

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 835 OF 2018

Rena Sahakari Sakhar Karkhana Ltd.
At Dilipnagar, Niwada,
Tq. Renapur, District Latur
Through its Managing Director
Shri Bhimrao Vinayak More
Age 56 years, Occ. Service,
R/o. Niwada, Tq. Renapur,
District Latur

.. Petitioner

Versus

1] The Union of India
Through the Secretary for
Food and Public Distribution Department,
New Delhi

2] The Chief Director (Sugar)
The Government of India,
Department of Food and Public
Distribution,
New Delhi

.. Respondents

...

Mr. V.D. Hon, Sr. Advocate h/f. Mr. A.V. Hon, Advocate for
petitioner

Mr. Bhushan Kulkarni, Standing Counsel for
respondent - Union of India

...

CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.

DATE : 28-08-2019

ORAL JUDGMENT (*PER - SUNIL P. DESHMUKH, J.*) :

1. Rule. Rule made returnable forthwith. Heard learned

counsel for the parties finally, by consent.

2. The petitioner before us is a co-operative sugar manufacturing factory/mill.

The respondents herein had floated a tradable export scrip scheme on 18-09-2015 whereunder there had been allocation of sugar factory-wise Minimum Indicative Export Quota (MIEQ) as annexed to the petition as Exhibit - 'A'. It has been provided that MIEQ are being specified for sugar season 2015-16 commencing from 01-10-2015.

Under the same, the quota shall be deemed to be discharged on submission to Department of Food and Public Distribution (DFPD), certain documents, *inter-alia*, showing agreements in quota holder sugar factory, merchant exporter and the source sugar factory, undertaking from the source sugar factory indicating factorywise MIEQ utilized for export of the sugar. It is further provided that the documents shall be submitted to DFPD within 180 days from the date of shipment of last consignment.

It appears that allocation of 6997.00 Tonnes quota had come to petitioner's way figuring at serial no. 299, as can be seen

from table appended to the communication.

3. Subsequently, the respondents had declared a scheme dated 02-12-2015 granting production subsidy to sugar mill with a view to offset cost of cane and facilitate timely payment of cane price dues of farmers for sugar season 2015-16, relating to the Fair and Remunerative Price (FRP) of sugarcane fixed by Central Government. Production subsidy at the rate of Rs. 4.50 per quintal of cane crushed for the production of sugar had been provided. Said subsidy is to be paid directly to farmers on behalf of the mills to be adjusted against the cane price dues payable to farmers against FRP. The notification, *inter-alia*, also provides that the mills which have achieved at least 80% of the target as per terms and conditions under MIEQ scheme notified on 18-09-2015 would be eligible for production subsidy. Under proforma annexed to the notification, it appears that details of cane crushed by mills were sought. Clause no. 4 of the notification enables DFPD to amend or withdraw the production subsidy scheme. On 19-05-2016, the production subsidy scheme floated on 02-12-2015 had been withdrawn.

4. The respondents had issued yet another notification dated 12-09-2016 whereunder, it has been observed that subsidy

scheme notified on 02-12-2015 had been withdrawn vide notification dated 19-05-2016 before time and, thus, the Central Government had decided to disburse performance based subsidy for cane crushed during 2015-16 till the tenancy of the scheme subject to the conditions therein, *inter-alia*, revising the MIEQ under 18-09-2015 scheme/order to 15.70 Kg of sugar per MT of actual cane crushed during current crushing season 2015-16 upto 19-05-2016.

5. The petitioner claims that it had dispatched sugar for export as required under the schemes. The petitioner refers to documents annexed to the petition and submits that all the documents had been submitted with the respondents as are required to show dispatch of consignments, yet, respondents are not paying any heed nor are taking any decision nor have paid amount of subsidy in accordance with production subsidy scheme dated 02-12-2015 for export under MIEQ quota.

6. It is being submitted that the amount is required by the petitioner for various purposes. The petitioner is entitled to receive the amount of production subsidy under notification dated 02-12-2015 in accordance with the MIEQ pursuant to scheme under communication dated 18-09-2015. It is stated that the

sugar manufactured and exported for which subsidy is claimed, had been manufactured well before 19-05-2016 and had been dispatched in the month of April-2016 to the export agency and subsequently, the exporter has also exported/shipped the goods out of country.

7. Petitioner claims that while it has dispatched 21800 quintals sugar during 07-04-2016 and 12-04-2016 and was exported, it was entitled to subsidy in accordance with provisions of scheme under notification dated 02-12-2015. The petitioner, thus, seeks mandamus to the respondents to release amount of subsidy to petitioner implementing notification dated 02-12-2015.

8. The petition is resisted on similar grounds as in writ petition no. 8313 of 2017. It had been submitted that factories which could not achieve the targeted performance in respect of exports till the tenancy of scheme upto 19-05-2016 were not considered eligible to avail of the benefit of scheme. The production subsidy was provided to all the sugar mills which have exported at least 40% of MIEQ till the date of tenancy of scheme. While the petitioner had not exported even 40% of their target by 19-05-2016, it had not been found eligible for production subsidy. It has been referred to in the reply, that as per records available

with the respondents, the factory though had delivered 2180 metric tonnes of sugar from its premises but could be exported by the stipulated date i.e. 19-05-2016 which does not meet the requirement of 40% of its minimum indicative export quota (MIEQ) which is the minimum quantity required to be exported by a mill for being eligible to avail of benefit of the scheme under notification dated 12-09-2016 referring to its clause (iv).

9. Notification dated 12-09-2016 mainly envisages the eligibility criteria and modalities of disbursement of subsidy to sugar mills after withdrawal of scheme before time and only such factories were eligible to be paid subsidy which were satisfying all the conditions as per the notification dated 12-09-2016, particularly parameter about export of 40% of its MIEQ.

10. The notification dated 02-02-2015 floating production subsidy scheme under its term no. 2 clause (i) provides modalities and extent of subsidy as referred to above provides production subsidy at the rate of Rs. 4.50 per quintal of cane crushed for sugar season 2015-16, further clause (iii) provides that those mills which have achieved at least 80% of the target as per terms and conditions under the MIEQ scheme notified on 18-09-2015 would be eligible for production subsidy. Under term no. 4 thereof

of said production subsidy scheme, the respondents were empowered to amend or withdraw the scheme which purportedly had been exercised withdrawing the scheme on 19-05-2016.

11. Subsequently, it appears that respondents had considered that the production subsidy scheme notified on 02-12-2015 had been withdrawn before time and, thus, had decided to disburse performance based subsidy for cane crushing for 2015-16 sugar season till the tenancy of scheme subject to certain conditions under notification of 12-09-2016, *inter-alia*, setting out two terms (ii) and (iv) reading, thus,

“ (ii) **Export quota under MIEQ** notified vide order dated 18-09-2015 which was 15.70 Kg of sugar per MT of **estimated cane crushing** shall be **now revised to** 15.70 Kg of sugar per MT of **actual cane crushed** during current sugar season 2015-16 upto 19.05.2016 or existing quota already notified under MIEQ, **whichever is lower; to be referred to as Revised Export Quota (REQ).**

(iv) *Those mills which have undertaken **at least half of the targeted export quantity i.e. 40% of REQ** under the scheme and in case of mills having distillation capacity, have supplied ethanol as per (iii) above shall be eligible for the production subsidy. Mills which have exported 80% of REQ and in case of mills having distillation capacity, have supplied targeted ethanol as per (iii) above, shall be eligible for subsidy @ Rs. 4.5 per quintal of cane crushed.”*

12. Second term as can be seen, requires to take into account actual cane crushing during the sugar season 2015-16 upto 19-05-2016 or existing quota already notified under MIEQ

whichever is lower to be referred to as REQ. Under clause (iv) above those mills which have undertaken at least half of the targeted export quantity i.e. 40% of REQ under the scheme would be eligible for subsidy. The notification does not appear to imply export by 19-05-2016.

13. Despite the notification dated 12-09-2016 and clauses (ii) and (iv) referred to above, resistance proceeds on the footing that eligibility criterion is 40% of MIEQ whereas aforesaid clauses would depict that it is 40% of the REQ.

14. While the annexures with regard to dispatch and supply to the exporter by petitioner have not been disputed and further it has not been disputed that the figure of such dispatch and supply to exporter are well before 19-05-2016. To quite a large extent, it gives indication about actual cane crushing for sugar cane season 2015-16 upto 19-05-2016.

15. During the course of hearing, learned counsel appearing for petitioner had tendered across calculations referring to that the petitioner's sugar factory had crushed about 208951 M.T. of sugar cane and the same had received approval from the Cane Commissioner, Maharashtra State on 21-09-2016. A photocopy of the same is tendered across along with calculations

stated to be complying with requirements of notification dated 12-09-2016. Those are marked 'X' and 'Y' respectively for identification. 40% of the REQ i.e. revised export quota worked out from the same is referred to as 13122 quintals and there does not appear to be any dispute on that petitioner had dispatched from its factory about 21800 quintals sugar to the exporter. It is thus being sought to be shown said figure 21800 quintals having regard to actual cane crushing upto 19-05-2016 exceeds 40% of revised export quota [REQ]. Further export of the same has not been disputed by the respondents.

16. It would be worthwhile to note that the notification dated 12-09-2016 appears to have been issued with a underlying purpose to alleviate the sufferings from abrupt withdrawal of 02-12-2015 subsidy scheme. The notification of September, 2016 particularly refers to that under clause (ii) the rate of export quota under MIEQ notified under order dated 18-09-2015 which is on the basis of estimated cane crushing had been revised to actual cane crushed upto 19-05-2016. Said notification further specifically refers to that the mills which had undertaken atleast half of the export quota i.e. 40% of REQ (referable to clause (ii) of the notification), would be eligible to the benefit of the notification.

17. The department of Food and Public Distribution having regard to that withdrawal of 02-12-2015 notification, production subsidy scheme have been before time and, as such, had decided to be lenient to the sugar producers, who were hit by abrupt withdrawal of the scheme. The stand taken by respondents about there ought to be actual export before 19-05-2016, does not appear to correspond to the intention underlying the notification dated 12-09-2016. It may also be referred to that MIEQ scheme gives allowance to submit shipment documents of 180 days after export. Taking overall view of the matter, for benefits of notification dated 12-09-2016 petitioner's case may have to be considered.

18. There is no specific reply filed in the present petition, it would not be proper to decline benefit of the scheme adopting a hyper-technical approach. The schemes were evolved and improved upon from time to time with a view to see that sufferings of farmers as well as those of the ailing factories would be alleviated/reduced.

19. We, therefore, deem it appropriate that the petition deserves similar treatment as given to petitioner in writ petition bearing no. 8313 of 2017 under order dated 06-08-2019.

20. We, therefore, deem it appropriate that respondents would consider petitioner's case for benefits in accordance with provisions of notification dated 12-09-2016 without detaining the same on the ground that sugar dispatches were not meeting with 40% of MIEQ, if sugar dispatches as stated comply with REQ requirements under notification dated 12-09-2016.

21. Rule is accordingly made absolute. Writ petition is disposed of.

[S.M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/