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KISAN SAHKARI CHINI MILLS LTD. AND ORS.

v.

VARDAN LINKERS AND ORS.

(Civil Appeal No. 5543 of 2004)

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APRIL 15, 2008

[R.V. RAVEENDRAN & LOKESHWAR SINGH PANTA, JJ.]

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Constitution of India, 1950 – Art.226 – Writ Petition – In regard to contractual dispute – High Court allowed writ petition and quashed order of the Secretary (Sugar), whereby order of the Assistant Cane Commissioner, granting permission to First Respondent to lift 85,000 quintals of molasses from the five sugar mills in question at a price of Rs.127/- per quintal, was cancelled – Challenge to – Held: On facts, the order of Assistant Cane Commissioner could not be considered to be a contract for supply of 85,000 quintals of molasses to First Respondent – There was no material before the High Court to assume or come to the conclusion that there was a concluded contract – Cancellation order passed by the Secretary (Sugar) was fully justified and in public interest – No justification for the High Court to invoke the principles of legitimate expectation, estoppel, acquiescence and principle of part performance to make out a contract, where none existed or to give directions to the five independent sugar mills to supply huge quantities of molasses to First Respondent without any contract at an admittedly low price of Rs.127/- per quintal – Administrative Action – Judicial Review – Scope.

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Contract – Breach of – Remedy – Held: Remedies for breach of contract being purely in the realm of contract are dealt with by Civil Courts – Public law remedy, by way of a Writ Petition under Art.226 of the Constitution, is not available to seek damages for breach of contract or specific performance of contract – However, where contractual dispute has a public law element, power of judicial review under Art.226 of the

Constitution may be invoked – Constitution of India, 1950 – A
Art. 226.

Sale of molasses produced by the six State controlled sugar mills in the State of Uttaranchal was controlled through the Molasses Sales Committee constituted by the State Government. Tender notice was issued inviting offers for purchase of molasses produced by five State controlled sugar mills from “bona fide consumers” outside the State. First Respondent, a proprietary concern in the State of Uttar Pradesh, submitted tender for purchase of molasses from one sugar mill. It did not make any offer for purchasing molasses from the other four mills. As prices offered by the tenderers were found to be very low, the Assistant Cane Commissioner held negotiations with them. During negotiations, First Respondent purportedly offered to purchase the entire stock of molasses of the five sugar mills at price of Rs.127/- per quintal. The Assistant Cane Commissioner passed order dated 26-3-2004, permitting the First Respondent to lift a total quantity of 85,000 quintals of molasses from the five sugar mills by 31-05-2004 at a price of Rs.127/- per quintal. Around that time, the State Government received several reports that the prevailing price of molasses was much higher. Finding serious irregularities in the order dated 26-3-2004 issued by the Assistant Cane Commissioner, the Secretary (Sugar) passed order dated 8-4-2004, staying operation of the order dated 26-3-2004 passed by the Assistant Cane Commissioner.

First Respondent challenged the decision by filing writ petition in High Court praying *inter alia* to issue directions to the appellants (the State Government, Controller of Molasses, Molasses Sale Committee and the five Sugar Mills) to continue the supply of molasses to him so that the entire allotted quantity of 85,000 quintals could be lifted on or before 31-5-2004. It contended that

- A the order dated 26-3-2004 was in pursuance of a concluded contract for sale of molasses and therefore the decision of staying the operation of the allotment letter was invalid and illegal. High Court, in the meanwhile, issued an interim direction to the State Government to hold inquiry in the matter. Accordingly, the Secretary (Sugar) held inquiry and after giving hearing to First Respondent passed a detailed order dated 24-4-2004, holding that there was no valid contract for supply of molasses to First Respondent and therefore the order dated 26-3-2004 issued by the Assistant Cane Commissioner was without any authority and consequently cancelled the same. According to the Secretary (Sugar), the order dated 26-3-2004 was a result of the collusion between First Respondent and the Assistant Cane Commissioner and the District Magistrate.
- D Thereafter, First Respondent amended the writ petition and included a prayer 'for quashing the order of cancellation dated 24-4-2004', contending that the cancellation order was illegal and arbitrary. High Court allowed the amendment and thereafter quashed the order dated 24-4-2004 passed by the Secretary (Sugar). It held that there was a concluded contract between the five sugar mills and the first respondent for sale of 85,000 quintal of molasses at a price of Rs.127/- per quintal and having regard to the doctrines of part performance, legitimate expectation, estoppel and acquiescence, cancellation of the order dated 26-3-2004 issued by the Assistant Cane Commissioner was unsustainable and the First Respondent was entitled to lift the entire quantity of 85,000 quintal (less 7,465.9 quintal already lifted).
- G In appeals to this Court, two questions arise for consideration i.e. (i) Whether the High Court was right in concluding/assuming that there was a valid contract and (ii) Whether the High Court was justified in quashing the cancellation order dated 24-4-2004 passed by Secretary, (Sugar).
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Allowing the appeals, the Court

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HELD:1. Ordinarily, the remedy available for a party complaining of breach of contract lies for seeking damages. He will be entitled to the relief of specific performance, if the contract is capable of being specifically enforced in law. The remedies for a breach of contract being purely in the realm of contract are dealt with by Civil Courts. The public law remedy, by way of a Writ Petition under Article 226 of the Constitution, is not available to seek damages for breach of contract or specific performance of contract. However, where the contractual dispute has a public law element, the power of judicial review under Article 226 of the Constitution may be invoked. [Para 15] [552-E, F, G]

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Divisional Forest Officer v. Bishwanath Tea Co. Ltd. (1981) 3 SCC 235; State of Gujarat v. M. P. Shah Charitable Trust (1994) 3 SCC 552; Mahabir Auto Stores v. Indian Oil Corporation (1990) 3 SCC 752 and Veriyamto Naveen v. Government of Andhra Pradesh (2001)8 SCC 344 – referred to.

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2.1. If the dispute was considered as purely one relating to existence of an agreement, that is, whether there was a concluded contract and whether the cancellation and consequential non-supply amounted to breach of such contract, the first respondent ought to have approached the Civil Court for damages. On the other hand, when a writ petition was filed in regard to the said contractual dispute, the issue was whether the Secretary (Sugar), had acted arbitrarily or unreasonably, in staying the operation of the allotment letter dated 26-3-2004 or subsequently cancelling the allotment letter. In a civil suit, the emphasis is on the contractual right. In a writ petition, the focus shifts to the exercise of power by the authority, that is whether the order of cancellation dated 24-4-2004 passed by the Secretary (Sugar), was

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- A arbitrary or unreasonable. The issue whether there was a concluded contract and breach thereof becomes secondary. In exercising writ jurisdiction, if the High Court found that the exercise of power in passing an order of cancellation was not arbitrary and unreasonable, it should
- B normally desist from giving any finding on disputed or complicated questions of fact as to whether there was a contract, and relegate the petitioner to the remedy of a civil suit. [Para 17] [555-B, C, D, E, F]

- 2.2. Even in cases where the High Court finds that
- C there is a valid contract, if the impugned administrative action by which the contract is cancelled, is not unreasonable or arbitrary, it should still refuse to interfere with the same, leaving the aggrieved party to work out his remedies in a Civil Court. In other words, when there
- D is a contractual dispute with a public law element, and a party chooses the public law remedy by way of a writ petition instead of a private law remedy of a suit, he will not get a full fledged adjudication of his contractual rights, but only a judicial review of the administrative action. The
- E question whether there was a contract and whether there was a breach may, however, be examined incidentally while considering the reasonableness of the administrative action. But where the question whether there was a contract, is seriously disputed, the High Court
- F cannot assume that there was a valid contract and on that basis, examine the validity of the administrative action. [Para 17] [555-F, G; 556-A, B]

- 2.3. In this case, the question that arose for consideration in the writ petition was whether the order
- G dated 24-4-2004 passed by the Secretary (Sugar), cancelling the allotment letter dated 26-3-2004 was arbitrary and irrational or violative of any administrative law principles. The question whether there was a concluded contract or not, was only incidental to the
- H question as to whether cancellation order dated 24-4-2004

by the Secretary (Sugar), was justified. As the case involved several disputed questions in regard to the existence of the contract itself, the High Court ought to have referred the first respondent to a Civil Court. But the High Court in exercise of its writ jurisdiction, proceeded as if it was dealing with a pure and simple civil suit relating to breach of contract. When certain disputed facts cropped up, the High Court adopted a strange procedure of calling the General Managers of two Sugar Mills and putting some questions to them and recording their statements. [Para 18] [556-C, D, E, F]

2.4. Before a Court can record a finding as to whether there is a contract, it has to find out who are the parties to the contract, when and what was the offer, whether there was an acceptance, and whether the offer and acceptance were valid. None of these were addressed nor answered by the High Court. [Para 19] [557-C, D]

2.5. The case of first respondent is that there was a concluded contract - that is acceptance of his offer on 3.3.2004, when the negotiations took place. But in the writ petition, the first respondent alleged that the contract was concluded when the letter dated 26-3-2004 was issued by the Assistant Cane Commissioner permitting him to lift 85,000 quintals of molasses and the said letter dated 26-3-2004 was a 'agreement' between the parties. This ambiguity as to whether the contract came into existence on 3.3.2004 or 26-3-2004 was not even referred to by the High Court in the impugned order. [Para 20] [558-A, B, C]

2.6. The tender notice made it clear that only bona fide consumers (that is, actual users) could make the offer. Admittedly, the first respondent did not have a distillery or manufacturing unit and was not a 'consumer' of molasses. He was a transport contractor. Even the allotment letter dated 26-3-2004 shows that the first respondent was not the 'consumer - purchaser'. Therefore, first respondent could not be the purchaser.

- A Patiala Distillers and Chandigarh Distillers, who were shown as the persons who will take deliveries in the letter dated 26-3-2004, did not make any offer. Nor was any offer made on their behalf. There was no acceptance addressed to them. There was no agreement or contract with them. They did not seek delivery nor did they join the first respondent as petitioners in the writ petition. They were not therefore the 'purchasers'. If neither first respondent, nor Patiala Distillers/Chandigarh Distillers could be the purchaser, the question as to who was the bona fide consumer who could claim performance, remains unanswered. [Para 21] [558-C, D, E, F, G]

- 2.7. The tenders were invited for sale of molasses by five independent sugar mills. The tenderers were required to pay Rs.1,00,000/- as earnest money, in respect of each sugar mill from which the tenderer intended to purchase molasses. The five sugar mills were different legal entities. Though the tender notice was common, the tenderers were required to make separate offers in regard to molasses to be purchased from each sugar mill showing the quantity which they wanted to purchase from each sugar mill and the price which they were willing to pay and also to pay separate earnest money deposit. The first respondent did not make any offer except in the case of Nadehi Sugar Mill, even that was not accompanied by the earnest money deposit. He claims to have made an endorsement in the tender form on 3.3.2004, that if his rate was accepted, he was ready to lift the entire quantity of molasses from the five factories. But neither the original offer nor the alleged extension of the offer on 3.3.2004 was accompanied by any earnest money deposit. There was therefore no valid offer as on 3.3.2004. Nor was there any acceptance by the Molasses Sales Committee or any of the sugar mills on 3.3.2004. There was also no acceptance even by the three Members of the Molasses Sales Committee on 3.3.2004. This is evident from the fact that after the negotiations meeting, a report was submitted

by the Three Members of the Committee to the Chairman referring to the offer of first respondent seeking his approval for their proposal to sell the molasses of the other Mills to the first respondent. Therefore, it could not be said that there was a concluded or binding contract for sale or supply of molasses by any of the five mills on 3.3.2004. [Para 22] [558-G; 559-A, B, C, D, E, F]

2.8. The First Respondent did not make any offer in the prescribed form of tender in regard to the molasses of the other four mills (Gadarpur, Doiwala, Sitarganj and Kitcha). On 3.3.2004 when negotiations were held between the first respondent and three members of the Committee, the first respondent appears to have expressed his interest to purchase the molasses of all the mills at a price of Rs.127/- per quintal and made an endorsement to that effect in his tender form. First respondent claims to have paid Rs.4,00,000/- as earnest money deposit in respect of four mills under cover of letter dated 10.3.2004. But thereafter there was no meeting of the Molasses Sales Committee nor any acceptance of first respondent's offer. Neither the act of putting up a proposal by the Assistant Cane Commissioner or the District Magistrate for consideration by the Chairman of the Molasses Sales Committee nor the alleged approval of the recommendation for sale by the Chairman of the Molasses Sales Committee will lead to a binding contract as there was no decision by Molasses Sales Committee to accept the offer. Therefore, on this count as well, there was no concluded contract. [Para 23] [559-F, G; 560-A, B, C]

2.9. The first allotment by the Assistant Cane Commissioner was on 15.3.2004 permitting the first respondent to lift 5000 quintals from Nadehi Mills at Rs.127/- per quintals. This was wholly illegal as it was not in pursuance of any concluded contract and as first respondent was not a bona fide consumer. The first respondent submitted the authorization letter from the

A Patiala Distillers and the Chandigarh Distillers only on
14.3.2004. If there was already a concluded contract with
the first respondent on 3.3.2004, there could not have been
any change in the contract by submitting an authorization
letter from Patiala Distillers and Chandigarh Distillers on
B 14.3.2004. There was also no correspondence or
negotiations subsequent to 3.3.2004 to show that any
contract was concluded in favour of Patiala Distillers or
Chandigarh Distillers. Therefore, when the letter dated
26-3-2004 was issued by the Assistant Cane
Commissioner authorizing the first respondent to lift
C 85,000 quintals of molasses it was not in pursuance of
any concluded contract but was unilateral unauthorized
act on the part of the Assistant Cane Commissioner
which would not bind the State Government. [Para 24]
[560-C, D, E, F]

D 2.10. The tender notice clearly specified that only
bona fide consumers could make an offer. In his tender,
the first respondent claimed that he was making an offer
as a bona fide consumer, that is, as an actual user of
molasses. The tender did not mention that he was making
E the offer as an agent of other consumers nor did he
disclose the names of any consumers on whose behalf
he was making the offer. He merely made a vague and
sweeping statement that he will lift molasses in favour of
distilleries of U.P., Punjab and Haryana. This showed that
F he was not acting for any specific principal. Further having
regard to the requirement that sale will be only to bona
fide consumers, the offer ought to have disclosed the
names of the Principal and his authority to make the offer
on their behalf, if he was making an offer on behalf of
G anyone else. Further, the required Certificate from the
Excise Commissioner/Controller of Sugar that the
purchaser was a bona fide consumer, ought to have
been enclosed. For all these reasons, therefore, there
could not be any valid contract with first respondent.
H [Para 25] [560-G; 561-A, B, C]

2.11. The order dated 25.3.2003 constituting the Molasses Sales Committee made it clear that molasses could be sold only by the said Committee. This meant that the Molasses Sales Committee would identify and decide upon the purchaser, as also the terms of sales including the price. But the Molasses Sales Committee by itself was not the seller but only the authority entrusted with the task of finalizing the sales and the seller were the sugar mills themselves. The Committee consisted of nine members with Commissioner of Kumaon Mandal as Chairman, the District Magistrate, Udham Singh Nagar and the General Managers of the six sugar mills as members and the Assistant Cane Commissioner, Udham Singh Nagar, as the Member-Secretary. The nine members of the Committee were not present either on 1.3.2004 when the tenders were opened or on 3.3.2004 when the alleged negotiations were held. The tenders were opened on 1.3.2004 by the Assistant Cane Commissioner, who was the Secretary of the Committee. No meeting of the Committee had been called on 3.3.2004. The persons who were present in the alleged negotiation meeting were the District Magistrate, Udham Singh Nagar and only the General Manager of Godarpur Sugar Mills, apart from the Member-Secretary. The General Managers of other four mills were not present nor was the Chairman of the Committee present. Three members did not constitute the quorum for the Committee. Nor did the Committee authorize three members to finalise the sale of molasses. It cannot therefore, be said that the negotiations held on 3.3.2004 were held by the Molasses Sales Committee or authorized members of the said Committee. In fact, the Molasses Sales Committee never considered the offer of first respondent, nor accepted its offer. [Para 26] [561-C, D, E, F, G; 562-A, B]

2.12. The communication dated 26-3-2004 from the Assistant Cane Commissioner to the first respondent

A whereby and whereunder the first respondent was permitted to lift 85,000 quintals of molasses from the five sugar mills, did not refer to any decision by the Molasses Sales Committee to sell molasses to the first respondent. It referred only to the negotiations held on 3.3.2004 and
B stated that "on the approval of Commissioner, Kumaon Mandal", first respondent was permitted to lift 85,000 quintals of molasses. The Commissioner, Kumaon Mandal was not the authority empowered to effect the sale of molasses. In the absence of any contract under which
C the five sugar mills agreed to sell 85,000 quintals in all to the first respondent at a price of Rs.127 per quintal, the question of Assistant Cane Commissioner permitting the first respondent to lift 85,000 quintals of molasses did not arise. The letter dated 26-3-2004 sent by Assistant Cane
D Commissioner cannot therefore, be considered to be a contract for supply of 85,000 quintals of molasses to the first respondent. Thus, there was no material before the High Court to assume or come to the conclusion that there was a concluded contract for supply of 85,000 quintals of molasses. [Paras 27, 28] [562-C, D, E, F, G]

E 3.1. The order dated 24-4-2004, passed by the Secretary (Sugar) holding that the first respondent did not have any valid contract for supply of molasses and it had no right to enforce the letter dated 26-3-2004 issued by
F the Assistant Cane Commissioner was perfectly valid and justified. The decision of the Secretary, Sugar that there was no concluded contract for sale of any molasses in favour of first respondent or his nominee is correct and does not suffer from any infirmity or
G perversity. [Para 29] [563-A, B]

H 3.2. The first respondent does not dispute that 70% of the molasses were earmarked for supply to distilleries and chemical factories in the State of Uttaranchal and 10% for manufacturers of country-liquor in the State and only 20% was earmarked for use by bona fide consumers, that

is distilleries and chemical factories outside the State. The price at which 70% is sold to the distilleries and chemical factories within the State will normally be less than the price at which 20% is sold to distilleries or chemical factories outside the State. The tenders were invited in regard to the quota earmarked for bona fide consumers where distilleries and chemical factories outside the State could participate. In spite of it, the District Magistrate, Udham Singh Nagar, prepared a note for the attention of the Chairman of the Committee wherein he referred to the price of Rs.117/- per quintal at which molasses were being sold to IGL which was a distillery within the State covered by 70% local quota, to justify the sale of molasses to the first respondent under 20% outside quota though it was not a bona fide consumer at a price of Rs.127/- per quintal. The note neither mentioned the fact of the quantities to be sold nor the fact that the first respondent had not produced any certificate either from the Cane Commissioner or from the Excise Department to show that it was a bona fide consumer of molasses. [Para 30] [563-C, D, E, F, G]

3.3. The first respondent is a proprietary concern carrying on transport business at Bijnor in the State of Uttar Pradesh but the tender was submitted by the first respondent in the name and style of "Vardan Linkers, Bijnor being bona fide consumer registered industrial unit." The note added at the end of the tender stated that "we shall lift molasses in favour of distillery of UP, Punjab and Haryana". If first respondent was to lift the molasses for other units, it was admittedly not a bona fide consumer. Only on 14.3.2004, the first respondent produced authorization letters showing him as authorized agent of Patiala Distillers and Manufacturers Ltd., Patiala and Chandigarh Distillers and Bottlers Ltd., Patiala. On the basis of those letters, the first respondent requested for delivery of 45000 quintals (that is 15000 quintals each from

A Nadehi, Gadarpur and Doiwala Sugar Mills) to Patiala
Distillers and 40,000 quintals (15,000 quintals from
Sitarganj Mills and 25,000 quintals from Kiccha Mills) to
Chandigarh Distillers. Though the tender was opened on
1.3.2004, the first respondent did not disclose till 14.3.2004
B that he was submitting the tender on behalf of the above
said two distillers in the State of Punjab. Thus, it was clear
that the offer was made not by first respondent as a bona
fide consumer but as a non-consumer trader. Therefore,
there was no valid offer at all by the first respondent. The
C Assistant Cane Commissioner was fully aware that first
respondent was not a bona fide consumer, he was also
aware of the prevailing sale prices in regard to molasses
to be sold to bona fide consumers outside the State at
much higher prices than what was offered by first
D respondent, and also of the fact that the price for the sale
of molasses to consumers within the State was much less
than the rate for sale of molasses to bona fide consumers
outside the State, he proceeded to negotiate with the first
respondent taking only one more member (District
Magistrate) into confidence. [Para 31] [563-G; 584-A-G]
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3.4. The manner in which the entire matter was
proceeded with, showed collusion between the first
respondent on one hand and the District Magistrate,
Udham Singh Nagar and the Assistant Cane
F Commissioner, Udham Singh Nagar on the other hand,
to dispose of large quantities of valuable molasses at a
throw-away price without proper negotiations and without
valid authority from the Molasses Sales Committee to a
party who was not entitled to purchase molasses as a
G bona fide purchaser. [Para 31] [564-G, 585-A]

3.5. The various serious irregularities were noticed
by the Secretary (Sugar) in his detailed and reasoned
order dated 24-4-2004 and resultantly, he directed
cancellation of the letter dated 26-3-2004 issued by the
H Assistant Cane Commissioner which permitted the first

respondent to lift 85,000 quintal of molasses from five mills. A
He also held that there was no valid contract. In the facts
and circumstances, it is not legally possible to hold that
the order dated 24-4-2004 was either arbitrary or
unreasonable or mala fide. It was fully justified and in
public interest. If the order dated 24-4-2004 did not suffer B
from an infirmity which required correction by application
of principles of Administrative Law, the High Court ought
not to have interfered with it. There was, apparently, no
justification for invoking the principles of legitimate
expectations, estoppel, acquiescence and principle of part C
performance to make out a contract, where none existed
or to give directions to five independent sugar mills to
supply huge quantities of molasses to first respondent
without any contract at an admittedly low price of Rs.127/
- per quintal. [Para 32] [565-A, B, C, D, E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5543
of 2004.

From the Judgment and Order dated 28.7.2004 of the High
Court of Uttaranchal at Nainital in W.P. No. 318 (M/B) of 2004

WITH

Civil Appeal No. 5544-5545 of 2004.

A.S. Rawat, A.A.G., Uttaranchal, U.K. Uniyal, Sudhanshu
Dhulia, Sobhit Saharia, Dinesh Kumar Garg, J.K. Bhatia, B.N.
Jha, R.C. Kaushik, R.D. Upadhyay, Ramesh Saraf, Yashpal
Bharti and Vinay Garg for the appearing parties.

The Judgment of the Court was delivered by

LOKESHWAR SINGH PANTA, J. These appeals by
special leave filed by Kisan Sahkari Chini Mills Limited,
Sitarganj, Gadarpur and Nadehi [Civil Appeal No. 5543/2004],
State of Uttaranchal [Civil Appeal No. 5544/2004], and Doiwala
Sugar Company Limited and Kichha Sugar Company Limited
[Civil Appeal No. 5545/2004] are directed against the final

- A judgment and order dated 28-7-2004 passed by the Division Bench of the High Court of Uttaranchal in Writ Petition No. 318/2004 filed by Vardan Linkers, a proprietary concern of B.B. Singh, first respondent in these appeals. By the impugned judgment, the High Court allowed the said writ petition and quashed the order dated 24.4.2004 of the Secretary, Cane Development and Sugar Industries, whereby the order dated 26.03.2004 of the Assistant Cane Commissioner, Udham Singh Nagar, granting permission to the first respondent to lift 85,000 quintals of molasses from the five sugar mills at a price of Rs.127/- per quintal was cancelled.

Factual Background :

2. It is stated that there are six State controlled sugar mills in the State of Uttaranchal, which produce molasses as a by-product. Of them; two mills - Doiwala Sugar Company Limited and Kichha Sugar Mills Limited - are Government Companies. The other four are in the co-operative sector, namely, Kisan Sahkari Chini Mills Limited at Nadehi, Gadarpur, Sitarganj and Bhajpur. Sale of molasses produced by these six sugar mills was controlled through the Molasses Sales Committee constituted by the State Government vide order dated 25.3.2003, with the following nine Members:

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|-------|--|-------------|
| (i) | Commissioner, Kumaon Mandal, Nainital | - Chairman |
| (ii) | District Magistrate, Udham Singh Nagar | - Member |
| (iii) | Six General Managers of the four Cooperative Sugar Mills and two Sugar Companies | - Members |
| (iv) | Assistant Cane Commissioner, Udham Singh Nagar | - Secretary |

- The said order made it clear that molasses of the six sugar mills shall be sold only through the said Committee. The State

Government policy at the relevant time required molasses produced by these sugar factories to be disposed in the following manner: 70% to distilleries and chemical factories in the State; 10% to manufacturers of country liquor within the State; and 20% to *bona fide* consumers (distilleries and chemical industries). No allottee who got allotment as a *bona fide* consumer could transfer the allotment to anyone else.

3. The Kisan Sahkari Chini Mills Limited, Gadarpur, issued a tender notice (published in *Amar Ujala* dated on 23.2.2004) inviting offers from *bona fide* consumers for purchase of 'B' grade molasses produced by five sugar mills at Gadarpur, Nadehi, Sitarganj, Doiwala and Kiccha. Tenderers were required to submit their tenders to the Assistant Cane Commissioner, Udham Singh Nagar, specifying the name of the Sugar Mills from which he wanted to purchase molasses and the quantity. The tender had to be accompanied by an earnest money of Rs.1,00,000/- in respect of each sugar mill from which the tenderer wanted to buy molasses.

4. In response to the tender notice, first respondent and others submitted their tenders, which were opened on 1.3.2004 at 3.30 PM by the Assistant Cane Commissioner, Udham Singh Nagar, in the presence of the General Manager, Gadarpur, the Purchase Clerk of Sitarganj Mills and Molasses Clerk of Nadehi Mills. The first respondent's tender was for purchase of 15,000 quintals of molasses from Kisan Sahakari Chini Mills Limited, Nadehi, at a price of Rs.101/- per quintal. The said offer contained a note to the effect that "we will lift molasses in favour of distilleries of UP, Punjab and Haryana". The first respondent did not enclose any earnest money with the tender, but stated that a sum of Rs.1,00,000/- was already deposited with the Nadehi Sugar Mill. The first respondent did not make any offer for purchasing molasses from the other four mills. As the prices offered by the tenderers were found to be very low, negotiations were held by the Assistant Cane Commissioner with the tenderers on the same day. This was followed by further negotiations on 3.3.2004. At the time of negotiations on

- A 3.3.2004, only three members of the Molasses Sales Committee were present - District Magistrate, Udham Singh Nagar, General Manager, Gadarpur Sugar Mills and the Assistant Cane Commissioner, Udham Singh Nagar. The Chairman of the Molasses Sales Committee and the General Managers of the
- B five other sugar mills, were not present. The Chief Accountant of Sitarganj Mills was present. During negotiations, the first respondent increased its offer to Rs.119/- per quintal and again to Rs.127/- per quintal.

- C 5. The three members of the Committee, who were present (along with the Chief Accountant of Sitarganj Mills), submitted a Note dated 03.03.2004 to the Chairman of the Molasses Sales Committee, reporting that during negotiations, the first respondent had offered to purchase the entire stock of molasses of the five sugar mills at Gadarpur, Nadehi, Sitarganj, Kichha
- D and Doiwala at a price of Rs.127/- per quintal, though he had submitted the tender only for purchase of molasses of Nadehi sugar mill. It was also reported that the first respondent had assured payment of earnest money in respect of each of the four other mills, within seven days if his offer was accepted. The
- E report also stated that the price of Rs. 127/- per quintal offered by the first respondent was higher than the offer of the other tenderers - IGL (Rs.117/-) and Rampur Distillery (Rs.126/-). The Chairman was requested to make his recommendations for accepting the offer of first respondent. The Chairman of
- F Molasses Sales Committee made an endorsement 'Seen' on the said note on 3.3.2004. The District Magistrate, Udham Singh Nagar, made a note thereon to the effect, "Necessary orders may be issued today itself. Firm may deposit earnest money". The first respondent deposited Rs.4,00,000/- by bank drafts
- G under cover of letter dated 10.03.2004, towards earnest money for purchase of molasses of the sugar mills at Gadarpur, Sitarganj, Kichha and Doiwala.

- H 6. The Assistant Cane Commissioner, Udham Singh Nagar, *vide* letter dated 15.03.2004 permitted the first respondent to lift 5,000 quintals of molasses from Kisan Sahkari

Sugar Mill Ltd., Nadehi, at the rate of Rs.127/- per quintal within one month. A

7. The first respondent gave an undated letter to the District Magistrate, Udham Singh Nagar requesting allotment of 1,02,000 quintals of molasses of all five sugar mills. On this letter, the District Magistrate, Udham Singh Nagar made a note on 23.3.2004 instructing the Assistant Cane Commissioner to issue orders giving time till 31.5.2004 to take delivery. On the basis of the said request of the first respondent, the Assistant Cane Commissioner prepared an undated official note and sought approval from the District Magistrate for granting permission to the first respondent for lifting 15,000 quintals of molasses from each of the four sugar mills at Nadehi, Gadarpur, Sitarganj, and Doiwala and 25,000 quintals of molasses from Kichha Sugar Mill, in all 85,000 quintals, by 31.05.2004. The District Magistrate, Udham Singh Nagar, on 25.03.2004 made the following endorsement thereon: "Approved. The Commissioner has desired to issue orders". B C D

8. The Assistant Cane Commissioner, by letter dated 26.03.2004, addressed to the first respondent, informed him that on the approval of the Commissioner, Kumaon Mandal, he was permitted to lift a total quantity of 85,000 quintals of molasses from the five sugar mills by 31.05.2004 at a price of Rs.127/- per quintal. The said letter is extracted below : E

"M/s Vardan Linkers,
Bijnor (Uttar Pradesh)
Sir, F

With reference to the tender dated 1.3.2004 invited on behalf of Co-operative/Corporation Sugar Mills for selling export molasses and further with reference to the negotiations held on 3.3.2004, it is informed to you that on the approval of Commissioner, Kumaon Mandal, Nainital, you are hereby permitted to lift total 85000 quintals of molasses from the following sugar mills at the rate mentioned against the name of G H

A every sugar mill. You will have to lift the said molasses by 31.5.2004.

| S.N. | Name of Sugar Mill | Allotted (Per Qt.) | Rate | Name of firm |
|------|--------------------|--------------------|------|---|
| B 1. | Nadehi Co-op. | 15000 | 127 | Patiala Distillers & Manufacturers Ltd. |
| 2. | Gadarpur Co-op. | 15000 | 127 | Do |
| 3. | Doiwala Co-op. | 15000 | 127 | Do |
| C 4. | Sitarganj Co-op. | 15000 | 127 | Chandigarh Distillers & Bottlers Ltd. |
| 5. | Kiccha | 25000 | 127 | Do |

D In addition to the rates mentioned above you will have to pay excise duty, sales tax and other applicable taxes. You are also hereby informed that you will be bound by all the conditions mentioned in the tender form.

E Sd/- Assistant Cane Commissioner

Udham Singh Nagar

Copy to :

F General Manager/Executive Director of aforesaid Chini Mills with a request that they should grant necessary permission for lifting quantity of molasses mentioned against each Sugar Mill, after completing all formalities. The drafts towards the earnest money for all the sugar mills except Nadehi Sugar Mill have been received. The concerned sugar mills are requested to collect the draft regarding earnest money from the office.

G 9. Around that time, the State Government received several reports that the prevailing price of molasses was much higher. On 06.04.2004, M/s Associated Alcohols and Breweries H Limited, Jaipur and M/s. Jagjit Industries Limited, Kapurthala,

wrote letters to the District Magistrate, Udham Singh Nagar, offering to purchase molasses from the sugar mills of Kiccha, Sitarganj, Gadarpur, Nadehi and Doiwala at the rate of Rs.260/- and Rs.250/- per quintal respectively. M/s Uttar Pradesh Sahkari Sugar Mills Sangh Limited, Lucknow, informed the Government of Uttaranchal by a fax message that the stock of molasses lying at the co-operative sugar mills in the State of U.P. at Sarsawa, Bagpat and Morna Distilleries were sold to M/s. Chandigarh Distillers and Bottlers Limited on 8.4.2004 at the rate of Rs.300/- per quintal. Information was also received that molasses were being sold by the neighbouring private sector sugar mills in Uttaranchal at rates ranging from Rs.310/- to Rs.330/- per quintal. In view of it, the Additional Secretary, Cane Development and Sugar Industries submitted a report to the Secretary, Cane Development and Sugar Industries, (for short 'Secretary(Sugar)') referring to the irregularities in the proposal for supply of 85,000 quintals to first respondent and stating that the six sugar mills would suffer a loss of more than Rs.1.40 crores if they were required to sell molasses at the rate of Rs.127/- per quintal to the first respondent. The Secretary(Sugar), by letter dated 08.04.2004 addressed to the five sugar mills, stayed the operation of the letter dated 26.03.2004 issued by the Assistant Cane Commissioner allotting 85,000 quintals of molasses to first respondent until further orders.

10. Being aggrieved, the first respondent filed W.P.(C) No.318/2004 in the High Court praying *inter alia* to issue directions to the appellants herein (the State Government, Controller of Molasses, Molasses Sale Committee and the five Sugar Mills) to continue the supply of molasses to him so that the entire allotted quantity of 85,000 quintals could be lifted on or before 31.05.2004. It was alleged that the first respondent had already taken delivery of 7465.9 quintals of molasses, from three sugar mills at Nadehi, Sitarganj, and Doiwala and that he had also made all arrangements for taking delivery of the balance stock.

- A 11. A Division Bench of the High Court, by interim order dated 19.04.2004, directed the State Government to take a decision on the claim of first respondent after giving hearing within 10 days. Pending such decision, the High Court permitted the first respondent to lift upto 20,000 quintals of molasses. The
- B High Court also directed that the writ petition be listed on 29.04.2004 for final hearing and disposal.

12. By order dated 20.04.2004, the State Government dissolved the earlier Molasses Sale Committee and in its place reconstituted a fresh Molasses Sale Committee. The Secretary,
- C Sugar *vide* letter dated 20.04.2004 sought certain information/clarifications from the first respondent as also from Patiala Distillers and Chandigarh Distillers, and on 22.04.2004 afforded personal hearing to the Proprietor and representative of first respondent and representatives of Patiala Distillers and
- D Chandigarh Distillers. Thereafter, on due and proper consideration of the material on record, the Secretary (Sugar), passed a detailed order dated 24.04.2004, holding that there was no valid contract for supply of molasses to first respondent and therefore the allotment letter dated 26.3.2004 was without
- E any authority and consequently cancelled the said allotment letter issued by the Assistant Cane Commissioner allotting 85,000 quintals of molasses to the first respondent. The findings on the basis of which he cancelled the allotment letter dated 26.3.2004 are extracted below :

- F “(i) That as per notice published on 23.2.2004 in Amar Ujala newspaper the tenders were invited from *bona fide* consumers and it was a compulsory condition to deposit Rs.1 lac earnest money with the tender. In this regard M/s Vardan Linkers submitted its offer for 15000 quintals of
- G molasses @ 119 per quintal only for Nadehi Sugar Mills in its tender. No rates were mentioned for remaining sugar factories namely Gadarpur, Sitarganj, Kiccha, Doiwala by M/s Vardan Linkers in its tender form. Moreover, no Bank draft towards earnest money for Rs.1 lac was submitted
- H with tender form for Nadehi Sugar Mills due to which the

tender was defective and was not acceptable.

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(ii) That on 3.3.2004 on the date of negotiation M/s Vardan Linkers has offered its negotiated rates @ Rs.127 per quintal of molasses, only for Nadehi Sugar Mills. The remark on the aforesaid negotiation form given by the above firm that they are ready to lift the molasses of other sugar factories on this rate if their rates are approved by the Committee, in that case they are ready to deposit within one week. This condition is not acceptable in accordance to law because the conditional tenders are liable for cancellation. The tender opening form dated 1.3.2004 and the negotiation form dated 3.3.2004 contains the signature of General Manager, Sugar Mills, Gadarpur, Molasses Clerk, Sitarganj, Purchase Clerk and Assistant Cane Commissioner. As such the Purchase Clerk and Molasses Clerk were not the members of the Committee and their participation was not legal.

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(iii) M/s Vardan Linkers has not offered its rates for Gadarpur, Doiwala, Sitarganj, and Kichha Sugar Mills nor submitted bank drafts for earnest money for Rs.1 lac for each sugar factories with the tender on 1.3.2004 or 3.3.2004. Moreover, the General Managers of these mills who were also the members were not present in the Committee meeting on 1.3.2004 and 3.3.2004 so the sale of molasses of these mills is not in accordance to the law.

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(iv) The Assistant Cane Commissioner's letter dated 26.3.2004 which is originally written to M/s Vardan Linkers, Bijnor contains the details of M/s Patiala Distilleries and Manufactureres and M/s Chandigarh Distillers to whom the molasses is sold @ Rs.127 per quintal but M/s Vardan Linkers did not disclose their names in its tender form. Moreover, on 1.3.2004 at the time of tender submission and on 3.3.2004 at the time of negotiation there were no authorization letters in favour of M/s Vardan Linkers of these two distillers from which it is very clear that M/s

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A Vardan Linkers is not a *bona fide* purchaser.

(v) That in condition no.9 of the tender form it is clearly mentioned that no person will transport the molasses in Uttaranchal and Uttar Pradesh and out of these States without the prior permission of Controller of Molasses M/s Vardan Linkers has enclosed with its writ petition as Annexure No.1 and 2 which are the No Objection Certificate of Excise and Taxation Commissioner, Patiala dated 16.3.2004 issued in favour of M/s Patiala Distiller and Manufacturer and 'No Objection Certificate' dated 12.3.2004 issued in favour of Chandigarh Distillers and Bottlers, from which it is clearly evident that on 1.3.2004 on the date of submission of tenders and on 3.3.2004 at the time of negotiation they have no such certificate. No document has been produced about the approval of Controller of Molasses. From this it is clear that even on compliance of this condition the tender was not acceptable.

(vi) From the information obtained from the sugar mills it has been observed that the letter dated 26.3.2004 issued by Assistant Cane Commissioner for sale of molasses in favour of M/s Vardan Linkers was only submitted in the mills by the representative during the period 6.4.2004 to 8.4.2004 of M/s Vardan Linkers and they lifted the molasses during this period. During this period another firm M/s Jagjit Industries, Kapurthala and another firm M/s Associated Alcohol and Breweries Limited vide its fax letter dated 6.4.2004 offered its rates @ Rs.250 and Rs.260 per quintal respectively for molasses. The submission of alleged letter dated 26.3.2004 of Assistant Cane Commissioner issued a letter in favour of M/s Vardan Linkers and its submission and its submission by its representative in the mills during the period 6.4.2004 to 8.4.2004 creates doubt and question mark, and by this act it creates loss of Rs.1.40 crores to the mills of State of Uttaranchal. As such it is reviewed.

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(vii) The Assistant Cane Commissioner, Udham Singh Nagar letter No.2345/C/Sheera/Rudrapur dated 15.3.2004 issued to M/s Vardan Linkers for sale of 5000 quintals of molasses of Nadehi Sugar Mills contains the details of tender dated 1.3.2004 and subsequent negotiations dated 3.3.2004. As such the Assistant Cane Commissioner would have preferred fresh tenders for sale of molasses if it was not considered for sale at that time.

(viii) From the facts available on file, it is observed that one M/s Chandigarh Distillers is purchasing molasses @ Rs.300/- per quintal from the Co-operative Sugar Mills of UP which were near to the sugar mills of State of Uttaranchal. Moreover, the private sector mills in the State of Uttaranchal, like Laksar Uttam, Iqbalpur and Kashipur are sealing the molasses @ Rs.330, Rs.320, Rs.320 and Rs.310 per quintal of molasses respectively. As such without any valid contract with the mill of State of Uttaranchal to sale the molasses @ Rs.127 per quintal to M/s Vardan Linkers is against the rules.

13. Being aggrieved by the interim direction dated 19.4.2004 to supply 20,000 quintals of molasses to the first respondent, the appellants approached this Court. When the special leave petitions came up for hearing on 5.5.2004, this Court granted leave and disposed of the appeals [CA Nos. 2984-86/2004] in the following terms:

“By consent of the parties, the impugned order are set aside. The respondents are permitted to amend their Writ Petition to challenge the Order dated 24th April, 2004. Reply, if any, including to this amendment to be filed within two weeks from today. The High Court is requested to dispose of the Writ Petition within a period of four weeks thereafter.”

The first respondent thereafter made an application for amendment of the pending writ petition, praying to challenge the order of cancellation dated 24.4.2004. The High Court

- A allowed the application for amendment on 18.05.2004. The State of Uttaranchal and the Sugar Mills filed separate counter affidavits, in opposition to the writ petitions setting out the entire facts, and contended that there was no concluded contract with the first respondent, for sale of 85,000 quintals of molasses;
- B and that the first respondent, in collusion with certain officers (the Assistant Cane Commissioner and District Magistrate, Udham Singh Nagar), had managed to secure allotment of 85,000 quintals of molasses without any authority.

- C 14. A Division Bench of the High Court heard the writ petition and allowed it by judgment dated 28.07.2004. The High Court quashed the order dated 24.04.2004 passed by the Secretary (Sugar) and directed that the first respondent "shall be allowed to lift 85,000 quintals of molasses less the quantity already lifted", in terms of letter dated 26.03.2004. It also
- D extended the time for lifting the molasses by a period equivalent to the number of days between 24.4.2004 and 31.5.2004, that is one month and seven days. The correctness and legality of the said judgment of the High Court is challenged in these appeals.

E **Questions for consideration**

- F 15. Ordinarily, the remedy available for a party complaining of breach of contract lies for seeking damages. He will be entitled to the relief of specific performance, if the contract is capable of being specifically enforced in law. The remedies for a breach of contract being purely in the realm of contract are dealt with by Civil Courts. The public law remedy, by way of a Writ Petition under Article 226 of the Constitution of India, is not available to seek damages for breach of contract or specific
- G performance of contract. However, where the contractual dispute has a public law element, the power of judicial review under Article 226 of the Constitution of India may be invoked. We may refer to a few decisions illustrating the position.

- H 15.1) In *Divisional Forest Officer v. Bishwanath Tea Co. Ltd.* – (1981) 3 SCC 235, and *State of Gujarat vs. M. P.*

Shah Charitable Trust – (1994) 3 SCC 552, this Court observed that a writ petition challenging the termination of an arrangement which is said to be governed by a contract or agreement between the parties is not maintainable since it was a public law remedy, which was not available in private law field where the matter is governed by a non-statutory contract.

15.2) In **Mahabir Auto Stores v. Indian Oil Corporation** – (1990) 3 SCC 752, this Court noticed the difference between private law cases where the issue is the exercise of a 'right' as contrasted from public law cases where the question related to exercise of 'power' :

"Mr. Salve submitted that in private law field there was no scope for applying the doctrine of arbitrariness or *mala fides*. The validity of the action of the parties have to be tested, it was urged on behalf of the respondent, on the basis of "right" and not "power". A plea of arbitrariness/*mala fides* as being so gross cannot shift a matter falling in private law field to public law field. According to Mr. Salve to permit the same would result in anomalous situation that whenever State is involved it would always be public law field, this would mean all redress against the State would fall in the writ jurisdiction and not in suits before civil courts.

We are of the opinion that in all such cases whether public law or private law rights are involved, depends upon the facts and circumstances of the case. The dichotomy between rights and remedies cannot be obliterated by any strait-jacket formula. It has to be examined in each particular case. Mr. Salve sought to urge that there are certain cases under Article 14 of arbitrary exercise of such "power" and not cases of exercise of a "right" arising either under a contract or under a statute. We are of the opinion that that would depend upon the factual matrix."

15.3) In **Veriyamto Naveen v. Government of Andhra Pradesh** – (2001) 8 SCC 344, this Court observed :

- A “Where the breach of contract involves breach of statutory
obligation when the order complained of was made in
exercise of statutory power by a statutory authority, though
cause of action arises out of or pertains to contract, brings
it within the sphere of public law because the power
exercised is apart from contract. The freedom of the
B Government to enter into business with anybody it likes is
subject to the condition of reasonableness and fair play
as well as public interest. After entering into a contract, in
canceling the contract which is subject to terms of the
statutory provisions, as in the present case, it cannot be
C said that the matter falls purely in a contractual field.”

16. Finding serious irregularities in the letter dated
26.3.2004 issued by the Assistant Cane Commissioner, which
directed supply of 85,000 quintals of molasses by five sugar
D mills to two distilleries through first respondent at a very low
price, the Secretary (Sugar), on 8.4.2004, stayed the operation
of the said allotment letter. The decision was challenged by the
first respondent in the writ petition by contending that the
allotment letter dated 26.3.2004 authorizing him to lift 85,000
E quintals of molasses was in pursuance of a concluded contract
for sale of such molasses and therefore the decision of staying
the operation of the allotment letter was invalid and illegal. The
initial prayer in the writ petition was for a direction to ‘continue
the supply of molasses so that entire allotted quantity of 85,000
F quintals of molasses could be lifted on or before 31.5.2004’. As
the order dated 8.4.2004 of the Secretary (Sugar), staying the
allotment letter was pending, the High Court in the meantime
issued an interim direction to the State Government to hold
inquiry in the matter after giving hearing to the first respondent.
Accordingly, the Secretary (Sugar), held an inquiry and passed
G a detailed order dated 24.4.2004 giving the instances of
irregularities committed by the Assistant Cane Commissioner
and others and held that there was no concluded or valid contract
and that the allotment letter dated 26.3.2004 was as a result of
collusion between the first respondent and the Assistant Cane
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Commissioner and the District Magistrate and, therefore, cancelled the allotment letter dated 26.3.2004. In other words, the Secretary (Sugar), held that as there was no contract at all, therefore, the Assistant Cane Commissioner could not have issued a letter of allotment permitting the first respondent to lift 85,000 quintals of molasses. When the said order was passed, the first respondent amended the writ petition and included a prayer 'for quashing the order of cancellation dated 24.4.2004', contending that the cancellation order was illegal and arbitrary.

17. If the dispute was considered as purely one relating to existence of an agreement, that is, whether there was a concluded contract and whether the cancellation and consequential non-supply amounted to breach of such contract, the first respondent ought to have approached the Civil Court for damages. On the other hand, when a writ petition was filed in regard to the said contractual dispute, the issue was whether the Secretary (Sugar), had acted arbitrarily or unreasonably, in staying the operation of the allotment letter dated 26.3.2004 or subsequently cancelling the allotment letter. In a civil suit, the emphasis is on the contractual right. In a writ petition, the focus shifts to the exercise of power by the authority, that is whether the order of cancellation dated 24.4.2004 passed by the Secretary (Sugar), was arbitrary or unreasonable. The issue whether there was a concluded contract and breach thereof becomes secondary. In exercising writ jurisdiction, if the High Court found that the exercise of power in passing an order of cancellation was not arbitrary and unreasonable, it should normally desist from giving any finding on disputed or complicated questions of fact as to whether there was a contract, and relegate the petitioner to the remedy of a civil suit. Even in cases where the High Court finds that there is a valid contract, if the impugned administrative action by which the contract is cancelled, is not unreasonable or arbitrary, it should still refuse to interfere with the same, leaving the aggrieved party to work out his remedies in a Civil Court. In other words, when there is a contractual dispute with a public law element, and a party

A chooses the public law remedy by way of a writ petition instead of a private law remedy of a suit, he will not get a full fledged adjudication of his contractual rights, but only a judicial review of the administrative action. The question whether there was a contract and whether there was a breach may, however, be
B examined incidentally while considering the reasonableness of the administrative action. But where the question whether there was a contract, is seriously disputed, the High Court cannot assume that there was a valid contract and on that basis, examine the validity of the administrative action.

C 18. In this case, the question that arose for consideration in the writ petition was whether the order dated 24.4.2004 passed by the Secretary (Sugar), cancelling the allotment letter dated 26.3.2004 was arbitrary and irrational or violative of any administrative law principles. The question whether there was
D a concluded contract or not, was only incidental to the question as to whether cancellation order dated 24.4.2004 by the Secretary (Sugar), was justified. As the case involved several disputed questions in regard to the existence of the contract itself, the High Court ought to have referred the first respondent
E to a Civil Court. But the High Court in exercise of its writ jurisdiction, proceeded as if it was dealing with a pure and simple civil suit relating to breach of contract. When certain disputed facts cropped up, the High Court adopted a strange procedure of calling the General Managers of Sitarganj Sugar Mills and
F Nadehi Sugar Mills and putting some questions to them and recording their statements. The High Court reached the conclusion that there was a concluded contract between the five sugar mills and the first respondent for sale of 85,000 quintal of molasses at a price of Rs.127/- per quintal. Thereafter, it formulated the question for consideration in the writ petition as
G 'whether the State Government was competent to cancel the valid and completed contract', and held that having regard to the doctrines of part performance, legitimate expectation, estoppel and acquiescence, the cancellation of the allotment letter dated 26.3.2004 issued by the Assistant Cane
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Commissioner was unsustainable and the first respondent was entitled to lift the entire quantity of 85,000 quintal (less 7,465.9 quintal already lifted), and he was also entitled to extension of time for taking delivery by one month and seven days from the date of the judgment. In this view of the matter, two questions arise for our consideration. They are : A B

- (i) Whether the High Court was right in concluding/ assuming that there was a valid contract?
- (ii) Whether the High Court was justified in quashing the cancellation order dated 24.4.2004 passed by Secretary, (Sugar)? C

Re: Question (i)

19. Before a court can record a finding as to whether there is a contract, it has to find out who are the parties to the contract, when and what was the offer, whether there was an acceptance, and whether the offer and acceptance were valid. None of these were addressed nor answered by the High Court. D

20. We extract below the averments made in the writ petition to contend that there is a concluded contract : E

"That aforesaid tenders were opened on 1.3.2004 at the office of Assistant Cane Commissioner, Udham Singh Nagar. The Assistant Cane Commissioner also happens to be the Secretary of the Committee. F

That subsequently thereafter all the prospective allottees (who had submitted their tenders) were invited by the Committee and tenders were opened and in an open meeting, the bidders were asked to increase the bids and negotiations took place and petitioner being highest as Rs.127 per quintal was accepted. G

That at this junction, the deponent has been advised to state that once the bid of the petitioner was accepted by the authorized Committee for a certain price which was Rs.127 per quintal, it amounts to valid contract as it has H

A all the ingredients of a valid contract, namely, offer, acceptance and consideration.”

Thus, the case of first respondent is that there was a concluded contract - that is acceptance of his offer on 3.3.2004, when the negotiations took place. But in paras 17 and 19 of the writ petition, the first respondent alleged that the contract was concluded when the letter dated 26.3.2004 was issued by the Assistant Cane Commissioner permitting him to lift 85,000 quintals of molasses and the said letter dated 26.3.2004 was a ‘agreement’ between the parties. This ambiguity as to whether the contract came into existence on 3.3.2004 or 26.3.2004 was not even referred to by the High Court in the impugned order.

21. Let us next examine as to who was the purchaser. The tender notice made it clear that only *bona fide* consumers (that is, actual users) could make the offer. Admittedly, the first respondent did not have a distillery or manufacturing unit and was not a ‘consumer’ of molasses. He was a transport contractor. Even the allotment letter dated 26.3.2004 shows that the first respondent was not the ‘consumer - purchaser’. Therefore, first respondent could not be the purchaser. Let us consider whether Patiala Distillers and Chandigarh Distillers, who were shown as the persons who will take deliveries in the letter dated 26.3.2004, were the purchasers. They did not make any offer. Nor was any offer made on their behalf. There was no acceptance addressed to them. There was no agreement or contract with them. They did not seek delivery nor did they join the first respondent as petitioners in the writ petition. They were not therefore the ‘purchasers’. If neither first respondent, nor Patiala Distillers/Chandigarh Distillers could be the purchaser, who was the *bona fide* consumer who could claim performance?

G The question remains unanswered.

22. The tenders were invited for sale of molasses by five independent sugar mills. The tenderers were required to pay Rs.1,00,000/- as earnest money, in respect of each sugar mill from which the tenderer intended to purchase molasses. The

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five sugar mills were different legal entities. Two of them were Government companies incorporated under the Companies Act and the remaining three were independent co-operative sugar mills. The tender notice and the tender documents would make it clear that though the tender notice was common, the tenderers were required to make separate offers in regard to molasses to be purchased from each sugar mill showing the quantity which they wanted to purchase from each sugar mill and the price which they were willing to pay and also to pay separate earnest money deposit. The first respondent did not make any offer except in the case of Nadehi Sugar Mill, even that was not accompanied by the earnest money deposit. He claims to have made an endorsement in the tender form on 3.3.2004, that if his rate was accepted, he was ready to lift the entire quantity of molasses from the five factories. But neither the original offer nor the alleged extension of the offer on 3.3.2004 was accompanied by any earnest money deposit. There was therefore no valid offer as on 3.3.2004. Nor was there any acceptance by the Molasses Sales Committee or any of the sugar mills on 3.3.2004. There was also no acceptance even by the three Members of the Molasses Sales Committee on 3.3.2004. This is evident from the fact that after the negotiations meeting, a report was submitted by the Three Members of the Committee to the Chairman referring to the offer of first respondent seeking his approval for their proposal to sell the molasses of the other Mills to the first respondent. Therefore, it could not be said that there was a concluded or binding contract for sale or supply of molasses by any of the five mills on 3.3.2004.

23. It is admitted that the first respondent did not make any offer in the prescribed form of tender in regard to the molasses of the other four mills (Gadarpur, Doiwala, Sitarganj and Kitcha). On 3.3.2004 when negotiations were held between the first respondent and three members of the Committee, the first respondent appears to have expressed his interest to purchase the molasses of all the mills at a price of Rs.127/- per quintal and made an endorsement to that effect in his tender

- A form. First respondent claims to have paid Rs.4,00,000/- as earnest money deposit in respect of four mills under cover of letter dated 10.3.2004. But thereafter there was no meeting of the Molasses Sales Committee nor any acceptance of first respondent's offer. Neither the act of putting up a proposal by the Assistant Cane Commissioner or the District Magistrate for consideration by the Chairman of the Molasses Sales Committee nor the alleged approval of the recommendation for sale by the Chairman of the Molasses Sales Committee will lead to a binding contract as there was no decision by Molasses Sales Committee to accept the offer. Therefore, on this count as well, there was no concluded contract.

24. In this case, the first allotment by the Assistant Cane Commissioner was on 15.3.2004 permitting the first respondent to lift 5000 quintals from Nadehi Mills at Rs.127/- per quintals.

- D This was wholly illegal as it was not in pursuance of any concluded contract and as first respondent was not a *bona fide* consumer. The first respondent submitted the authorization letter from the Patiala Distillers and the Chandigarh Distillers only on 14.3.2004. If there was already a concluded contract with the first respondent on 3.3.2004, there could not have been any change in the contract by submitting an authorization letter from Patiala Distillers and Chandigarh Distillers on 14.3.2004. There was also no correspondence or negotiations subsequent to 3.3.2004 to show that any contract was concluded in favour of Patiala Distillers or Chandigarh Distillers. Therefore, when the letter dated 26.3.2004 was issued by the Assistant Cane Commissioner authorizing the first respondent to lift 85,000 quintals of molasses it was not in pursuance of any concluded contract but was unilateral unauthorized act on the part of the Assistant Cane Commissioner which would not bind the State Government.

25. The tender notice clearly specified that only *bona fide* consumers could make an offer. In his tender, the first respondent claimed that he was making an offer as a *bona fide* consumer, that is, as an actual user of molasses. The tender did not mention

that he was making the offer as an agent of other consumers A
nor did he disclose the names of any consumers on whose
behalf he was making the offer. He merely made a vague and
sweeping statement that he will lift molasses in favour of
distilleries of U.P., Punjab and Haryana. This showed that he
was not acting for any specific principal. Further having regard B
to the requirement that sale will be only to *bona fide* consumers,
the offer ought to have disclosed the names of the Principal
and his authority to make the offer on their behalf, if he was
making an offer on behalf of anyone else. Further, the required
Certificate from the Excise Commissioner/Controller of Sugar C
that the purchaser was a bona fide consumer, ought to have
been enclosed. For all these reasons, therefore, there could
not be any valid contract with first respondent.

26. The order dated 25.3.2003 constituting the Molasses
Sales Committee made it clear that molasses could be sold D
only by the said Committee. This meant that the Molasses Sales
Committee would identify and decide upon the purchaser, as
also the terms of sales including the price. But the Molasses
Sales Committee by itself was not the seller but only the authority
entrusted with the task of finalizing the sales and the seller were E
the sugar mills themselves. The Committee consisted of nine
members with Commissioner of Kumaon Mandal as Chairman,
the District Magistrate, Udham Singh Nagar and the General
Managers of the six sugar mills as members and the Assistant
Cane Commissioner, Udham Singh Nagar, as the Member- F
Secretary. Admittedly, the nine members of the Committee were
not present either on 1.3.2004 when the tenders were opened
or on 3.3.2004 when the alleged negotiations were held. The
tenders were opened on 1.3.2004 by the Assistant Cane
Commissioner, who was the Secretary of the Committee. No G
meeting of the Committee had been called on 3.3.2004. The
persons who were present in the alleged negotiation meeting
were the District Magistrate, Udham Singh Nagar and only the
General Manager of Godarpur Sugar Mills, apart from the
Member-Secretary. The Chief Accountant of Sitarganj Sugar H

- A Mills who was present ,cannot be considered to be a member of the Committee. The General Managers of other four mills were not present nor was the Chairman of the Committee present. Three members did not constitute the quorum for the Committee. Nor did the Committee authorize three members
- B to finalise the sale of molasses. It cannot therefore, be said that the negotiations held on 3.3.2004 were held by the Molasses Sales Committee or authorized members of the said Committee. In fact, the Molasses Sales Committee never considered the offer of first respondent, nor accepted its offer.
- C 27. The communication dated 26.3.2004 from the Assistant Cane Commissioner to the first respondent whereby and whereunder the first respondent was permitted to lift 85,000 quintals of molasses from the five sugar mills, did not refer to any decision by the Molasses Sales Committee to sell molasses
- D to the first respondent. It referred only to the negotiations held on 3.3.2004 and stated that “on the approval of Commissioner, Kumaon Mandal”, first respondent was permitted to lift 85,000 quintals of molasses. The Commissioner, Kumaon Mandal was not the authority empowered to effect the sale of molasses. In
- E the absence of any contract under which the five sugar mills agreed to sell 85,000 quintals in all to the first respondent at a price of Rs.127 per quintal, the question of Assistant Cane Commissioner permitting the first respondent to lift 85,000 quintals of molasses did not arise. The letter dated 26.3.2004
- F sent by Assistant Cane Commissioner cannot therefore, be considered to be a contract for supply of 85,000 quintals of molasses to the first respondent.

28. Thus, there was no material before the High Court to assume or come to the conclusion that there was a concluded
- G contract for supply of 85,000 quintals of molasses.

Re : Question (ii) :

29. Let us now examine whether the Secretary (Sugar), was justified in issuing the order dated 24.4.2004 cancelling
- H the order dated 26.3.2004 and whether the High Court was

justified in questioning the order of the Secretary (Sugar). The order dated 24.4.2004, passed by the Secretary (Sugar) holding that the first respondent did not have any valid contract for supply of molasses and it had no right to enforce the letter dated 26.3.2004 issued by the Assistant Cane Commissioner was perfectly valid and justified. We have already held that the decision of the Secretary, Sugar that there was no concluded contract for sale of any molasses in favour of first respondent or his nominee is correct and does not suffer from any infirmity or perversity.

30. The first respondent does not dispute that 70% of the molasses were earmarked for supply to distilleries and chemical factories in the State of Uttaranchal and 10% for manufacturers of country-liquor in the State and only 20% was earmarked for use by *bona fide* consumers, that is distilleries and chemical factories outside the State. Obviously, the price fore sale to each category would be different. The price at which 70% is sold to the distilleries and chemical factories within the State will normally be less than the price at which 20% is sold to distilleries or chemical factories outside the State. The tenders were invited in regard to the quota earmarked for *bona fide* consumers where distilleries and chemical factories outside the State could participate. In spite of it, the District Magistrate, Udham Singh Nagar, prepared a note for the attention of the Chairman of the Committee wherein he referred to the price of Rs.117/- per quintal at which molasses were being sold to IGL which was a distillery within the State covered by 70% local quota, to justify the sale of molasses to the first respondent under 20% outside quota though it was not a *bona fide* consumer at a price of RS.127/- per quintal. The note neither mentioned the fact of the quantities to be sold nor the fact that the first respondent had not produced any certificate either from the Cane Commissioner or from the Excise Department to show that it was a *bona fide* consumer of molasses.

31. The tender notice made it clear that only *bona fide* consumers of molasses could make offers. The first respondent

- A is a proprietary concern carrying on transport business at Bijnor in the State of Uttar Pradesh but the tender was submitted by the first respondent in the name and style of "Vardan Linkers, Bijnor being *bona fide* consumer registered industrial unit." The note added at the end of the tender stated that "we shall lift
- B molasses in favour of distillery of UP, Punjab and Haryana". If first respondent was to lift the molasses for other units, it was admittedly not a *bona fide* consumer. Only on 14.3.2004, the first respondent produced authorization letters showing him as authorized agent of Patiala Distillers and Manufacturers Ltd., Patiala and Chandigarh Distillers and Bottlers Ltd., Patiala. On
- C the basis of those letters, the first respondent requested for delivery of 45000 quintals (that is 15000 quintals each from Nadehi, Gadarpur and Doiwala Sugar Mills) to Patiala Distillers and 40,000 quintals (15,000 quintals from Sitarganj Mills and 25,000 quintals from Kiccha Mills) to Chandigarh Distillers.
- D Though the tender was opened on 1.3.2004, the first respondent did not disclose till 14.3.2004 that he was submitting the tender on behalf of the above said two distillers in the State of Punjab. Thus, it was clear that the offer was made not by first respondent as a *bona fide* consumer but as a non-consumer trader.
- E Therefore, there was no valid offer at all by the first respondent. The Assistant Cane Commissioner was fully aware that first respondent was not a *bona fide* consumer, he was also aware of the prevailing sale prices in regard to molasses to be sold to *bona fide* consumers outside the State at much higher prices
- F than what was offered by first respondent, and also of the fact that the price for the sale of molasses to consumers within the State was much less than the rate for sale of molasses to *bona fide* consumers outside the State, he proceeded to negotiate with the first respondent taking only one more member (District
- G Magistrate) into confidence. The manner in which the entire matter was proceeded with, showed collusion between the first respondent on one hand and the District Magistrate, Udham Singh Nagar and the Assistant Cane Commissioner, Udham Singh Nagar on the other hand, to dispose of large quantities of
- H valuable molasses at a throw-away price without proper

negotiations and without valid authority from the Molasses Sales Committee to a party who was not entitled to purchase molasses as a *bona fide* purchaser.

32. The various serious irregularities were noticed by the Secretary (Sugar) in his detailed and reasoned order dated 24.4.2004 and resultantly, he directed cancellation of the letter dated 26.3.2004 issued by the Assistant Cane Commissioner which permitted the first respondent to lift 85,000 quintal of molasses from five mills. He also held that there was no valid contract. In the facts and circumstances, narrated hereinabove, it is not legally possible to hold that the order dated 24.4.2004 was either arbitrary or unreasonable or *mala fide*. It was fully justified and in public interest. If the order dated 24.4.2004 did not suffer from an infirmity which required correction by application of principles of Administrative Law, the High Court ought not to have interfered with it. There was, apparently, no justification for invoking the principles of legitimate expectations, estoppel, acquiescence and principle of part performance to make out a contract, where none existed or to give directions to five independent sugar mills to supply huge quantities of molasses to first respondent without any contract at an admittedly low price of Rs.127/- per quintal

33. We, therefore, allow these appeals and set aside the judgment dated 28.7.2007 passed by the High Court of Uttaranchal in WP No.318(N/B) of 2004 and dismiss the writ petition. We direct the first respondent to pay costs of Rs.10,000/- in each appeal (in all Rs.30,000/-) to the appellants.

34. This Court, by interim orders dated 23.8.2004 and 10.9.2004, had permitted the first respondent to lift in all 15,000 quintals of molasses from Nadehi Mills. Though the first respondent is not entitled to it, not being a *bona fide* consumer, if the supplies have already been effected and paid for, the issue of supply to that extent may be treated as closed.

B.B.B.

Appeals allowed.