

Union Of India vs Lakshmi Sugar & Oil Mills Ltd., Hardoi on 21 November, 1985

Equivalent citations: 1986 AIR 388, 1985 SCR SUPL. (3) 758, AIR 1986 SUPREME COURT 388, 1986 (1) SCC 26, 1986 ALL. L. J. 254, 1986 UJ (SC) 152, (1986) 1 COM LJ 198, (1986) 1 CURCC 250, (1986) 1 SUPREME 281

Author: R.S. Pathak

Bench: R.S. Pathak, M.P. Thakkar

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
LAKSHMI SUGAR & OIL MILLS LTD., HARDOI

DATE OF JUDGMENT 21/11/1985

BENCH:
PATHAK, R.S.
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PATHAK, R.S.
THAKKAR, M.P. (J)

CITATION:
1986 AIR 388 1985 SCR Supl. (3) 758
1986 SCC (1) 27 1985 SCALE (2) 1088

ACT:

The Sugar Undertakings (Taking over of Management) Ordinance 1978 Clause 3(1) & The Sugar Undertakings (Taking over of Management) Act, 1978. Section 3(a) (b) - Scope of.

Sugar Undertaking - Arrears of cane dues - Accumulation of - Initiation of action by Central Government - Whether arrears to be confined to current 'sugar year' or earlier 'sugar year'.

HEADNOTE:

The Respondent company manufactures sugar from sugar cane. On November 18, 1978, the Central Government issued a notice under sub-para (1) of para 3 of the Sugar Undertakings (Taking over of Management) Ordinance, 1978 stating that as on November 15, 1978, the respondent-company

was in arrears of cane dues in relation to the cane purchased before that date for the purpose of its sugar undertaking to the extent of more than ten per cent of the total price of the cane purchased by it during the immediately proceeding "sugar year", the total arrears being Rs. 475.99 lacs, and called upon the respondent to explain in writing the circumstances in which the sugar undertaking had failed to clear the arrears of cane dues and why the undertaking should not be taken over by the Central Government under that Ordinance. On November 25, 1978 the respondent replied to the notice denying that it was in arrears. However, the Central Government issued an order dated December 1, 1978 reciting that it was satisfied after considering the report sent by the respondent that the arrears of cane dues had not been cleared by the respondent, and directing that the management of the sugar undertaking would vest in the Central Government for a period of three years commencing on and from December 2, 1978.

The respondent filed a writ petition in the High Court which was allowed. It was held that while the Central Government could take action in respect of the arrears due in respect of sugar cane purchased during the current "sugar year" it could not do so in respect of the arrears pertaining to a preceding "sugar year", and therefore, the impugned orders were invalid. The High Court quashed the order and directed handing over of the possession of the sugar undertaking.

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Allowing the appeal of the Union of India to this Court,

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HELD: 1. The language of clause (b) of sub-section (a) of section 3 is clear. It speaks of arrears of cane dues in relation to the cane purchased "before that date". The language is wide enough to include all the arrears of cane dues accumulated upto "that date" including the arrears pertaining to sugar cane purchased in earlier years. The judgment and order of the High Court is set aside and the writ petition is dismissed. [765 D-E]

2. The Sugar Undertakings (Taking over of Management) Ordinance, 1978 was replaced by the Sugar Undertakings (Taking over of Management) Act, 1978. An analysis of the provisions of the Ordinance, and of the Act which replaced it, indicates that the principal purpose of the legislation is to put mismanaged sugar undertakings into proper functioning order by empowering the Central Government to assume the temporary management of the undertakings. [761 E; 763 H - 764 A]

3. The legislation indicates two kind of cases evidencing mismanagement. One is the failure of the undertaking to commence the manufacture of sugar on or before the appointed day in the sugar year, or where the sugar undertaking, having started the manufacture of sugar

on or before that date, has ceased to manufacture sugar before the expiry of the average period of manufacture of sugar. (Clause (a) of sub-section (1) of section 3). The other is the case where the sugar undertaking has accumulated arrears of cane dues upto a date in a sugar year to the extent of more than ten per cent of the total price of the cane purchased during the immediately preceding sugar year. (Clause (b) of sub-section (1) of section 3). The two cases merely provide evidence from which a presumption can be drawn that the sugar undertaking is in distress. [764 B-C]

4. The action intended under the legislation is intended to serve more than the object of recovering arrears of cane dues. If the object of recovering arrears of cane dues alone was the purpose to be achieved, there was already sufficient provision in existing statutes such as the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, which by section 17 thereof provides for the recovery of arrears of cane dues. The impugned Ordinance and Act cannot be considered at par with the statutes providing merely for the recovery of arrears of cane dues. The object of the legislation covers a wider range of purpose. [764 G 765 A]

5. The permissible limit of arrears of cane dues provided for in cl.(b) of sub-section (a) of section 3 merely constitutes a standard for determining whether the arrears of cane dues fall

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within the permissible limit or have exceeded it. It does nothing more than that. It cannot be extended as a criterion or determining whether the arrears of cane dues should be confined to the sugar purchased during the instant sugar year or can include also the arrears in relation to sugar purchased during an earlier sugar year. [765 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 162 of 1979.

From the Judgment and Order dated 19.12.1978 of the Allahabad High Court in Writ Petition No. 2774 of 1978.

M.S. Gujaral, Dalveer Bhandari and R. N. Poddar for the Appellant.

Anil Kumar Gupta and Brij Bhushan Sharma for the Respondent.

The Judgment of the Court was delivered by PATHAK, J. This appeal by special leave is direct against the judgment and order of the Allahabad High Court allowing a writ petition and quashing an order made by the Central Government under cl.(b) of sub-para (2) of para 3 of the Sugar

Undertakings (Taking over of Management) Ordinance, 1978 and a consequential order issued under sub- para (4) of para 4 of the Ordinance.

The respondent company manufactures sugar from sugar cane. On November 18, 1978 the Central Government issued a notice under sub-para (1) of para 3 of the Sugar Undertakings (Taking over of Management) Ordinance, 1978 (hereinafter referred to as the "Ordinance") stating as on November 15, 1978 the respondent was in arrears of cane dues in relation to the cane purchased before that date for the purpose of its sugar undertaking to the extent of more than ten per cent of the total price of the cane purchased by it during the immediately preceding "sugar year", the total arrears being 475.99 lacs, and that as the Central Government was satisfied that the effective functioning of the sugar undertaking was necessary for the purposes of the said Ordinance, the Central Government called upon the respondent to explain in writing the circumstances in which the sugar undertaking had failed to clear the arrears of cane dues and why the undertaking should not be taken over by the Central Government under that Ordinance. On November 25, 1978 the respondent replied to the notice denying that it was in arrears to the extent of Rs. 475.99 lacs and claimed the right to tender oral and documentary evidence on a date fixed for the hearing of the case. However, the Central Government issued an Order S.O. 696 (E) dated December 1, 1978 reciting that it was satisfied after considering the report sent by the respondent that the arrears of cane dues in excess of ten per cent had not been cleared by the respondent, and directing that the management of the sugar undertaking would vest in the Central Government for a period of three years commencing on and from December 2, 1978.

The respondent filed a writ petition in the Allahabad High Court, and on December 19, 1978 the High Court allowed the writ petition holding that while the Central Government could take action in respect of the arrears due in respect of sugar cane purchased during the current "sugar year"

(that is to say, the sugar year during which the action is taken) it could not do so in respect of the arrears pertaining to a preceding sugar year, and therefore the impugned orders were invalid. The order dated December 1, 1978 and the consequential order were quashed and the appellant was directed to hand over possession of the sugar undertaking to the respondent.

The Ordinance has since been replaced by the Sugar Undertakings (Taking over of Management) Act, 1978 which while repealing the Ordinance adopts everything done or action taken under the Ordinance as if it had been done or taken under the corresponding provisions of the Act.

The Preamble of the Sugar Undertakings (Taking over of Management) Act, 1978 (hereinafter referred to as the "Act") recites that for "maintaining the continuity of production of sugar, for avoiding undue hardship to cane producing farmers and to best subserve the interest of all sections of the people, it is expedient in the public interest to provide for the taking over for a limited period the management of every sugar undertaking which fails or ceases to manufacture sugar or which fails to pay promptly amounts due for the cane acquired for the purposes of the undertaking." Sub-s. (1) of s.3 of the Act provides :-

"3.(1) Where the Central Government is satisfied -

(a) that any sugar undertaking has in any sugar year failed to commence the manufacture of sugar on or before the appointed day in respect of that year, or having started the manufacture of sugar on or before that day ceased to manufacture sugar before the expiry of the average period of manufacture of sugar in relation to that undertaking; or

(b) that on any date in any sugar year any sugar undertaking has, in relation to the cane purchased before that date for the purposes of the undertaking, arrears of cane dues to the extent of more than ten per cent of the total price of the cane purchased for the purposes of the undertaking during the immediately preceding sugar year; and

(c) that in either case the effective functioning of the undertaking is necessary for the purposes of this Act, the Central Government may issue a notice in such form and in such manner as may be prescribed to the owner or the manager of such sugar undertaking calling upon such owner or manager to report in writing within such time, not being less than five days, as may be specified in the notice, the circumstances under which such undertaking has so failed to commence or ceased to manufacture sugar or, as the case may be, clear the said arrears of cane dues and to show cause as to why the management of such undertaking should not be taken over by the Central Government under this Act."

And sub-s. (2) of s. 3 reads :-

"(2) As soon as may be, after the receipt of the report under sub-section (1) from the sugar undertaking, or where the sugar undertaking has failed to make such report within the time specified in the notice to that undertaking under sub-section (1), after the expiry of such time, the Central Government may make such further inquiry (if any) as it may be deem fit and -

(a) if the Central Government is satisfied that having regard to all the circumstances of the case and the purposes of this Act that it would be expedient to give further time to the undertaking to enable it to commence or resume production of sugar or, as the case may be, clear the arrears of cane dues, it may, by order in writing, specify the date on or before which and the manner in which such undertaking shall commence or resume production of sugar or, as the case may be, clear the said arrears of cane dues; or

(b) if the Central Government is not satisfied as provided in clause (a), declare by notification that the management of such undertaking shall vest in the Central Government on and from such date as may be specified in such notification."

The expression "sugar year" has been defined by cl.(g) of s.2 of the Act to mean "the period of twelve months commencing on the 1st day of October and ending with the 30th day of September next following". Sub-s.(5) of s.3 of the Act provides that a notification issued under sub-s.(2) for vesting the management of a sugar undertaking in the Central Government shall be in force for such period not exceeding three years from the date of vesting as may be specified in the notification and that although such period may be extended the total period for which the management may remain vested in the Central Government should in no case exceed three years from the date of vesting.

From the facts set out before the High Court it appears that the management of the undertaking had been taken over on the ground that the respondent had not paid in full the price of the sugar cane purchased before November 15, 1978, and that included the sugar cane purchased during the sugar year 1977-78, and the arrears so due were more than ten per cent of the total price of the cane purchased during the sugar year 1977-78. It was contended by the respondent that the arrears of cane price for the sugar year 1977-78 could not be a ground for making the impugned order. It was urged that cl.(b) of sub-para (2) of para 3 of the Ordinance on a proper construction thereof, empowered the Central Government to initiate action for assuming the management of the undertaking only if the arrears of cane purchased during the period from the commencement of the sugar price were due for sugar cane year 1978-79 to November 15, 1978 which period would fall within the sugar year 1978-79. The contention found favour with the High Court, and it granted relief on the writ petition.

It is apparent from an analysis of the provisions of the Ordinance and thereafter the Act which replaced it, that the principle purpose of the legislation is to put mismanaged sugar undertakings into proper functioning order by empowering the Central Government to assume the temporary management of the undertakings. The legislation indicates two kind of cases evidencing such mismanagement. One is the failure of the undertaking to commence the manufacture of sugar on or before the appointed day in the sugar year or where the sugar undertaking, having started the manufacture of sugar on or before that day, has ceased to manufacture sugar before the expiry of the average period of manufacture of sugar. Vide cl.(a) of sub-s.(1) of s.3. The other is the case where the sugar undertaking has accumulated arrears of cane dues upto a date in a sugar year to the extent of more than ten per cent of the total price of the cane purchased during the immediately preceding sugar year. Vide cl.(b) of sub-s.(1) of s.3. The two cases merely provide evidence from which a presumption can be drawn that the sugar undertaking is in distress. In both cases the statute further requires that the Central Government should be satisfied that the effective functioning of the undertaking is necessary for the purposes of the Act, that is to say, for maintaining the continuity of the production of sugar, for avoiding undue hardship to cane producing farmers and far best subserving the interests of all sections of the people. Vide cl.(c) of sub-s.(1) of s.3. In other words, what the legislation intends is that where a sugar undertaking has been so mismanaged that either the undertaking has failed to commence the manufacture of sugar in the sugar year, or having commenced manufacture has ceased to carry it on during the sugar year, or has accumulated arrears of cane dues in excess of the prescribed standard, then in all these cases it must further be determined whether the effective functioning of the undertaking is necessary for the purposes mentioned earlier, and only upon being so satisfied can the Central Government assume the temporary management of the undertaking. It takes over the undertaking temporarily in order to

put it back on the rails after removing the aberrations and shortcomings responsible for the mismanagement and restoring the undertaking to a normal condition of effective functioning. The action intended under the legislation is intended to serve more than the object of recovering the arrears of cane dues. If the object of recovering arrears of cane dues alone was the purpose to be achieved, there was already sufficient provision in existing statutes such as the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, which by s.17 thereof provides for the recovery of arrears of cane dues. The impugned Ordinance and Act cannot be considered at par with statutes providing merely for the recovery of arrears of cane dues. As has been explained earlier, the object of the legislation covers a wider range of purpose.

The argument of the respondent before the High Court was that the permissible limit of arrears of cane dues had been defined as ten per cent of the total price of the cane purchased during the immediately preceding sugar year, and this, it was said, required the court to confine the arrears of cane dues to the cane purchased between the commencement of the instant sugar year and the date in the sugar year when cognizance of the matter was taken. We are not satisfied that cl.(b) of sub-s.(a) of s.3 should be so limited. The permissible limit merely constitutes a standard for determining whether the arrears of cane dues fall within the permissible limit or have exceeded it. It does nothing more than that. It cannot be extended as a criterion for determining whether the arrears of cane dues should be confined to the sugar purchased during the instant sugar year or can include also the arrears in relation to sugar purchased during an earlier sugar year. The language of the clause is clear. It speaks of arrears of cane dues in relation to the cane purchased "before that date". It seems to us that the language is wide enough to include all the arrears of cane dues accumulated upto "that date", including the arrears pertaining to sugar cane purchased in earlier years.

In the results, the appeal is allowed, the judgment and order dated December 10, 1978 of the High Court is set aside and the writ petition is dismissed. As the point is one of first impression, there is no order as to costs.

N.V.K.

Appeal allowed.