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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RA-CW-456-2017 (O&M) IN
CWP-3058-2010
Date of decision : 08.12.2017

M/s Kashipur Sugar Mills Ltd.

... Petitioner(s)

Versus

State of Punjab and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. IPS Doabia, Addl. A.G., Punjab,
for the review applicant/respondent(s)-State.

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AMIT RAWAL, J. (ORAL)

CM-14546-2017

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 122 days in filing the review application is condoned.

CM-14547-2017

Allowed as prayed for.

RA-CW-456-2017

This Court vide order dated 20.04.2017 allowed the above-mentioned writ petition along with other connected petitions.

The review application has been filed by the State of Punjab under Order 47 Rule 1 read with Section 151 of the Code of Civil Procedure for reviewing of order dated 20.04.2017.

Mr. IPS Doabia, Addl. A.G., Punjab, appearing on behalf of the review applicant/respondent(s)-State with vehemence argued that the judgment sought to be reviewed suffers from glaring errors apparent on record, which have been enumerated in para 20 of the review application which reads as under:-

> *"A. BECAUSE the issue which arises in this matter, prior to the passing of the order under review dated 20.04.2017, stood covered by a judgment of a co-ordinate Bench dated 26.02.2010 passed in Criminal Revision Petition No.3045 of 2009 and Criminal Revision Petition No.3046 of 2009, wherein this Hon'ble Court has rejected the legal argument that in absence of specific adoption of the Central Government Notification by the State of Punjab, it be presumed that the sugar control regime in the State of Punjab stood decontrolled, especially in light of the fact that the State of Punjab had impliedly taken every step necessary for compliance with the Central Government notification dated 12.03.2009, including the authority to appoint the officials to search and seize the sugar. Further the said judgment rendered by this Hon'ble Court dated 26.02.2010 has now attained finality given that the SLP (Crl.) No(s).2484-2485/2010 preferred against order dated 26.02.2010 were dismissed as withdrawn vide the Hon'ble Supreme Court's order dated 10.03.2011.*
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> *B. BECAUSE the order under review proceeds on the erroneous basis (and forms as a question for determination) that there was an absence of an order passed by the State Government for licensing and fixing of limits as seen from the question framed below:-*
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> > *"Whether in the absence of an Order issued by the State Government for licensing of the sugar dealers or in the absence of fixing any limit by promulgating the notification in consonance with the Central Government Notification 2009 and under the Sugar (Control) Order,*

> *1966 issued under Section 3 and 10 of the EC Act, the State of Punjab can invoke the provisions of EC Act or not?"*

C. BECAUSE the State Government letter dated 27.08.2009 is indeed such executive action/order ordering the licensing of and regulating of sugar limits.

D. BECAUSE when the Central Government notification authorized the State Government to do an act and the State Government by letter dated 27.08.2009 adopted and forwarded for action and implementation the limits order, and hence it in fact exercised such authority. There can be no presumption that the Decontrol Order stands viz-a-viz the State of Punjab, when in letter, spirit and practice the State of Punjab has hitherto maintained the permissible quantity of sugar stock to be 2000 Qtls. and continued to do so by the letter dated 27.08.2009. It is only if an executive order was issued or an action to the contrary taken that lead to a conclusion that the state had acted otherwise.

E. BECAUSE all the executive actions within the State of Punjab thus point to a conclusion that the Central Government Notification was very much adopted, executed within the State of Punjab and that a lacunae of specific promulgation in a specific form in this regard (which was not even set out or required by the Central Government Notification dated 16.07.2009) does not render the whole exercise of sugar control void. Reading it otherwise, would mean dismantling the whole sugar control regime within the State of Punjab on a hyper-technicality leading to highly adverse consequences, not only for the State but also the people.

F. BECAUSE the Central Government Notification dated 16.07.2009 merely authorized the State Government to fix limits and separate notifications/order would be necessary in the event it wished to specify a different quantity for *stockholding and a different period for turnover, than those specified in the Central Government Notification. The manner/procedure in which Central Government Notification dated 16.7.2009 was to be adopted has not been specifically enumerated in the Central Government Notification. In such a situation, the State of Punjab exercising the authority given to it under the Central Government Notification, given that it chose to fix the same limits as contained in the Central Government Notification dated 16.07.2009 adopted the said notification by issuing directions to its officials to comply with it in letter and spirit. The mere fact that a separate order was not issued by the State of Punjab, cannot be read so as to lead to a conclusion that the Central Government Notification dated 16.07.2009 is not applicable at all within the State of Punjab, when the State Government letter dated 27.08.2009 in clear and unambiguous terms made the limits applicable.*

G. BECAUSE the work used in the Central Government Notification is "authorizes" which leads to an interpretation that the State Government has the authority to fix the stockholding and turnover limit subject to certain conditions. In what manner, procedure that authority was to be exercised is not specifically enumerated. In the absence of such specific enumeration, the State Government having been given such authority is at liberty to exercise (or even not exercise) such authority in any manner it deems fit. It is stated that the State of Punjab exercised its authority to implement the Central Government Notification dated 16.7.2009 by forwarding it to the concerned officials of Department of Food, Civil Supplies and Consumer Affairs under its letter dated 27.8.2009 for action and strict compliance. The fact that a specific notification/order in a specific form or manner was not issued by the State of Punjab to adopt the Central Government Notification is immaterial and wholly irrelevant.

H. BECAUSE previously the State of Punjab had adopted Central Government notifications under the Sugar Control Order once such instance being executive order dated 30.04.2009. The intention being executive order dated 30.04.2009. The intention of the State Government was thus, always to follow the Central Government Notification, and to save time vide a procedure for an executive order, has effectively and efficiently through letter dated 27.08.2009 asked all the officers of the Department of Food, Civil Supplies and Consumer Affairs within the State of Punjab, to comply with the Central Government Notification.

I. BECAUSE letter dated 27.08.2009 can be deemed nothing less than an executive order/state government notification by the very reason of its purpose and import. The Central Government Notification thus stood applicable mutatis mutandis within the State of Punjab.

J. BECAUSE it is not the form or procedure of adoption of delegated legislation that is relevant, it is to be seen if the import of the delegated legislation has been carried through or not. The State of Punjab in letter and spirit intended to follow and did follow the Central Government Notification, which stands proved by the various letters and memos exchanged in this regard, as discussed above. Any rationale premised on an assumed absence of a specific/separate notification giving effect to the Central Government Notification in a particular form or manner, is straight jacketed and weighs procedure over import, leading to adverse, unjust consequences.

K. BECAUSE even though the Seized Sugar was confiscated vide order dated 15.10.2009, no prejudice was caused to the Yaski International or M/s Kashipur Sugar Mills Ltd, as in the event of acquittal from the criminal proceedings, they were entitled to refund of the price of the confiscated sugar from the State.

L. BECAUSE the Seized Sugar cannot be said to be case property, as the seizure of the said sugar was as per the EC Act, the Central Government Notification, in accordance with valid exercise of power and jurisdiction by the confiscating authorities.

M. BECAUSE the rational adopted in the order under review is not in conformity with the EC Act, 1955, the Central Government Notification and State Government notification therein. Specifically, when all intent to adopt the Central Government Notification has been established, holding that the Decontrol Order 2002 is still applicable, not only runs contrary legislative intent and executive action, but also erroneously vitiates the whole sugar control exercise within the State of Punjab, which would result in miscarriage of justice.

N. BECAUSE the order under review has disregarded the fact that by taking action against the accused firms, the Respondents/Applicants were under full compliance in letter and in spirit with the EC Act, the Central Government notification and State Government notification therein.

O. BECAUSE whether or not a part of 8516 Qtls. of sugar was sold to another firm or not, is immaterial in so far as the fact that whole amount of 8516 Qtls. was confiscated from the premises of Yaski International. It is submitted that if at all the 4200 Qtls had been sold off, Yaski International, being well aware of the stock holding requirements, should not have allowed it to be stored in its godowns. It is submitted that Yaski International knew very well that holding such quantities of sugar was illegal.

P. BECAUSE an explicit exercise of legislative powers may not be done by an implicit exercise by way of a judicial order. This amounts to legislating, which the Courts of Law must refrain from doing. For this reason alone, this Hon'ble Court may *kindly review the order under review.*

Q. BECAUSE the order under review causes legislative uncertainty and vitiates the present regime as regards the control of an essential commodity i.e., sugar. Other litigations may ensue, as the existing sugar control regime stands upset by the order under review. For this reason alone (also), a review of the order passed by this Hon'ble Court is duly warranted.

R. BECAUSE the accused firms were in fact indulging in hoarding of an essential commodity i.e., sugar. Where the executive has to balance conflicting rights of consumers and food procedure, laws against black marketing and hoarding of essential food items is the only tool. The order under review takes away the tool through which the State of Punjab enforces right to life, as is its solemn duty mandated by the Constitution. The order under review has effectively quashed criminal proceedings against the accused firms who have indulged in the heinous socio-economic offence of hoarding.

S. BECAUSE gross injustice and miscarriage of justice will ensure if the order under review is not reviewed. The unjust implication of the order under review is that the sugar control regime in the State of Punjab stands de-controlled which has neither been the explicit or implicit intent of the Government of Punjab. For this reason alone, the order under review must be reviewed."

thus, there is an error apparent on the face of record and urges this Court for modifying the order under review.

I have heard the learned counsel for the review applicant/respondent(s)-State and appraised the paper book and of the view that all the points, in my view, raised does not confirm to the principles culled out by Hon'ble the Supreme Court in **"*Tamilnadu Terminated Full***

<u>Time Temporary LIC Employees Association Vs. S.K. Roy, The Chairman, Life Insurance Corporation of India and another" 2016 (9) SCC 366</u>. The relevant paragraph of the judgment reads as under:-

> *"Review is not re-hearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to re-open concluded adjudications. This Court, in* ***Jain Studios Ltd. v. Shin Satellite Public Co. Ltd. (2006) 5 SCC 501,*** *held as under:*
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> > *11. So far as the grievance of the applicant on merits is concerned, the Learned Counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases."*

Even non-reference of a judgment would not also be a ground for seeking review. The pith and substance of the grounds, extracted above, reveals no manner of doubt that no error apparent has been pointed out except that an attempt is made to reagitate and reargue the matter, which is not permissible in view of the *ratio decidendi* culled out by the judgment cited supra.

Accordingly, I do not find any error apparent on the face of record. No ground is made out for interference and accordingly, the present review application stands dismissed.

(AMIT RAWAL)
JUDGE

08.12.2017
Yogesh Sharma

✓
Whether speaking/reasoned **Yes/ No**
✓
Whether Reportable **Yes/ No**