

M/S Zuari Sugar And Power Ltd. Thru.Sri ... vs State Of U.P. Thru. Prin. Secy. Food And ... on 9 August, 2023

Bench: Vivek Chaudhary, Manish Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2023:AHC-LK0:52773-DB

Court No. - 3

Case :- WRIT - C No. - 12814 of 2021

Petitioner :- M/S Zuari Sugar And Power Ltd. Thru.Sri Heera Lal Shamra And Anr

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Civil Supplies And Ors.

Counsel for Petitioner :- Sudeep Kumar,Avdhesh Kumar Pandey, Miss Radhika Varma

Counsel for Respondent :- C.S.C.,Surya Bhan Pandey

Hon'ble Vivek Chaudhary,J.

Hon'ble Manish Kumar,J.

1. Heard learned counsel for the petitioner, Shri Varun Pandey, learned counsel for Union of India and learned Additional Chief Standing Counsel for the State.

2. The facts and disputes of the present writ petition would be clear from the detailed order dated 4.08.2021 passed by this Court, the same reads as follow:

"Having regard to the urgency in the matter which has occasioned because of the nature of the goods seized which is perishable i.e., the sugar which is prone to catching moisture and even otherwise being rotten, we require the State Government to file counter affidavit in this case within ten days.

The affidavit on behalf of the Chief Director (Sugar) of the Central Government shall also be filed within this period.

A week's time thereafter shall be available to learned counsel appearing for the petitioners to file rejoinder affidavit.

List this case on 31.08.2021.

Lengthy arguments have been raised by learned counsel appearing for the respective parties on the issue relating to validity of the seizure document, which has been annexed as annexure-1 to the writ petition.

Learned counsel for the petitioners has stated that though the sample of sugar has been collected only from two bags, however, by the impugned seizure document, the entire godown where as many as 11619 bays of sugar are kept, has been seized which is impermissible for the reason that under the scheme of the Food Safety and Standards Act, 2006, it is only the food items/articles which can be seized and not the entire godown. Other arguments have also been raised regarding applicability of the Food Safety and Standards Act, 2006 together the application of the Sugar Control Order, 1966 issued by the Central Government under Section 3 of the Essential Commodities Act. Arguments have also been raised around the provisions contained in Section 97 which contains the repeal and savings clause to the Food Safety and Standards Act 2006. The issue, thus, raised in this petition requires consideration specially in respect of applicability/interplay of the aforesaid legislations, namely, the Food Safety and Standards Act, 2006 and the Essential Commodities Act and the Orders made there under.

In the meanwhile, our attention has also been drawn to the vulnerable stage of the sugar which is in large quantity and is kept in the godown in as more than eleven thousand bays. It has been stated that on account of the ongoing monsoon season such sugar is liable to get more moisture, which will make it unmarketable and, accordingly, the petitioners have made an application seeking permission of the Central Government as per the requirement of clause 7 of Sugar Control Order, 1966.

Sri Sudeep Kumar, learned counsel for the petitioners prays that pending consideration of the issues, which have arisen in this writ petition, an appropriate direction may be issued so that the processing of the sugar may be done by the petitioner-sugar mills in order to save the huge quantity of the sugar from being perished. He has further stated that ultimately if the samples collected by the Food Safety Officer under the Food Safety and Standards Act, 2006 are found to be substandard or not conforming to the provisions of the said Act or the Rules and Regulation made there under, the same may entail criminal prosecution, however, the criminal prosecution cannot be initiated unless and until the samples are analyzed by the laboratory for which the petitioners have made a prayer in view of the fact that the petitioners are contesting the analysis report sent by the Regional Public Analyst Laboratory, Meerut.

Under the circumstances and having regard to the danger of huge quantity of sugar being perished and wasted, we had earlier directed the Chief Director (Sugar), Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution, Directorate of Sugar & Vegetable Oils, New Delhi to consider the prayer made by the petitioners seeking permission under clause 7 of the Sugar Control Order for reprocessing the sugar to make it marketable.

Sri S.B. Pandey, learned Assistant Solicitor General of India assisted by Sri Varun Pandey, learned counsel for respondent No.2 has drawn our attention to a letter dated 22.07.2021 of the Assistant Director in the Directorate of Sugar & Vegetable Oils, Government of India, which is addressed to the Cane Commissioner. By the said letter, a request has been made to the Cane Commissioner of the State of Uttar Pradesh to make available his comments on the prayer of the petitioners to reprocess the unmarketable/damaged/moist sugar.

Sri H.P. Srivastava, learned Additional Chief Standing Counsel appearing for the State has submitted that in reference to the said letter of the Assistant Director, dated 22.07.2021, the Cane Commissioner has informed the Assistant Director of the Central Government that the entire bags of sugar in question have been sealed along with the godown of the petitioners-sugar mill and as such since the godown is sealed, the physical verification of the stock is not possible. The Cane Commissioner has further intimated the Assistant Director of the Central Government that in view of the aforesaid, decision for permitting the reprocessing of sugar may be taken at the end of the Directorate.

The said letter of the Cane Commissioner, State of Uttar Pradesh, dated 04.08.2021 is taken on record.

Having regard to the totality of facts available before us and also having heard the learned counsel at Bar, we are of the opinion that all possible endeavour should be made to ensure that the sugar lying in the godown does not go waste and is not allowed to perish.

Accordingly, we direct that the Directorate of Sugar & Vegetable Oils, Government of India shall take appropriate decision in accordance with law on the application said to have been preferred by the petitioners under clause 7 of the Sugar Control Order, 1966 within ten days from today.

For the said purpose, if the appropriate authority in the Directorate feels it appropriate that the Sugar sought to be reprocessed needs to be inspected, such inspection or any other inquiry shall also be carried out within this period. For facilitating the inspection or inquiry, which may be needed for passing appropriate orders under clause 7 of Sugar Control Order, 1966, the Food Safety Officer, Sitapur shall extend all his cooperation and shall also permit such inspection or inquiry of the

sugar lying in the godown of the petitioners. If the Competent Authority of the Sugar & Vegetable Oils, Government of India permits the petitioners to reprocess the sugar, the Food and Safety Officer, Sitapur shall allow the same, however, such permission would be deemed to have been given under this order of the Court.

It is further directed that, in case the sugar is reprocessed under the permission granted under clause 7 of the Sugar Control Order, 1966, the petitioners shall keep it in a safe place and environment so that it is adequately protected. We further direct that the sugar which may be reprocessed shall not be sold without specific leave of this Court.

The entire exercise which may be carried out under this order shall be subject to further orders which may be passed in this writ petition.

This order shall be communicated by Sri S.B. Pandey, learned Assistant Solicitor General of India to the authorities concerned, forthwith.

Sri H.P. Srivastava, learned Additional Chief Standing Counsel shall also communicate this order to the Food and Safety Officer, Sitapur."

3. Now, the said sugar with the permission of the authorities as referred to order dated 04.08.2021, stands re-processed since the year 2021 and is lying in godowns.

4. Prayer made by learned counsel for petitioner is that there is no allegation of the said sugar being defective or of sub-standard, thus, the same is marketable product which should be permitted to be sold in market.

6. Learned counsel for Union of India and learned Additional Chief Standing Counsel have no objection to the sale of the said sugar in accordance with law with approval from the appropriate authorities.

7. Thus, the petitioner is permitted to sell the re-processed sugar in accordance with law after taking approval from the appropriate authorities. Further, the question with regard to applicability of Sugar Control Order, 1966 vis-a-vis Food Safety and Standards Act, 2006 is left to be considered in appropriate case.

8. With the aforesaid, present petition is hereby disposed of.

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[Manish Kumar, J.] [Vivek Chaudhary, J.] Order Date :- 9.8.2023

-Amit K-

