Court No. - 3

Case :- WRIT - C No. - 884 of 2010

Petitioner :- The Oudh Sugar Mills Limited Hargaon Sitapur Thru E.Presiden
Respondent :- Civil Judge Senior Div. Sitapur And Ors.
Counsel for Petitioner :- Sudeep Kumar,A.K. Pandey
Counsel for Respondent :- C.S.C.,Anoop Kumar,K.S. Pawar

Hon'ble Vivek Chaudhary,J.
Hon'ble Manish Kumar,J.

We have heard learned counsel for the petitioner and learned Standing Counsel and perused the record.

In pursuance to power conferred by Section 15 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (in short Act) readwith Sugarcane (Control) Order 1966 (in short Control Order), the Cane Commissioner exercises jurisdiction to allocate cane purchase centre to sugar mill. The Sugar Control Order has been issued by the Government of India in pursuance to power conferred by Section 3 of the Essential Commodities Act, 1955 and the Government of India has got power to allocate cane purchase centre. However, Government of India delegated its power to the Cane Commissioner. Thus, the Cane Commissioner exercises its jurisdiction with regard to allocation of cane purchase centre in pursuance to the Act as well as Control Order. Section 12-B of the E.C. Act, 1955 prohibits the Civil Court to grant injunction or to make any order for any other relief against the Central Government or any State Government or a public officer in respect of any act done or purporting to be done by such Government, or such officer in his official capacity under the Act. Section 12-B of the Essential Commodities Act, 1955 is reproduced as under:-

"12-B. Grant of injunction etc. by Civil Courts.- No Civil Court shall grant an injunction or make any order for any other relief, against the Central Government or any State Government or a public officer in respect of any act done or purporting to be done by such Government, or such officer in his official capacity, under this Act or any order made thereunder, until after notice of the application for such injunction or other relief has been given to such Government or officer."

The cane purchase centre was allocated to the petitioner by the Cane Commissioner vide order dated 12.11.2009, copy of

which has been annexed as Annexure No. 3 to the writ petition. It appears that the private respondent nos. 2 to 6 filed a regular suit before the Civil Judge (Senior Division) Sitapur, alongwith application for temporary injunction. The learned Civil Judge, by the impugned order dated 21.01.2010, has passed the impugned order on the basis of consent between the opposite parties no. 7 in the present writ petition.

Mr. Sudeep Kumar, learned counsel for the petitioner submits that the impugned order dated 21.01.2010 which has been passed on the basis of alleged consent is collusive act with the plaintiff and defendants before the trial court without impleading the affected sugar mill, i.e. the petitioner, and that too without taking into account the provision contained in Section 12-B of the Essential Commodities Act, cannot be permitted to survive.

A perusal of the plaint, copy of which has been filed with the present writ petition, reveals that in the suit filed by the opposite parties no. 2 to 6, the petitioner was not impleaded as a party in spite of the fact that the cane purchase centre in question was allocated to it. Thus, since the petitioner could not exercise its statutory right with regard to purchase of cane from the cane purchase centres in question, the learned Civil Judge while passing the impugned order seems to have exceeded jurisdiction on the basis of the alleged consent arrived at between the opposite parties no. 2 to 6 and 7, more so when the Civil Court has been barred by Section 12-B of the Essential Commodities Act to grant such relief. There appears to be an implied collusion between the opposite parties no. 2 to 6 and Dalmia Chini Mill (opposite party no. 7) in procuring the impugned order in their favour.

The cane purchase centres in question was allocated to the petitioner in pursuance to the order passed by the Cane Commissioner. No relief including temporary injunction could have been granted affecting the petitioner's right to use the cane purchase centre without serving of notice to the petitioner. Since the petitioner was not impleaded in the suit filed by the plaintiff-respondents, there was no occasion for the Civil Judge to pass impugned order affecting the petitioner's right to carry on trade from the cane purchase centre in question. Learned Civil Judge exceeded his jurisdiction.

A Division Bench of this Court has stayed the impugned order while admitting the writ petition.

The submission of learned counsel for the petitioner that the impugned order which has been passed on the basis of consent

without impleading the affected sugar mill and without taking into consideration the provision contained in Section 12-B of the E.C. Act, is liable to be quashed, carries weight. Though the petitioner was having an option to prefer appeal but since the Division Bench of this Court has admitted the writ petition keeping in view the facts and circumstances of the case at this stage, it would not be proper to relegate the matter to the appellate authority.

The learned Additional Chief Standing Counsel has fairly submitted that the order passed by the Civil Judge is without jurisdiction which is mentioned in para no. 20 of counter affidavit.

In view of above, we do not find any reason to keep the matter pending, more so when the learned Civil Judge exceeded its jurisdiction by passing the impugned order, which, prima facie, appears to be a collusive act and suffers from substantial illegality.

In view of above, the writ petition is allowed. The impugned order dated 21.01.2010 passed by the learned Civil Judge (Senior Division) Sitapur is set aside. The trial court is directed to proceed with the suit and decide expeditiously say, within a period of six months from the date of production of certified copy of this order, if the suit is pending.

(Manish Kumar,J) (Vivek Chaudhary,J)

Order Date :- 8.12.2023
Ashish

Digitally signed by :-
ASHISH MISHRA
High Court of Judicature at Allahabad,
Lucknow Bench