on the basis of substituted rule 49 i.e. @ 2.69% of the minimum statutory price of sugarcane. After 30.9.92, the Cane Commissioner of Uttar Pradesh issued a circular to the

effect that the society commission after 30.9.92 shall be charged @ 5% of the minimum statutory price of sugarcane fixed by the Central Government on the premise that since the substituted rule came to be inoperative after 30.9.92, the old rule 49 has revived.

5. Since the respondents insisted to charge society commission @ 5% of the minimum statutory price of sugarcane fixed by the Central Government, it is alleged that the appellants were compelled to file a writ petition before the High Court of Judicature at Allahabad. In the said writ petition, the appellants challenged the order dated 5.1.93 passed by the Cane Commissioner whereby and whereunder the Cane Commissioner issued direction to realise society commission @5% of the minimum statutory price of sugarcane, fixed by the Central Government.

6. One of the grounds of challenge of the said circular was that once the old rule 49 having been deleted and substituted by new rule 49 providing for 2.69% of the minimum statutory price of sugarcane even though it has ceased to be operative after 30.9.92, the old rule does not revive and the respondent has no authority in law to charge society commission @ 5% of the minimum statutory price of sugarcane. The High Court was of the view that on the application of Section 6-C of the U.P. General Clauses Act, the repealed or deleted rule 49 revived after the substituted rule 49 ceased to be operative. In that view of the matter, the writ petition was dismissed. It is against the said judgment and order of the High Court, the appellants have filed the present appeal by way of special leave petition and there is also a connected writ petition under Article 32 of the Constitution, challenging the impugned society commission.

7. Learned counsel for the appellants raised two submissions. The first submission is that, after the statutory rule 49 providing for society commission @ 5% of the minimum statutory price of sugarcane having been deleted or repealed and substituted by a new rule 49, providing for society commission @ 2.69% of the minimum statutory price of sugarcane, the old rule 49 does not revive even after the substituted rule ceased to be operative. The second argument is that, in any event of the matter, the High Court was not legally justified in applying Section 6-C of U.P. General Clauses Act for holding that after the substituted rules having become inoperative, the old rule 49 would revive. Whereas, learned counsel appearing for the respondents urged that since the substituted rule in pith and substance has been rendered non-existent, the old rule would revive and the respondents have a right to charge society commission at the rate under the old rules.

8. On the argument of learned counsel for the parties, the first question that arises for our consideration is that once old rule has been deleted or repealed and substituted by a new rule, whether the old rule would revive when the substituted rule ceased to be operative.

9. In *B.N. Tiwari v. Union of India & Ors.*¹ the question whether the old rule revives after the substituted rule was struck down came up for consideration before this Court. In the said case, the Central Services Rule of 1952 provided for carry forward rule whereby the unfilled reserved vacancy of a particular year could be carried forward for one year. In the year 1955, the said 1952 rule was substituted by another rule providing that unfilled reserved vacancies

of a particular year would be carried forward for two years. Subsequently, the 1955 rule was declared ultra vires. In that context, the question arose whether the 1952 rule had revived after the 1955 rule was struck down. A Constitution Bench of this Court held that old 1952 rule having repealed and substituted by the 1955 rule, the old 1952 rule would not revive after the 1955 rule was struck down by this Court.

10. In *Firm A.T.B. Mehtab Majid & V. State of Madras & Anr*². it was held that where an old rule has been substituted by a new rule, it ceases to exist and does not get revive when the new rule is held invalid.

11. In *Indian Express Newspaper (Bom.) Pvt. Ltd. & Ors. etc. v. Union of India & Ors.*³ the Government of India issued a notification dated July 15, 1977, which was in force prior to March 1, 1981 under which total exemption had been granted. Subsequently, the said notification was substituted by another notification dated March 1, 1981. The question arose whether the old notification dated July 15, 1977 would revive on quashing of the notification dated March 1, 1981. This court held that on striking down of subsequent notification, the repealed notification does not revive.

12. We are in total agreement with the statement of law declared by this Court in the aforesaid decision.

13. In the present, case, sub-section (1) of Section 18 of the Act provides that there shall be paid by the occupier of a factory or a *Gur, Rab or Khandsari* sugar manufacturing unit a commission for every one maund of cane purchase by the factory or sugarcane manufacturing unit. sub-section (2) of the said Section further provides that a commission payable under sub-section (1) shall be at such rates as may be prescribed by the State government. Under Section 28 of the Act, the State government is empowered to frame rules prescribing the rate of commission payable by the occupier of the factory or manufacturing unit.

14. The government of U.P., in exercise of power under Section 28 read with Section 18 of the Act, amended rule 49 by deleting it and substituting the same by a new rule 49 which provided the society commission @ 2.69% of the minimum statutory cane price fixed by the Government of India. The notification dated 24.4.94 which has been extensively extracted above very clearly and in unambiguous terms provided that old rule set out in column 1 below the rules shall be substituted by the rule set out in column 2. In fact, by doing so, the government was very clear in its intention that it is substituting an old rule by a new one. Had the government ever intended that after 30.9.92 the old rule would revive, it could have added a proviso to the old rule 49 providing for society commission @ 2.69% with effect from 1.10.91 to 30.9.92. The deliberate omission to provide what has been contained in the new rule 49 by way of a proviso to old rule 49 shows that the State government intended to repeal the old rule and substitute it by a new rule 49.

15. It would have been a different case where a subsequent law which modified the earlier law held to be void. In such a case, the earlier law shall be deemed to have never been

modified or repealed and, therefore, continued to be in force. Where it is found that the legislature lacked competence to enact a law, still amends the existing law and subsequently it is found that the legislature or the authority was denuded with the power to amend the existing law, in such a case the old law would revive and continue. But it is not the case here. It is not disputed that the State government under Section 28 read with Section 18 of the Act, has power to frame rule prescribing the society commission. The State government by substituting new rule 49 never intended to keep alive the old rule. The totality of the circumstances shows that the old rule was deleted and came to be substituted by new rule 49 and, therefore, we are of the view that after new rule 49 ceased to be operative, the old rule 49 did not revive.

16. Learned counsel for the respondent then pressed into service sub section (2) of Section 6-C of the U.P. General Clauses Act and contended that where any amendment of text is made by any temporary U.P. Act or by an Ordinance, or by any law made in exercise of the power of the State Legislator by the President such Act, Ordinance or other law ceases to operate without being re-enacted, the amendment of text made thereby shall also cease to operate. It was, therefore, strongly argued that on application of Section 6-C of the U.P. General Clause Act, after substituted rule 49 ceased to be operative and the same has not been re-enacted, the old rule 49 revived. The contention has no merit. Section 6-C of the U.P. General Clauses Act runs as under:-

"6-C. Repeal or expiration of law-making textual, amendments in other laws. - (1) Except as provided by sub-section (2), where any Uttar Pradesh Act amends the text of any Uttar Pradesh Act or Regulation by the express omission, insertion or substitution of any matter, the amending enactment is subsequently repealed, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

(2). Where any such amendment of text is made by any temporary Uttar Pradesh Act or by an Ordinance or by any law made in exercise of the power of the State Legislature by the President or other authority referred to in sub-clause (a) of clause (1) of Article 357 of the Constitution, and such Act, Ordinance or other law ceases to operate without being re-enacted (with or without modifications) the amendment of text made thereby shall also cease to operate."

17. Section 20 of the U.P. General Clauses Act provides that where, by and Uttar Pradesh Act, a power to issue any statutory amendment is conferred, then expressions used in the statutory instruments shall, unless there is any thing repugnant in the subject or context, have the same respective meaning as in the Act conferring the power. sub-section (2) thereof further provides that the provision of Section 4, 4A, 6, 6A, 6B, 7, 8, 9, 10, 10A, 10C, 11, 12, 13, 14, 15, 16, 17, 18, 19, 19A, and 28 shall *mutatis mutandis* apply in relation to any statutory instrument issued under any Uttar Pradesh Act as they apply in relation to any Uttar Pradesh Act.

18. A perusal of Section 20 shows that several provisions of Uttar Pradesh General Clauses Act have been made applicable in relation to statutory instruments including the statutory rules issued under any Uttar Pradesh Act. However, Section 6-C does not find place in sub-section (2) of Section 20 of the U.P. General Clauses Act. In absence of application of Section 6-C to the statutory instrument, including the statutory rule, which is the case before us, the contention of the respondents deserve to be rejected. Since Section 6-C of the U.P. General Clauses Act has not been applied to the statutory rule framed by the government of Uttar Pradesh, the substituted rule after it became inoperative, old rule 49 would not revive.

19. For the aforesaid reasons, we are of the view that these matters deserve to be allowed.

20. Before we part with the case, we would like to observe that learned counsel for the appellants stated that they have paid the society commission on the basis of substituted rule or whatever they have paid towards the society commission, as per the respondents demand they would not claim any refund of the same. Under such circumstances we feel that no further order is required to be passed in that regard.

21. In view of what we have stated above, the judgment and order under challenge is set aside. The appeal as well as the writ petition are allowed. There shall be no order as to costs.

¹1965 (2) SCR 421

²1963 suppl. (2) 435

³1985 (1) SSC 641