

SUPREME COURT OF INDIA

Central Dairy Farm

Vs.

Glindia Ltd.

C.A.Nos.4767 with 4770 and 4771-73 of 1997

(Shivaraj V. Patil and D. M. Dharmadhikari, JJ.)

14.10.2003

JUDGEMENT

DHARMADHIKARI, J.:-

1. These appeals are directed against a common judgment dated 10-2-1992 of the Division Bench of the High Court of Allahabad whereby Notification No. 4345/XII-DU-VI-13/88, dated 12th January, 1989 issued by the Government of Uttar Pradesh in exercise of powers under S. 15 of the Uttar Pradesh Milk Act, 1976 (hereinafter referred to as 'Milk Act' for short) fixing price for supply of cream and paneer, is held to be not enforceable against respondent No. 1-M/s. Glindia Ld. (formerly known as Glaxo Laboratories India Ltd.).

2. The High Court further held that the price of cream and paneer payable to respondent No. 1 for supply by it to the appellant-Dairy has to be in accordance with the terms and conditions mutually agreed between the parties at the agreed rate of Rs. 40.40 per kg. fat to be calculated in accordance with 'Two Axis Formula' evolved in a joint meeting of the representatives of the appellant as purchaser and respondent No. 1 as the supplier of the cream.

3. By the impugned Notification, contrary to the terms and conditions agreed between the purchaser and the supplier, rates were fixed below the agreed rate and regardless of the agreed formula for calculation of the prices depending on the fat content in the cream and paneer.

4. For the purpose of these appeals facts in brief leading to initiation of an earlier litigation and institution of the present litigation between the parties are required to be stated.

5. Central Dairy Farm as an industrial unit was purchased by the State of Uttar Pradesh in the year 1948. The dairy was run initially by the Department of Animal Husbandry. In the year 1975, it was made a unit of Uttar Pradesh Pashudhan Udyog Nigam Ltd. which is a State Undertaking registered under the Companies Act. The respondent-Glindia had set up plant for manufacture of infants milk food and obtained a licence under the Industrial Development and Regulation Act. The respondent-Glindia had agreed to supply surplus cream available with it to Central Dairy Farm for manufacture of butter and ghee by the latter.

6. The supply of cream by respondent-Glindia to Central Dairy Farm continued on the mutually agreed price between them. In the year 1987 certain difficulties arose about pricing of the cream and they were resolved in a meeting on 7-9-1987 between the authorised executives of the appellant-Central Dairy Farm, the respondent-Glindia and officers of the concerned department of the State. Under the terms mutually settled through negotiations held on 7-9-1987, the price of cream at the agreed rate was to be determined on the basis of 'Two Axis Formula' which was being followed by Co-operative Societies. The formula is 59% allocated to fat and 41% to SNF with 60 paise per litre for milk to be paid as 'overhead charges.' The Two Axis Formula was revised on 8-2-1988 from 59% to 58% fat and 41% to 42% SNF. When Glindia was asked to adjust payment made on the basis of earlier fixed formula of 59% and 41%, it refused to do so and in fact started converting its cream into ghee for selling it to outside parties.

7. The above alleged action of Glindia led to passing of an order on 5-8-1988 by Additional Milk Commissioner of U.P. by which directions were issued to Glindia to supply cream to the appellant-Dairy as per the then prevailing Two Axis Formula of 52% fat and 48% for SNF allocation on which the price was worked out at Rs. 40.40 per kg. The licensing authority also issued directions to the Deputy Dairy Development Officer not to issue any permit to Glindia for transporting its cream beyond the reserved area. The aforementioned order dated 5-8-1988 passed by the Additional Milk Commissioner was challenged by Glindia in writ petition in the High Court of Allahabad. By judgment dated 14-10-1988 the High Court allowed the writ petition of Glindia holding the action of Additional Milk Commissioner as wholly illegal and beyond his powers under the Milk Act. After quashing the order dated 5-8-1988 of the Addl. Milk Commissioner, the Division Bench of the High Court of Allahabad issued following directions :

i) "supply of cream by petitioner to the CDF shall be resumed within three days in accordance with sub-clause (3) of Clause III of agreement dated 7th September, 1987.

ii) Price of the cream to be paid to petitioner shall be determined by agreement and in absence of any agreement by the price determined to be payable to co-operative societies to producers with overhead charges etc.

iii) It shall remain open to CDF and petitioner to agree for supply of cream over an above that was agreed in September, 1987.

iv) In respect of surplus cream left after meeting requirement of CDF in the manner indicated above the petitioner may apply under S. 11(3) for manufacture of ghee etc.

v) Surplus cream left over and above the requirement of CDF can be sold by petitioner in open market or be exported for which the necessary export permit shall not be refused.

vi) Milk collection shall be made by petitioner as determined by authorities but its average shall be worked out on annual basis.

vii) Since the petitioner has succeeded on legal issues the opposite parties are not entitled to any damages.

viii) Dispute about arrears or overpayment shall be resolved by a Committee to be appointed within two weeks comprising officers of two organisations and high officials of Animal Husbandry and Milk Act."

8. On the question of the authority of the licensing authority to fix price of milk and milk products the Division Bench made a reference to the provisions of S. 15 of the Milk Act and observed thus :

"Although the licence for item other than milk food can be refused but the licensing authority can grant or renew it subject to such restriction as can be considered to be reasonable and in public interest. But fixation of price or determining quantity of export are not in domain of licensing authority. These powers under the Act and Rules vest in State Government. Section 15 is dear and

specific. It empowers State Government in public interest to regulate or fix price in respect of sale or supply of milk or manufacture, sale or supply of milk product and the transport of those items inside and outside State. Clause (iii) of Rule 7 laying down functions of Milk Commissioner under the Act further dispels any doubt as it empowers him to make recommendation only to Government in regard to prohibition or regulation of sale and transport of milk products u/S.15. Section 13 which deals with licensing of transporters could not be invoked for restricting or permitting export. Even the learned Advocate General had to candidly admit that there was no escape from the conclusion that price fixation and restricting export of an item of milk product could be done by State Government. Cream or Ghee are milk products under Milk Act and in absence of any provision in IDR Act or any notified order u/S.18-G of Act 65 of 1951 the State and not the authorities under Milk Act could control its supply and distribution, fix its price and permit or restrict export. In the circumstances, the order dated 5th August, 1988 passed by Additional Milk Commissioner being in violation of statutory provision and the well established dictum that it is essential for lawful exercise of power that it should be exercised by the authority or person upon whom it is conferred by the Statute, cannot be maintained."

9. It is reported at the Bar that the special leave petition filed against the judgment of the Allahabad High Court in Writ Petition No.16526 of 1988 decided on 14-10-1988 has been rejected and the said judgment, therefore, has attained finality. After the judgment of the Division Bench of the High Court dated 14-10-1988 Glindia continued to supply cream and paneer to the Dairy on ad hoc price of Rs.45/- per kg. which was later on reduced to Rs.43/- per kg. The departmental authorities and the authorised officers of the Dairy Farm then held mutual negotiations and supply was resumed with effect from 6-1-1989 at agreed price of Rs.40.40 per kg.

10. It is thereafter that the notification impugned by Glindia in these cases came to be issued by the State of U.P. under S. 15 of the Milk Act whereby prices, contrary to the agreed rate, were fixed at Rs.34.50 per kg. fat of cream and Rs.30/- per kg. paneer for the months of January, February, November and December. By the same notification price at Rs.38 per kg. fat of cream and Rs.35/- per kg. for paneer was fixed for the months from March to October.

11. The issuance of Notification dated 12-1-1989 by the State fixing prices for supply of cream and paneer below the mutually agreed prices, the consequent coercive action of the authorities of State in rejecting application of Glindia for licence for manufacture of ghee, cancellation of its licenses and other adverse actions compelled Glindia to challenge the notification and action of the authorities of the State in writ petition No. 6387 of 1989 with other connected petitions which have given rise to these appeals.

12. By the impugned common judgment dated 10-2-1992, the High Court allowed the writ petitions filed by Glindia Ltd. The High Court quashed the Notification dated 12-1-1989 issued under S. 15 of the Milk Act by the State Government fixing price of cream and paneer. It held that the aforesaid notification was clearly in contravention of the judgment of the High Court in earlier writ petition

rendered on 14-10-1988. It also held that the impugned notification cannot be enforced against Glindia as the price payable is determinable only at the mutually agreed rate based on the agreed two axis formula with reference to fat contents in cream and paneer. The other adverse action taken by the State in rejecting licence to the Glindia to manufacture ghee was quashed. The order of the licensing authority suspending the licence of milk was also quashed and as a consequence all recovery proceedings initiated against Glindia were set aside.

13. The Central Dairy Farm and State of Uttar Pradesh by separate appeals have approached this Court and have challenged the common judgment of the Division Bench of the High Court dated 10-2-1992.

14. As a result of its success in the writ petition, according to Glindia, they were entitled to a total sum of above Rs.42 lacs and odd from the appellant dairy farm. They have issued a notice under S. 434 of the Companies Act for winding up of the appellant-company for non payment of its dues. This Court on 17-8-1992 stayed further proceedings for recovery of dues of Glindia subject to the appellant Central Dairy Farm paying Rupees ten lacs to Glindia. The order made by this Court on 17-8-1992 reads thus :

"Adjourned for four weeks. The matters are directed to be listed at the bottom of the list on a non-miscellaneous day. In the meanwhile, Shri Salve says that the respondent has issued a notice under S. 434 of the Companies Act for winding up in the event the payment of Rs.42 lakhs is not made. We stay further proceedings of collection subject to the petitioner paying a sum of Rs.10 lakhs to the respondent. The payment shall be made within three weeks as 'on account' payment and refunded with such interest as may be fixed by this Court in the event of the petitioner succeeding in the matter."

15. During the pendency of these appeals hearing was adjourned repeatedly as parties expected an amicable settlement with regard to the dues between them. An attempt was also made to seek adjudication through an arbitrator but ultimately the parties reported that no mutual settlement could be arrived at. It has also been informed that in accordance with the terms of the order of this Court dated 10-2-1992 a sum of Rupees ten lacs against total payable dues of Rupees forty two lacs and odd has been paid by the appellant Dairy Farm but as its financial condition continues to be poor it has closed its operations and it is unable to clear the remaining dues.

16. Learned counsel Mr. S. Muralidhar appearing for the appellant Central Dairy farm assailed the judgment of the High Court mainly on two grounds. Firstly, it is urged that in the earlier judgment of the High Court dated 14-10-1988 in Writ Petition No. 16526 of 1988, the order of the Additional Milk Commissioner as licensing authority was quashed but the statutory power of the State Government to fix price of milk and milk products by notification under S. 15 of the Milk Act was recognised and no fetters were placed on the exercise of such powers by the State. The Second

ground urged is that the price fixation by the State in accordance with S. 15 of the Milk Act is a power with which the Court should not interfere because it is essentially within the domain of executive authorities and requires consideration of several relevant factors pertaining to the maintenance of supply of milk. It is submitted that the Government in its counter-affidavit in the High Court has explained in detail the justification for fixing, by notification, the price of cream and paneer.

17. We have heard learned counsel appearing for the contesting respondent M/s. Glindia Ltd. We have also perused the relevant part of the judgment of the High Court under appeal and looked into the relevant provisions of the Milk Act. In the present case as the prices of cream and paneer to be supplied by respondent Glindia to the appellant Dairy Farm were fixed under terms mutually settled through negotiations between the parties, the power of price fixation under S. 15 of the Act could not have been invoked by the State Government to nullify the terms and conditions of the agreement on fixation of price reached between the two companies, (the appellant and respondent No.1). Section 15 of the Milk Act reads as under :

"15. Prohibition or regulation of sale and transport and export of milk and milk products. - The State Government may, in the public interest and subject to the provisions of this Act and the rules made thereunder, by notification regulate or fix prices in respect of -

(a) the sale or supply of milk, or the manufacture, sale or supply of any milk product in a particular area; and

(b) The transport of milk or any milk product from one area in the State to another area in the State or its export to any place outside the State."

As the Statement of Objects and Reasons of the Act indicate the legislation was found necessary 'to develop milk industry in a systematic and organised manner' in view of the limited yield of milk in the State. It was found necessary in public interest to regulate and control production, supply and distribution of milk and milk products. To fulfil the objects of the Act the State Government has been empowered under S. 15 of the Act to regulate and fix by notification prices for selling and supply of milk and milk products. The power of State Government to fix prices of milk and milk products by issuance of notification under S. 15 of the Milk Act is merely an enabling one and it is not obligatory for State Government in all circumstances to fix the prices. In the instant case, the prices of cream and paneer were fixed through mutual negotiations between authorised representatives of the two companies and with the assistance of the authorities of the State. Such binding terms of agreement reached between the two companies could not be frustrated by statutory intervention of the State by issuance of notification for fixation of prices under S.15 of the Act. As has been pointed out by the State the notification was intended to apply only to respondent Glindia Ltd. as the supplies of cream and paneer were being made to the appellant Central Dairy Farm by

the Glindia Ltd. alone.

18. In the earlier judgment of the High Court (W. P. 14526/1988 decided on 14-10-1988); the power of the State Government to fix prices of milk and milk products under S. 15 of the Act was recognised and it was held that the Additional Milk Commissioner as the licensing authority had no power to interfere in the matter of fixation of price of Milk and milk products. The operative part of the judgment in the earlier writ petition however settled the controversy between the parties that the prices of supplies by the respondent company were to be regulated by the directions made by the High Court in the said writ petition. The earlier judgment in the writ petition between the same parties (supra) has attained finality. The written directions issued in the earlier judgment (supra) have been quoted by us above. Those binding directions of the Court could not have been nullified by invoking power of the State of issuing price fixation notification under S. 15 of the Milk Act. The issuance of the impugned notification has rightly been held by the High Court to be an attempt to nullify the directions made by the High Court in its earlier judgment. Direction No.2 in the operative part required determination of price of cream /paneer by agreement and in the absence of any agreement on the basis of price payable by co-operative societies to purchasers with overhead charges. The dispute about over payment was directed to be resolved by committee to be appointed by the two companies comprising officers of two organisations and the high officials designated under the Milk Act. The statutory power under S. 15 of Milk Act of issuing notification for price fixation could not have been invoked by the State to by-pass or commit breach of the directions made by the High Court in the earlier writ petition. The High Court was fully justified in coming to the conclusion that the issuance of notification under S. 15 of the Act was an exercise done for oblique purpose and to somehow get over the judgment of the High Court in the earlier writ petition. The notification was ineffectual to frustrate the agreements and settlements reached on price fixation through mutual negotiations between the authorised representatives of the two companies and the authorised officers of the State.

19. Consequently, we find no merit in these appeals and they are accordingly dismissed. Keeping in view the dwindling condition of the appellant Central Dairy Farm, we make no order as to costs in these appeals against it. The respondent Glindia shall however be entitled to get all costs incurred in these appeals from the State of U.P. being the appellant in one of the appeals before us and mainly responsible for this second round of litigation.

Appeals dismissed.