

Kedia Castle Dallion Industries Ltd. and Another Vs. State of U. P. and Others

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Court : Allahabad

Decided On : Feb-04-1998

Reported in : 1998(2)AWC867

Judge : Palok Basu and ;D.K. Seth, JJ.

Acts : Uttar Pradesh Sheera Niyamtran Adhiniyam, 1964 - Sections 7A, 8, 8(1), (2) and (3) and 9 and 9(1); Uttar Pradesh Sheera Niyamawali, 1974 - Rules 2, 12, 13, 14, 22 to 24 and 40; Essential Commodities Act - Sections 3 and 3(1); [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 39617 of 1997, Connected with C.M.W.P. No. 39629 of 1997

Appellant : Kedia Castle Dallion Industries Ltd. and Another

Respondent : State of U. P. and Others

Advocate for Def. : Chandra Shekhar,; Virendra Kumar and ;Munna Pandey, Advs. and ;S.C.

Advocate for Pet/Ap. : K.D. Mishra and ;S.P. Gupta, Advs.

Judgement :

Palok Basu and D.K. Seth, JJ.

1. These two writ petitions raise common questions and, therefore, when they were entertained on 24.11.1997, counter-affidavits were called from the respondents and in the meantime it was directed by the said interim order that the molasses in stock which was subject-matter of the petitioners, contract shall be maintained intact as it is, until further orders of this Court.
2. On behalf of the petitioners Sri S. P. Gupta assisted by Sri K. D. Mishra has been heard at considerable length in support of these two writ petitions.
3. Sri Ashok Mehta has been heard on behalf of opposite party Nos. 1, 2 and 4 whereas Sri R. D. Khare has been heard on behalf of O. P. No. 3. Le., U. P, State Sugar Corporation Ltd. Likewise in the Petition No. 39629 of 1997, Sri A. K. Mishra has been heard on behalf of opposite party No. 3 which is U. P. Sahakari Chini Mill Sangh Ltd. Counter-affidavit as well as Supplementary counter-affidavit has been filed by the respondents to which suitable rejoinder-affidavit and supplementary rejoinder-affidavits have been filed by the petitioners.
4. Looking at the fact that the issues involved were of extreme urgency inasmuch as the molasses in stock were to be disposed of in accordance with law at the earliest convenience and further that the new stock of sugarcane was to be crushed and huge quantity of molasses was to be produced in the current season, it was directed as prayed by the learned counsel for the parties that both these writ petitions be disposed of at the earliest and that is why affidavits have been exchanged and as prayed the writ petitions are being disposed of by this common order.
5. Since the factual position in both the writ petitions are same, the word petitioners' herein will include and refer to the respective petitioners in both the cases. Likewise, the words 'sugar mill' will include opposite party No. 3, U. P. State Sugar Corporation Ltd. in Writ Petition No. 39617 of 1997 and U. P. Sahakari Chini Mills Sangh Ltd. in Writ Petition No. 39629 of 1997.

6. Before coming to the merits in the writ petitions and the arguments and points raised, it may be stated here that the petitioners had applied in response to an advertisement calling tenders for sale of molasses by the sugar mills. It is admitted that the petitioners' offer in response to the advertisement was accepted by the sugar mills. In pursuance of the aforesaid acceptance of the tender of the petitioners, a sum of Rs. 5,00,000 was deposited as earnest money or security money which was Rs. 3,75,000 in the other one. It is alleged that the petitioners were permitted to lift 1,14,000 and 75,000 quintals of molasses, respectively from the mills storage tanks subject to the restrictions imposed by the Act and the Rules. It may be mentioned that all the activities of production, storage, sale, distribution and transporting of molasses is controlled by the Act known as U. P. Sheera Niyamtran Adhiniyam, 1964 (for short 'Act') and U. P. Sheera Niyamtran Niyamawali, 1974 (for short 'the Rules'). It may further be mentioned that the aforesaid Act and the Rules have been framed by the State Government in accordance with the power conferred on it by Section 3 of the Essential Commodities Act (for short 'E. C. Act').

7. Further undisputed facts are that when the petitioners applied for transporting rights, the order dated 2nd September, 1997 (Annexure-7) issued by the Excise Commissioner/Controller of Molasses U. P., the petitioners were permitted to lift and transport 'respectively' 1,00,000 and 75,000 quintals of molasses from the 50% free sale quota of the sugar mills. In Writ Petition No. 39617 of 1997. the order dated 2.9.1997 (Annexure-7) indicates that the petitioners were to lift and transport 10,000 quintals, 23,000 quintals, 9,000 quintals and 58,000 quintals from Dhudhali, Khadda, Ramkola and Siswa Bazar sugar mills. Similarly in the order, dated 20th September, 1997, the petitioners were permitted to lift and transport 20,000 quintals, 25,000 quintals, 20,000 quintals and 10,000 quintals totalling 75,000 quintals from Tilhar, Sitarganj, Bisalpur, Gajrola and Nazibabad sugar mills. The terms and conditions in both the orders were identical. The important fact in this connection to be noted is that both these orders, i.e., one dated 2nd September, 1997 and the other dated 20th October, 1997 specifically mentioned that those orders should be valid till 30.11.1997.

8. It may be mentioned that such orders may not have been passed by the respondents had the petitioners not already obtained a 'no-objection-certificate' from the Excise Commissioner, Madhya Pradesh and such a certificate was in fact issued to the petitioners on 29.5.1997, in both the cases copies whereof have been filed as Annexure-3 to the writ petitions. These two no-objection-certificates issued by the Additional Excise Commissioner, Madhya Pradesh, Gwalior permitted the respective petitioners to remove 10,000 Metric Tonne of molasses from the State of U. P. into the State of M. P. for use of the said molasses in production of alcohol in their distilleries at district Durg, M. P. and in the other case Ghar district M. P.

9. The impugned orders, however, in both the cases are 18th November, 1997 (Annexure-1) and 15th November, 1997 (Annexure-2 to the writ petition). By the order dated 17.11.1997, the petitioner in W.P. No. 39617/97 was intimated that in pursuance of the order of the Molasses Controller as communicated by the Deputy Excise Commissioner, Gorakhpur region, Gorakhpur on 15.11.1997, the permission granted vide order dated 2.9.1997 to the petitioners relating to lifting and transporting of molasses has been stayed. It was, therefore, suggested to the petitioners that it should again obtain no-objection-certificate from the Molasses Controller without which it will not be possible to permit lifting and transporting of the molasses. The order dated 15.11.1997 is one which is issued by the Deputy Excise Commissioner, the substance of which is that the Excise Minister visited Gorakhpur district on 15.11.97 and held a meeting with the Departmental officials during which he instructed and ordered that the permission/no objection certificate granted to the petitioners on 2.9.1997 should be stayed forthwith and further that if there are other orders permitting such lifting and transporting of molasses from Gorakhpur region, those orders should also be stayed forthwith. It further narrates that the Excise Commissioner should in this regard meet the Minister as desired by the Minister concerned. Then comes the last order dated 18th November, 1997 which narrates that the orders which were issued in favour of the petitioners and some other dealers like the petitioners permitting lifting and transporting of the molasses till 30.11.1997 was cancelled with immediate effect. Aggrieved by the aforesaid orders, the petitioners have rushed up to this Court by these two writ petitions under Article 226 of the [Constitution of India](#).

10. It may be mentioned here that decisions of the Controller Molasses is subject to appeal under Section 9 of the Act and the appeal is maintainable before the State Government and it has been further provided therein that the order of the State Government under sub-section (1) shall be final. In the instant case the order itself has been issued under the direction of the Minister which was duly communicated to the Excise Commissioner/Molasses Controller for communicating to the Deputy Excise Commissioner and then conveyed to the petitioners and, therefore, as rightly pointed out by the learned counsel for the petitioners, the appellate forum is practically non-existent in the instant case. On the facts and circumstances involved in this case as already noted above, asking the petitioners to file an appeal would have been a mere formality and consequently the petitions cannot be thrown out on the availability of any alternative remedy.

11. Then again the provision of appeal as provided in Section 9 of the Act and Rule 40 of the Rules permits an appeal against an order under Section 8 subsections (1) and (2). Unless the order is held to be an order under Section 8(1) or 8(3), no appeal is permitted. It has been vehemently argued by Mr. Ashok Mehta, learned standing counsel that the orders have been issued in exercise of Section 8(3) of the Act. In the present case, we are unable to agree with Mr. Mehta's contention straightaway. We, therefore propose to examine the said contention at appropriate stage.

12. The learned counsel for the petitioners has placed reliance on the provisions under the Act and the Rules in order to argue that there was no power with the State Government much less the Controller Molasses to cancel the 'no-objection-certificate' granted earlier on some supposed reasonings. Attention of the Court was drawn to the three orders which do not indicate any reason whatsoever for cancellation of the 'no-objection-certificate' granted to the petitioners. The three orders have already been referred to above and except for the reason that the Minister has expressed such a desire, there is no other reason why ultimately the petitioners' right to transport the molasses was cancelled.

13. The learned counsel for the petitioners vehemently argued that under the provisions of the Act, all that was permissible by Section 8 is that the Controller may by order require the occupier of any sugar factory to sell or supply in the prescribed manner such quantity of molasses to such person, as may be specified in the order, and the occupier shall, notwithstanding any contract, comply with the order. It was argued on the strength of these words that the instant orders, or for that matter the final order, dated 18th November, 1997 (Annexure-1) would not come within the meaning of any of the contingencies contemplated by Section 8. In this connection, the rules provide vide Rules 12, 13 and 14 respectively that the occupier of said sugar factory shall submit to the Controller by August 31st 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. Likewise the estimated requirement of molasses for industrial purposes within the State relating to the molasses year following shall be furnished to the Controller by the Director of Industries by August 31st each year. A consolidated statements of the estimated availability of molasses in the molasses year following will be drawn up and placed before the Advisory Committee, constituted under Section 3(1) of the Act, by the Controller who may make orders regarding the sale or supply of molasses in accordance with the provisions of Section 8 of the Act.

14. The aforesaid gist of the rules incorporated verbatim leaves no manner of doubt that the estimate of molasses as available for the industries or for the distillery and the requirement as to how much of it can ultimately be left by the State Government for 'free-sale' and how much of it would desire to be disposed of by 'levy method' has to be determined well before hand. It may be mentioned that it is Rule 2 (d) which defines molasses year as : 'Molasses year' means the period beginning on the 1st day of November and ending on the 31st day of October in the year next following.'

It is, therefore, obvious that for purpose of getting the molasses dealt with in accordance with the provisions of the Act and the Rules, the assessment year period is beginning with 1st November and ending with 31st October of the next year.

15. At once it should be useful to remember as already noted above, the permission granted to the petitioners was already specifically noted in the two orders to be 'within 30th November, 1997.' Consequently, whatever stock was the subject-matter of the tender submitted by the petitioners had to be dealt with by the petitioners and its transportation could be permitted till 30th November, 1997.

16. In view of what has been stated above, there was absolutely no material on the date the order was passed by the State Government or by the Controller, Molasses indicating any need or justification for limiting the petitioners' right to the stock already contracted by it. Till the date of the order cancelling the permission, the 'no-objection-certificate' was valid and effective.

17. In this connection, it will be worthwhile to mention here that so far as the respective petitioners in these two writ petitions are concerned, their consistent case is that they had already, as per the tender, removed more than half of the quantity of the molasses which was the subject-matter of contract between the sugar mills and the respective petitioners. The specific averments in W.P. No. 39617/97 should be noted here:

'18. That the petitioner-company lifted nearly 50,670 quintals of molasses from various sugar factories till 1.11.1997 and a balance of 49,330 quintals of molasses is still to be lifted and transported to the premises of the distillery of the petitioner-company. It is stated that petitioner-company has about Rs. 10 lakhs in the form of bank drafts to be handed over to the sugar factories and about 20 molasses tankers of the petitioner company are standing idle in the premises of the sugar factories to transport molasses to the premises of the petitioner-company. But all of a sudden on 17.11.1997 (16.11.1997 being Sunday) the Sugar Factories stopped loading of the molasses in compliance with Order No. 4172-4221, dated 15.11.97 of the Hon'ble Minister of Excise U. P. communicated through the Deputy Excise Commissioner. Gorakhpur Charge. Gorakhpur. One of the Sugar Factories at Khadda, informed about the orders of the Deputy Excise Commissioner, Gorakhpur Charge, Gorakhpur vide its letter No. 4113/97-98, dated 17.11.1997. A true copy of the letter dated 17.11.1997 is being filed herewith and is marked as Annexure No.-8 to this writ petition.'

The counter-affidavit filed on behalf of the opposite parties No. 1, 2 and 4 has replied to the aforesaid averments of the petitioners in its Paras 24, 25, 26 and 27, out of which Para 24 alone may be necessary for further discussions and therefore, it is quoted below :

'24. That in reply to Para 18 of the writ petition it is submitted that the order was passed on 2nd September, 1997 and till 5th November, 1997, after passing of two months (4/5th of the total period) only half of the molasses was lifted by the petitioner.'

18. It may be mentioned that in Writ Petition No. 39629 of 1997, the petitioners had lifted about 20,000 and balance of 55,000 quintals was to be removed and transported.

19. The respondents have tried to Justify the present order of cancelling the permission on an alleged order which is said to have been passed by the Excise Commissioner/Controller of Molasses on 11th December, 1997 vide Annexure-CA-5 to the Supplementary counter-affidavit. Under this order, dated 11.12.1997, the State Government has directed that 65% of the molasses produced will be available for levy/controlled sale while only 35% shall be available for free sale by the sugar mills. In other words, the decision of the State; Government which was in vogue till 11.12.1997, i.e., permitting 50% of molasses to go for open sale or free sale and 50% of molasses to be available for levy/controlled sale was valid till atleast 10th December, 1997. The result, therefore, is that the decision of the State Government which was taken through the order of the State Government, dated 13th June, 1996 (Annexure-SCA-3) was modified only with effect from 11th December, 1997.

20. In view of what has been noted above, there was no material whatsoever nor any power with the State Government to stop the lifting or transporting of molasses which was subject-matter of a contract which was obviously available and was to be operative atleast till 11th December, 1997. Therefore, there is force in the arguments of the learned counsel for the petitioners that there was neither any material nor any justification for permitting the petitioners to lift only half of the contracted molasses and stop transporting of the remaining half of the molasses

already subject-matter of the contract between the petitioners and the sugar mills.

21. It may be mentioned, however, that the learned counsel for the respondents, i.e., the sugar mills in the two writ petitions have not disputed that they had entered into the contract by accepting the tenders submitted by the petitioners for lifting and transporting the molasses from their mills.

22. It was rightly pointed out by the learned counsel for the petitioners that the present Rules 22, 23 and 24 stand substantially amended in the year 1993 so much so that by Rule 22 all that can be regulated is that the molasses produced in sugar factory shall be sold or supplied only to distilleries or other persons bona fide requiring it for purposes of Industrial development.....and 'no person shall, transport or cause to be transported outside Uttar Pradesh any molasses unless permission in writing obtained from the Controller.'

23. The aforesaid-two Rules particularly Rules 22 and 24 leave no manner of doubt that the permission which was granted to the petitioners for removing 1,00,000 quintals of molasses from the sugar mills was operative till 30th November, 1997, and could not have been interfered by the aforesaid orders until that period was atleast over.

24. It has been contended by Mr. Ashok Mehta, learned standing counsel for the State that the order, dated 18.11.1997 (Annexure-1 to the petition) was passed by the Controller under Section 8(3) of the Act. The molasses year 1997-98 having started from 1.11.1997, it was open to the Controller to pass an order under Section 8(1) on the basis of stock available with the sugar mills, since the stock was not lifted, it is the stock within meaning of Section 8(2)(b) of the Act and as such, the order was valid and legal.

25. Section 8 empowers the Controller to require an occupier to sell or supply the molasses to such persons, specified in the order notwithstanding any contract. In the present case, the orders, dated 2.9.1997 and 20th September, 1997 were not orders directing sale or supply of molasses to any named person. On the other hand, it was free sale sugar which was proposed to be sold by the occupier. 'No-objection' was necessary under Rule 24 since it was proposed to be shifted

outside the State of Uttar Pradesh. If the molasses was not required to be shifted outside the State of U. P., in that event no-objection certificate would not have been necessary. For the quantum of molasses sought to be sold out of fifty percent free sale stock, no order under Section 8(1) of the Act was necessary.

26. Rule 13 of the Rules requires submission of requirement of molasses for industrial purposes within the State for the molasses year following. The requirement can be obtained even through an application under Section 7A of the Act. In the present case, the petitioner was neither required nor had applied under Section 7A of the Act nor any order has been passed on the said application under Section 8. On the other hand it was the permission within meaning of Rule 24.

27. Section 8(3) of the Act permits modification of an order passed under sub-section (1) and that too within the extent of correction of error or omission to meet subsequent changes in any of the factors, mentioned in clause (b) of subsection (2). The orders dated 2.9.1997 and 20.9.1997 respectively cannot be said to be an order within meaning of Section 8(1) of the Act. Inasmuch as the said order did not require occupier to sell or supply molasses to any person. In effect it was only permission of the Controller given in exercise of Rule 24 after the free sale quantity was proposed to be sold to the petitioner enabling him to transport the same outside the State of U. P. The very fact that when permission was sought for 1,14,000 quintals but permission was granted only for one lac quintal, itself shows that permission was given under Rule 24 after applying its mind with regard to the availability of fifty per cent free sale stock. The original proposal was in respect of five units of the sugar mill whereas stock of only four units of the sugar mill was made available. Thus, the order not being an order under Section 8(1), the same could not have been modified.

Even assuming that it was an order under Section 8(1), in that event it can be modified only to the extent as specified in sub-section (3) and not beyond. Thus, the correction can be made in respect of the quantity of stock or any portion thereof, that too proportion should be the same throughout the State of U. P. except where variation is necessitated on the reasons mentioned in sub-clauses (i), (ii) and (iii). The impugned orders cannot be said to be the order operative

throughout the State. It is confined only to a particular sugar mill in a particular area. However, such modification can be made in a particular area or the particular mills, if it is necessitated on account of, (i) requirement of distilleries within the area in which, molasses may be transported from the sugar factory at a reasonable cost, or (ii) the requirement for other purpose of Industrial development within such areas or (iii) the availability of transport facility in the area. No such ground or factors, have been mentioned in the order itself and even in the counter-affidavit no particulars have been detailed as to the existence of any of the factors necessitating such modification. Thus in exercise of powers under Section 8 of the Act, either under sub-section (1) or under sub-section (3). the permission granted under Rule 24 cannot be altered, in the facts and circumstances of the present case unless specific orders under Section 8(1) of the Act is issued or the same is sought to be amended under sub-section (3). Counter-affidavit does not disclose any such order either under Section 8(1) or under sub-section (3) until 11th December, 1997. Therefore, the contract between the petitioner and the respondent No. 3 cannot be superseded without an order under Section 8(1) of the Act.

28. In the present case, as we have observed, the orders dated 15.11.1997 and 18.11.1997 cannot stand the test of legal requirements. The order dated 17.11.1997 having been based on 15.11.1997 cannot sustain itself without the valid existence of the order, dated 15.11.1997.

29. Before parting with the case. It may be mentioned that it was pointed out by Sri Ashok Mehta, learned standing counsel for the respondents that it was open to the State Government as well as on its basis to the Controller Molasses to take a decision whenever it wanted to diminish the free sale quota for those exigencies and, therefore, the State Government through its Minister has exercised that power in pursuance of which the Excise Commissioner, U. P.. was asked to stay the transportation of the molasses and subsequently the final order was passed in the shape of one dated 18th November. 1997 (Annexure-1 to the writ petition). As already pointed out above on the date on which the orders were passed, admittedly the type of the order which the State Government has passed on 11th December, 1997, was nowhere in existence and consequently no action could

have been taken with regard to the stock which was already available for transporting by the petitioners till 30th November, 1997. In view of the aforesaid discussions, the impugned orders do not stand the test of judicial scrutiny inasmuch as are ultra vires the powers conferred by the Act and the Rules and also against the contract which was entered into by the respective sugar mills respondents in both the writ petitions with the petitioners. Consequently, the orders have to be quashed and cannot be sustained.

30. In the result, the writ petitions succeed and are allowed. The orders, dated 15.11.1997, 17.11.1997 and 18.11.1997 are quashed. The petitioners are permitted to lift and transport the quota on or before 28th February, 1998.

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