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In Chamber

Case :- WRIT - C No. - 9616 of 2022

Petitioner :- Dhampur Sugar Mills Limited And Another
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Rahul Agarwal
Counsel for Respondent :- C.S.C.,A.S.G.I.,Aditiya Kumar Singh,Ayush Garg,K.K.Rao,Rakesh Pande (Senior Adv.),Ravindra Singh

Hon'ble Siddhartha Varma, J.
Hon'ble Ajit Singh, J.

This writ petition has been filed for the issuance of a writ of certiorari quashing the '**No Objection Certificate**'[1] dated 14.9.2021 which has been issued by the Cane Commissioner to the respondent no.4 and also for the quashing of the "**Industrial Entrepreneur Memorandum**"[2] which has been filed by the respondent no.4 on 12.10.2021 and has been acknowledged by the Department of Promotion of Industry and Internal Trade on the same date.

It appears that for the installation of a sugar factory when the respondent no.4-M/s. Bindal Paper Limited on 7.9.2021 had asked for an NOC, then after considering the case of respondent no.4, the Cane Commissioner, Government of Uttar Pradesh, Lucknow had on 14.9.2021 issued the NOC and had detailed in the NOC that from the proposed sugar factory, as per the Indian Survey Department, Dehradun, the nearest sugar mills were as follows :-

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1 hereinafter referred to as **NOC**
2 hereinafter referred to as **IEM**

i. Wave Industries Pvt. Ltd., village Maleshiya Dhanaura, District Amroha (24.6 kms.)

ii. Deewan Sugar Mills Ltd., District Moradabad (31.3 kms.)

iii. Dhampur Sugar Mills Ltd., Unit Dhampur, District Bijnor (21.1 kms.)

iv. P.B.S. Foods Pvt. Ltd., Chandanpur, District Bijnor (17.5 kms.)

v. Upper Ganges Sugar and Industries Ltd., Seohara, District Bijnor (16.9 kms.).

Thereafter, the Commissioner had stated that NOC was being issued to M/s. Bindal Papers Ltd. for the issuing of the IEM to M/s. Bindal Papers Ltd.

The petitioner no.1 which is Dhampur Sugar Mills Limited, as per the survey report of the Indian Survey Department, Dehradun was 21.1 kilometers away from the proposed sugar mill and the petitioner no.2-Avadh Sugar and Energy Limited which has been mentioned as Upper Ganges Sugar and Industries Ltd., Seohara, District Bijnor in the NOC was 16.9 kilometers away from the proposed sugar mill of the respondent no.4. The establishment of sugar factories is regulated by both the Central and the State Government. The Government of India by its notification published in the Gazette of India (Extraordinary) 1966 had issued the **Sugarcane (Control) Order, 1966**[3] and as

3 hereinafter referred to as **1966 Order**

per Order 6-A, there was a restriction of setting up of two sugar factories within the radius of fifteen kilometers.

For convenience, Order 6-A of the 1966 Order is being reproduced here as under :-

> "**6-A. Restriction on setting up of two sugar factories within the radius of 15 kms.—** Notwithstanding anything contained in Clause 6, no new sugar factory shall be set up within the radius of 15 kms of any existing sugar factory or another new sugar factory in a State or two or more States:
>
> Provided that the State Government may with the prior approval of the Central Government, where it considers necessary and expedient in public interest, notify such minimum distance higher than 15 kms or different minimum distances not less than 15 kms for different regions in their respective States.
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> *Explanation 1*.—An existing sugar factory shall mean a sugar factory in operation and shall also include a sugar factory that has taken all effective steps as specified in Explanation 4 to set up a sugar factory but excludes a sugar factory that has not carried out its crushing operations for last five sugar seasons.
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> *Explanation 2*.—A new sugar factory shall mean a sugar factory, which is not an existing sugar factory, but has filed the Industrial Entrepreneur Memorandum as prescribed by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry in the Central Government and has submitted a performance guarantee of rupees one crore to the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution for implementation of the Industrial Entrepreneur Memorandum within the stipulated time or extended time as specified in Clause 6-C.

Explanation 3.—The minimum distance shall be determined as measured by the Survey of India.

Explanation 4.—The effective steps shall mean the following steps taken by the concerned person to implement the Industrial Entrepreneur Memorandum for setting up of sugar factory.—

(a) purchase of required land in the name of the factory;

(b) placement of firm order for purchase of plant and machinery for the factory and payment of requisite advance or opening of irrevocable letter of credit with suppliers;

(c) commencement of civil work and construction of building for the factory;

(d) sanction of requisite term loans from banks or financial institutions;

(e) any other step prescribed by the Central Government, in this regard through a notification."

As per Order 6-B of the 1966 Order, when a new unit of any sugar factory was to be established, it had to get an NOC from the Cane Commissioner or Director (Sugar) or the specified authority of the concerned State Government specifically stating that the distance between the site where the proposed factory was to be set-up and the adjacent sugar factory was not in any manner lesser than the minimum distance prescribed by the Central Government or the State Government. After the NOC was given by the concerned Cane Commissioner, the new factory had to give its IEM to the Central Government within a month of the issuance of such certificate. As and when the IEM was submitted,

the industrial concern which was to open the new factory had to submit a performance guarantee of Rs.1 crore to the Chief Director (Sugar), Ministry of Consumer Affairs, Food and Public Distribution, New Delhi and Public Distribution within 30 days of the filing of the IEM which was to be a surety for the implementation of the IEM. The requirement of getting the NOC with regard to the distance and the requirement of submitting the IEM and the submission of the performance guarantee have been provided in Order 6-B of the 1966 Order.

For convenience, Order 6-B of the 1966 Order is being reproduced here as under :-

> "**6-B. Requirements for filing the Industrial Entrepreneur Memorandum.—**(1) Before filing the Industrial Entrepreneur Memorandum with the Central Government, the concerned person shall obtain a certificate from the Cane Commissioner or Director (Sugar) or Specified Authority of the concerned State Government that the distance between the site where he proposes to set up sugar factory and adjacent existing sugar factories and new sugar factories is not less than the minimum distance prescribed by the Central Government or the State Government, as the case may be, and the concerned person shall file the Industrial Entrepreneur Memorandum with the Central Government within one month of issue of such certificate failing which validity of the certificate shall expire.
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> (2) After filing the Industrial Entrepreneur Memorandum, the concerned person shall submit a performance guarantee of rupees one crore to Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution within thirty days of filing the Industrial Entrepreneur Memorandum as a surety for implementation of the Industrial Entrepreneur Memorandum within the stipulated time or extended

> time as specified in Clause 6-C failing which Industrial Entrepreneur Memorandum shall stand de-recognized as far as provisions of this Order are concerned."

Thereafter under Order 6-C of the 1966 Order, time limit has been provided as to by when commercial production had to start etc.

In the instant case when the respondent no.4 had got the NOC as was to be obtained as per the provisions of Order 6-B of the 1966 Order and had also submitted its IEM which was acknowledged by the Central Government, the petitioners apprehending that the opening of the new factory would result in a shortage of sugarcane to their factories, filed an objection/representation jointly against the grant of the NOC and the acknowledgment of the IEM in favour of respondent no.4 before the Chief Director (Sugar), Government of India, Ministry of Consumer Affairs, Food and Public Distribution, Krishi Bhawan, New Delhi on 4.2.2022.

It is the case of the petitioners that the Ministry of Consumer Affairs communicated to the Cane Commissioner, State of Uttar Pradesh requiring the Cane Commissioner to furnish his comments on the representation submitted by the petitioners on 24.2.2022. The Cane Commissioner, however, when did not take any action on the representation of the petitioners, the instant writ petition was filed.

Learned counsel for the petitioners has assailed the granting of the NOC dated 14.9.2021 and the subsequent issuance of the IEM dated 12.10.2021 essentially on the ground that before issuing of the NOC and the IEM, the respondents, more specifically the Cane Commissioner did not look into the fact that once when the new sugar factory would be established, would there be enough sugarcane available for the running of the petitioners' sugar factory.

Learned counsel for the petitioners has argued that when there is a sugar factory, it has to be supplied sugarcane so that the factory may not be starved of the raw material which is sugarcane. He submits that the State has regulated the supply of sugarcane to the various sugar factories and for this purpose, learned counsel submitted that "reserved area" and "assigned area" are declared before the commencement of the "crushing season". Learned counsel informed that a 'crushing season' starts, as per the definition given in section 2(i) of **U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953**[4], on the 1st of October every year and ends on 15th of July of the following year. Learned counsel for the petitioners submitted that a 'reserved area' would mean, as per section 2(n) of the U.P. Act 1953, an area reserved for a factory under an order for reservation of sugarcane areas made under Rule 125-B of the Defence of India Rules, 1962 and when no such order is in force, the area

4 hereinafter referred to as the **U.P. Act 1953**

specified in an order made under section 15 of the U.P. Act 1953 and an 'assigned area' means, as per definition clause of section 2(a) of the U.P. Act 1953, an area assigned to a factory under section 15 of the U.P. Act 1953.

Learned counsel for the petitioners submitted that as per section 15 of the U.P. Act 1953, the Cane Commissioner shall, after consulting the factory and the cane growers' Cooperative Society reserve any area for the purposes of supply of sugarcane to a factory in accordance with the provisions of section 16 during one or more crushing seasons as may be specified. For proper understanding, section 15 of the 1953 Act is being reproduced here as under :-

> "**15. Declaration of reserved area and assigned area.**--(1) Without prejudice to any order made under clause (d) of sub-section (2) of Section 16 the Cane Commissioner may, after consulting the Factory and cane growers' Co-operative Society in the manner to be prescribed :
>
> (a) reserve any area (hereinafter called the reserved area); and
>
> (b) assign any area (hereinafter call an assigned area).
>
> for the purposes of the supply of cane to a factory in accordance with the provisions of Section 16 during one or more crushing seasons as may be specified and may likewise at any time cancel such order or alter the boundaries of an area so reserved or assigned.
>
> (2) Where any area has been declared as reserved area for a factory, the occupier of such factory shall, if so directed by the Cane Commissioner, purchase all the cane grown in that area, which is offered for sale to the factory.
>
> (3) Where any area has been declared as assigned area for a factory, the occupier of such factory shall purchase such quantity of cane grown

> in that area and offered for sale to the factory as may be determined by the Cane Commissioner.
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> (4) An appeal shall lie to the State Government against the order of the Cane Commissioner passed under sub-section (1)."

Learned counsel for the petitioners further submitted that before declaring of a 'reserved area' and an 'assigned area', the State through a 'bonding policy', which was a document by which the Cane Commissioner (Purchase) would assess as to what was the area in which the sugarcane was being grown; which farmers were to supply to which sugarcane Cooperative Society and which all sugarcane Cooperative were to supply cane to a particular factory. Learned counsel, therefore, submitted that, as per the 'bonding policy', the reserved area was declared. In the instant case, learned counsel for the petitioners submitted, when the 'reservation order' was issued for the year 2020-21 then after looking into the area adjoining the petitioner no.1-factory, it was ascertained that **47464** hectare of land which would provided **414.76** lac quintals of cane would be reserved for the petitioner no.1 and this area would include the reserved area and the assigned area. For the petitioner no.2, it was declared that 42958 hectare would be reserved for it and it would include the reserved area and the assigned area and this would give 366.45 lac quintals of sugarcane to the petitioner no.2. Learned counsel for the petitioners further informed the Court that at the time when the bonding policy is issued by the Cane Commissioner, a *"drawl*

percentage" of the total sugarcane was also determined. He explained that the 'drawl percentage' is the percentage of sugarcane which would be reaching the factory despite the reservation. As per learned counsel for the petitioners, drawl percentage of the petitioner no.1 for the year 2020-21 was 61.77% and for the petitioner no.2 it was 53.76% for the year 2020-21.

Learned counsel for the petitioners further informed that every factory had a *"crushing capacity"* and he informed that the cane which the petitioner no.1 could crush per day was to the extent of 14000 tonnes per day and similarly for the petitioner no.2 it was 13000 tonnes per day. Learned counsel for the petitioners also informed the Court that when the reservation order was issued under section 15 of the U.P. Act 1953 then the area which was reserved and assigned took into account the sugarcane which would reach the factory and whether that would suffice the crushing capacity. It was the duty of the authorities to see to it that as per the drawl capacity the factory had the crushing capacity. Learned counsel therefore, submitted that whenever an NOC is granted by the Cane Commissioner viz.-a-viz. the distance and whenever there is an issuance of an IEM then the criteria as is given in Rule 22 of the **U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954**[5] had to be looked into. Still further, he has submitted that before the NOC was given, the

5 hereinafter referred to as the **1954 Rules**

Commissioner had to give a personal hearing to the neighbouring factories. What is more, he has argued that the issuance of the IEM and the NOC ought to have been preceded by an active exercise wherein it could be seen that there was actual application of mind with regard to the fact that there would be enough sugarcane available to the neighbouring existing sugar factories. Learned counsel for the petitioners further submitted that if the drawl capacity was as low as had been taken note of in the bonding policies etc. then even if the petitioner no.1 was allocated **414.76** lac quintals of sugarcane from an area 4**7464** hectares of land and the petitioner no.2 was assured sugarcane to the tune of 366.45 lac quintals from an area of **42958** hectares of land, the cane which actually was to reach to the petitioners could be much less than the assured sugarcane.

Learned counsel for the petitioners in the rejoinder affidavit filed in reply to the counter affidavit filed by respondent no.4 dated 21.9.2022 has given on page 38, the details of how much area was reserved for the petitioner nos.1 and 2 in the year 2019-20, 2020-21 and 2021-22. The relevant portion of the table is being reproduced here as under :-

Year 2019-20

S.No.	Factory Name	Cane Area (In Hect.)	Allotted Production (Lac. Qtls)	Crushing (Lac Qtls)	Drawl %
1.	Dhampur	46705	401.20	231.63	57.73
2.	Seohara	40034	336.24	214.50	63.79

Year 2020-21

S.No.	Factory Name	Cane Area (In Hect.)	Allotted Production (Lac. Qtls)	Crushing (Lac Qtls)	Drawl %
1.	Dhampur	44786	386.76	238.92	61.77
2.	Seohara	48139	406.00	218.25	53.76

Year 2021-22

S.No.	Factory Name	Cane Area (In Hect.)	Allotted Production (Lac. Qtls)	Crushing (Lac Qtls)	Drawl %
1.	Dhampur	47464	414.76	244.29	58.90
2.	Seohara	31878	366.45	216.96	59.21

Learned counsel for the petitioners has, therefore, argued that in all the three crushing seasons even though the allotted sugarcane used to be much more the actual sugarcane which reached the petitioners' factory was much less. He submits that for the petitioner no.1 in the year 2019-20 though 401.20 lac quintals of sugarcane was reserved, only 231.63 lac quintals of sugarcane was actually crushed. Similarly in the year 2020-21, the petitioner no.1 was allotted 386.76 lac quintals but it could crush only 238.92 lac quintals and in the year 2021-22 though 414.76 lac quintals of sugarcane was allotted but it could crush only 244.29 lac quintals. It was further submitted by learned counsel for the petitioners that similarly for the petitioner no.2 even though the allotted sugarcane was much more but the actual sugarcane which came to the factory was of a lesser quantity i.e. to say that the petitioners had crushed lesser quantity of sugarcane than the quantity allotted to them. Learned counsel for

the petitioners submitted that this occurred on account of the fact that out of the 100% quantity of the sugarcane which was allotted to the petitioners, about 20% of the total sugarcane was normally sold off by the farmers to Kolhu or to the Jaggery units; 5% of it was retained by them for cattle fodders and 10-15% was retained for using as seed for the next crops.

Learned counsel for the petitioners further submitted that if the daily crushing capacity of the respondent no.4 was of 10000 tonnes and if for the 180 days it crushed sugarcane, it would require a minimum of 180 lac quintals of sugarcane and if there was a drawl percentage which had to be seen for the new factory, then the allotment which would have to be made for it would reach 360 lac quintals and, therefore, for an area which had an average yield of 875.25 per hectare, an area of 41140 hectares would be required to satisfy the requirement of the proposed sugar mill itself. Learned counsel submitted that the additional area of 41140 hectares for growing sugarcane was not available either in the district of Bijnor or in the district of Amroha or in any other surrounding districts as the fields in the surrounding districts had reached the point of saturation so far as the growing of sugarcane was concerned. Learned counsel for the petitioners submitted that if 41140 hectares of cultivable land were to be reserved for the respondent no.4 then it would lead to diversion of the sugarcane from the existing sugar mills and their sugarcane supply would be reduced. In effect, learned counsel for the

petitioners argued that if there was a diversion of sugarcane growing areas to the reserved area of respondent no.4 then it would lead to lessening of the reserved area for the petitioners. Learned counsel for the petitioners submitted that the allocation of land proposed for the respondent no.4 was earlier for M/s. Laxmi Sugar Mill for the establishment of a sugar mill which was challenged in a suit and when no injunction was granted, a First Appeal From Order being First Appeal From Order No.1077 of 2010 was filed in the High Court. In that case when the injunction was granted by the High Court, the matter reached the Supreme Court where it was pending as Civil Appeal No.3281 of 2011. In the order of the Supreme Court it was directed that the constructions done by M/s. Laxmi Sugar Mill would be subject to the outcome of the appeal in the Supreme Court. Learned counsel for the petitioners, therefore, argued that the efforts of the respondent no.4 to establish its sugar mill in the same location was nothing else but a dubious method for circumventing the orders of the Supreme Court. Still further, learned counsel for the petitioners argued that the IEM issued to the respondent no.4 was without any application of mind and on the basis of just the fact that NOC had been issued on 14.9.2021. He submitted that no evaluation of the availability of cane in the area for the purposes of respondent no.4 and the petitioner was made. Learned counsel for the petitioners has heavily relied upon the judgment of the Supreme Court in the case of ***Ojas Industries Pvt. Ltd. vs. Oudh***

Sugar Mills Ltd.[6] and specifically relied upon paragraph 30 of the judgment, which is being reproduced here as under :-

> "The Sugarcane (Control) (Amendment) Order, 2006 inserts Clauses 6-A to 6-E in Clause 6 of the Sugarcane (Control) Order, 1966. It retains the concept of "distance". **This concept of "distance" has got to be retained for economic reasons. This concept is based on demand and supply.** This concept has to be retained because the resource namely, sugarcane, is limited. Sugarcane is not an unlimited resource "Distance" stands for available quantity of sugarcane to be supplied by the farmer to the sugar mill. On the other hand, filing of bank guarantee for Rs. 1 crore is only as a matter of proof of bona fides. An entrepreneur who is genuinely interested in setting up a sugar mill has to prove his bona fides by giving bank guarantee of Rs. 1 crore. Further, giving of bank guarantee is also a proof that the businessman has the financial ability to set up a sugar mill (factory). Therefore, giving of bank guarantee has nothing to do with the distance certificate."
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> ***(emphasis supplied)***

Sri Manish Goyal, learned Additional Advocate General assisted by Sri A.K. Goyal, learned counsel appearing for the State-respondents submitted that there was enough sugarcane available in the region and, therefore, there was no harm if a new sugar mill was established. He submitted that when the petitioners could not crush the sugarcane which was to be made available to them from the reserved/assigned areas then they could not complain against the establishment of a new factory. He further submitted that despite the fact that there was an increase in the cane areas for the three consecutive years for the petitioners but the drawl percentage for both the petitioners had been

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6 (2007) 4 SCC 723

reduced. He in fact submits that even the crushing capacity was reduced every year.

Learned Additional Advocate General further submitted that as always there was an increase in the area where sugarcane was being grown, it was in the interest of the public in general that more sugar factories be established. He drew the attention of the Court to **"The Uttar Pradesh Sugarcane Supply and Purchase Order, 1954"**. More specifically, he drew the attention of the Court to Form-C which was an agreement between the cane growers' Cooperative Society and the occupier of the factory and submitted that the occupier of the factory entered into an agreement only to the extent that the factory could crush. Definitely, the factory would not enter into an agreement by which there would be surplus sugarcane. He, therefore, submitted that the concept of "drawl capacity" was brought into existence because the sugarcane which was being utilized by a particular sugar factory was only limited to its crushing capacity.

Learned Additional Advocate General further submitted that nowhere have the petitioners come up with any case that their sugarcane crushing capacities were more than the sugarcane which was being made available to them. He also submitted that if more factories would be established, the sugarcane which was available in the reserved areas of the petitioners and which was not being utilized by them on account of their low drawl capacity, could be diverted to fresh factories in public interest. He further

submitted that even if the drawl capacity was not seen and only the reservation order was seen then also there was sufficient land available for the supply of sugarcane to the existing as well as for the new factories.

Learned Additional Advocate General while replying to the non-consideration of the objection of the petitioners, submitted that there was sufficient consideration by the authorities concerned with regard to the availability of sugarcane to the petitioners and also to the new factory. He argued that the Government had taken into account the figures of additional sugarcane which was available in the last so many years and which could not be utilized by the existing factories and also he submitted that the Government had taken into account the regular trend of the increasing sugarcane production.

Learned Additional Advocate General submitted that if all the Forms "C", which had been signed by the petitioners under the 1954 Rules were seen, it would become evident that much more sugarcane was being allotted to them in the reservation orders issued under section 15 of the 1953 Act than was being actually consumed by the two petitioners. For this purpose he pointed out to the various Forms "C" which have been filed along with the Supplementary Rejoinder Affidavit by the petitioners on 29.11.2022.

Learned Additional Advocate General specifically submitted that the order of the Supreme Court passed in Civil

Appeal No.3281 of 2022 was not of any help to the petitioners as the same was no longer applicable in the case at hand. He submits that the respondent no.4 had acquired almost 400 bighas of land to establish its mill. He further submitted that the IEM which was issued to the earlier factory namely M/s. Laxmi Sugar Mill Pvt. Ltd. was cancelled vide communication dated 1.10.2021 and the respondent no.4 was granted the IEM on 12.10.2021 and, therefore, it may not be said that the respondent no.4 was in any way trying to get what was not given to M/s. Laxmi Sugar Mills Pvt. Ltd. surreptitiously.

Learned Additional Advocate General argued that once when it was found that there was sufficient material for taking a particular policy decision by the State Government and the Government of India within the rights guaranteed by the Statutes then the High Court may not under its powers of judicial review go into the correctness of such policy decision so as to find out better alternatives. In this regard he relied upon the following decisions of the Supreme Court :-

1. Federation of Railway Officers Association & Others. vs. Union of India [7]
2. BALCO Employees Union vs. Union of India (UOI) & Others.[8]
3. P.T.R. Exports (Madras) Pvt. Ltd. & Other vs. Union of India (UOI) & Others[9].
4. Prag Ice and Oil Mills & Others vs. Union of India (UOI)[10]
5. R.K. Garg & Others vs. Union of India (UOI) & Others[11]

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7 (2003) 4 SCC 289
8 (2002) 2 SCC 333
9 (1996) 5 SCC 268
10 (1978) 3 SCC 459
11 (1981) 4 SCC 675

6. Dhampur Sugar (Kashipur) Ltd. vs. State of Uttaranchal & Others[12].
7. Ugar Sugar Works Ltd. vs. Delhi Administration & Others[13].
8. Shri Sitarm Sugar Company Limited & Another vs. Union of India & Others[14].

Learned Additional Advocate General has specifically relied upon paragraphs 18, 19 and 20 of the judgment of the Supreme Court in **Ugar Sugar Works Ltd. (supra)** and therefore, the same is being reproduced here as under :-

> "18. The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, **the mere fact that it would hurt business interests of a party, does not justify invalidating the policy.** In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The Courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.
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> "19. In ***T.N. Education Deptt. Ministerial and General Subordinate Services Assn. vs. State of T. N. (1980) 3 SCC 97***, noticing the jurisdictional limitations to analyse and fault a policy, this Court opined that:
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> > "The court cannot strike down a G.O., or a policy merely because there is a variation or contradiction. Life is sometimes contradiction and even consistency is not always a virtue. What is important is to know whether mala

12 (2007) 8 SCC 418
13 (2001) 3 SCC 635
14 (1990) 3 SCC 223

> fides vitiates or irrational and extraneous factor fouls."

20. It would also be prudent to recall the following observations of Lord Justice Lawton in ***Laker Airways Ltd. vs. Deptt. of Trade, (1977) 2 WLR 234***, while considering the parameters of judicial review in matters involving policy decisions of the executive :

> "In the United Kingdom aviation policy is determined by ministers within the legal framework set out by Parliament. Judges have nothing to do with either policy-making or the carrying out of policy. Their function is to decide whether a minister has acted within the powers given to him by statute or the common law. If he is declared by a court, after due process of law, to have acted outside his powers, he must stop doing what he has done until such time as Parliament gives him the powers he wants. In a case such as this I regard myself as a referee. I can blow my judicial whistle when the ball goes out of play; but when the game restarts I must neither take part in it nor tell the players how to play."
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> **(emphasis supplied)**

He also relied upon paragraph 12 of the the judgment of the Supreme Court in **Federation of Railway Officers Association (supra)** and the same is also being reproduced here as under :-

> "12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the Court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the Court will not interfere with such matters."

Learned Additional Advocate General further submitted that the ratio in the case of **Ojas Industries Pvt. Ltd. (supra)** would not help the petitioners as that was a case where two sugar mills were proposed to be established within a distance of 7.2 kilometers and he submitted that when the Supreme Court observed that the distance was to be an economic concept then he submitted that the Supreme Court held that when the State was wanting one unit to be separated by another unit by 15 kilometers then it was for "economic reasons". Learned Additional Advocate General, therefore, submitted that the judgment cited by the petitioners in the case of **Ojas Industries Pvt. Ltd. (supra)** would not in any manner help the petitioners. He also submitted that no monopolistic approach, as was being desired by the petitioners, could be given sanctity to by a Constitutional Court. In this regard reliance has been placed on the judgments of the Supreme Court in **APM Terminals BV vs. Union of India**[15]**; Dhampur Sugar (Kashipur) Ltd. vs. State of Uttaranchal & Ors.**[16] and **Sunil Kumar Sharma & Anr. vs. State of U.P.**[17]**.** Learned Additional Advocate General relying upon the judgment of the Supreme Court in Dhampur Sugar (Kashipur) Ltd. (supra) categorically stated that in a policy matter where the Government had come up with a policy, the Court could not annul the same only on the ground that earlier there was a lesser number of factories and now there would be more factories and, therefore,

15 2011 (6) SCC 756
16 2007 (8) SCC 418
17 2018 (9) ADJ 806 (DB)

sugarcane supplied to the factories would be restricted. He submitted that whenever the Government takes a policy decision, it looks into every aspect of the matter. Learned Additional Advocate General submitted that if the respondent no.4 becomes functional and when reserved areas are to be allotted to different factories, then reservation orders would be drawn under section 15 of the 1953 Act as per the sugarcane availability; the drawl capacity and the crushing capacity. Here again, learned Additional Advocate General submitted that if in any manner the petitioners were not satisfied, at a future date, with the reservation order, then they could always file a statutory appeal.

Learned Additional Advocate General again relying upon the judgment of the Supreme Court in **Dhampur Sugar (Kashipur) Ltd. (supra)** submitted that before the Supreme Court the petitioner no.1 was the the appellant in that case with regard to its Kashipur Unit. In that case a Rab unit was coming up and the petitioner had opposed by filing a writ petition in the High Court that only a few days back the Government was reluctant to give licence to the Rab unit and, therefore, it could not give the licence on a later date. The High Court had dismissed the writ petition of the petitioner therein and the Supreme Court had also dismissed the appeal with a definite observation that matters of public policy could not be interfered with lightly. Learned Additional Advocate General submitted that the case at hand had also been filed virtually on the same grounds. The

petitioners were only apprehending, he submits, that there would be a shortage in the supply of sugarcane to the petitioners. It had not been considered while filing the writ petition, learned Additional Advocate General submits, that no writ lies on the basis of apprehension. He submitted that absolutely no writ lay on the basis of apprehension.

Learned Additional Advocate General submitted that the filing of the instant writ petition was with an oblique motive to stifle competition. He submits that Rule 22 of the 1954 Rules had sufficient provisions for seeing that reservation is done in a proper fashion.

He also submitted that the establishment of a new unit would be in the larger public interest and in the interest of the cane growers. He, therefore, submitted that a holistic view of the Constitution ought to be taken. In this regard, he placed heavy reliance upon the decision of the Supreme Court in **Shivshakti Sugars Ltd. vs. Shree Renuka Sugar Ltd.**[18]

In the end, learned Additional Advocate General submitted that when there was a limited crushing capacity of a sugar factory and the drawl percentage was also lesser than the tonnage of sugarcane allotted, then the only conclusion was that the farmers were diverting their sugarcane produce to Khandsari units which were being run by Kolhus. Learned Additional Advocate General also submitted that not only was there more wastage but the profit

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18 (2017) 7 SCC 729

margin was also minimal. He, therefore, submitted that if a new factory comes up then even farmers would be benefited from the new factory as they would definitely get more money by selling their sugarcane to sugar factories.

Sri Aditya Kumar Singh, learned counsel appearing for respondent nos.3, 5 and 6 also made arguments virtually on the same lines.

Sri Rakesh Pande, Senior Advocate assisted by Sri K.K. Rao, learned counsel appearing for respondent no.4 submitted that the petitioners' argument that the NOC ought to be issued after taking a broader view was absolutely fallacious. He submitted that under the provisions of Clauses 6-A to 6-B of the 1966 Order, the NOC was issued and they only stipulated that the NOC would be given on the basis of distance which ought not to be lesser than 15 kilometers from one factory and the other. Learned Senior Counsel submitted that if the petitioners contended that the availability of sugarcane had also to be looked into then they should have challenged the vires of Orders 6-A and 6-B of the 1966 Order which they have not done in the instant writ petition. He submits that while issuing an NOC no other parameter ought to be looked into. Learned counsel for respondent no.4 further submitted that reservation area which was the domain of the Cane Commissioner under section 15 of the 1953 Act read with Rule 22 of the 1954 Rules definitely catered for providing of a reserved area and if there was a factory, he

submits, the reserved area had to be there for it as per its drawl capacity and crushing capacity. Learned counsel, therefore, submits that the writ petition was filed on the basis of absolute apprehension and no writ could be issued on the basis of apprehension. Learned counsel submitted that even before there was any shortfall in the reserved area, the writ petition had been filed. This showed that the writ petition was a premature one.

Learned counsel for respondent no.4 further submitted that so far as the procedure for considering the grant of NOC by the Commissioner, Cane and Sugar Department dated 12.9.2022 was concerned (the policy dated 12.9.2022 had been attached along with the Supplementary Affidavit filed by the petitioner on 9.11.2022), when the NOC was granted and the IEM was accepted by the Central Government, then it was presumed that all factors must have been taken into consideration.

Having heard Sri Shashi Nandan, learned Senior Counsel assisted by Sri Rahul Agarwal, learned counsel for the petitioners; Sri Manish Goyal, learned Additional Advocate General assisted by Sri A.K. Goyal, learned counsel for respondent nos.1 and 2; Sri Rakesh Pande, learned Senior Counsel assisted by Sri K.K. Rao, learned counsel appearing for the respondent no.4 and Sri Aditya Kumar Singh, learned counsel appearing for the respondent nos.3, 5 and 6, the Court is of the view that no interference is warranted in the instant writ petition and, therefore, the same deserves to be dismissed.

The petitioners have challenged the NOC dated 14.9.2021 issued by the respondent no.2-Cane Commissioner to the respondent no.4-M/s. Bindal Paper Limited and the IEM bearing Acknowledgment No.IEM/A/ACK/595/2021 dated 12.10.2021 issued by the Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India.

The first ground which the petitioners have taken is that the grant of the NOC and the issuance of the IEM thereof was done merely on the basis of the distance between the proposed sugar mill and the existing sugar mills and the learned counsel for the petitioners submitted that this contravened the scheme as provided in the U.P. Act 1953 and the 1954 Rules. Learned counsel for the petitioners had submitted that the factor of distance between the proposed mill and the existing sugar mill was only one of the many factors which was to be considered as per the Act and the Rules framed. He had submitted that when the procurement of the sugarcane and manufacturing of sugar was regulated by U.P. Act 1953 and the 1954 Rules then as per section 15 of the U.P. Act 1953 and as per Rule 22 of the 1954 Rules, power was there with the Cane Commissioner to determine the reserved area and the assigned area for each sugar mill from which the sugar mill was required to procure sugarcane for its crushing season. Learned counsel for the petitioners had stated that the quantity of the sugarcane supplied from the reserved and assigned areas to the sugar factory in the previous

years and the quantity of the cane which was required to be crushed by the factory were the main criteria under Rule 22 of the 1954 Rules. He had, therefore, submitted that as per the 1966 Control Order, specifically clauses 6-A to 6-E, the Authority had to see that whenever a sugar factory was to be established then the availability of sugarcane had to be looked into. By referring to the judgment of the Supreme Court reported in (2007) 4 SCC 723, learned counsel for the petitioners had argued that the distance alone was not the criteria on the basis of which the NOC ought to have been issued. He submitted that when an NOC was to be issued then the impact on the availability of the sugarcane for the already existing sugar mills had to be examined with reference to their crushing capacity; total cultivable area of sugar cane which was there in the reserved area and the assigned area and the drawl percentage had definitely to be considered.

However, from the arguments heard, the Court is of the view that under Clause 6-A of the 1966 Control Order the Cane Commissioner had to only look into the fact as to whether there was a distance of 15 kilometers from the proposed site of a fresh factory and the pre-existing factories. If that was the statutory obligation on the Cane Commissioner then he could not have gone beyond that statutory obligation. The Court has also examined section 15 of the U.P. Act 1953 and Rule 22 of the 1954 Rules and it has found that if a factory had been established then it was the bounden duty of the Authorities to see that it had

to attach a reserved area and an assigned area to every sugar factory. The Court is also of the view that as and when a fresh factory is given the permission to establish itself the Authorities were under an obligation to see that the fresh sugar factory as also the pre-existing sugar factories get enough sugarcane for the purposes of crushing in a particular crushing year. Also the Court finds that when the reserved area and the assigned area is allocated to a particular sugar factory then the following amongst other aspects are taken into consideration :-

i. the drawl capacity;

ii. the crushing capacity; and

iii. the past performance of the sugar factory.

Also when the reserved area and the assigned area is allocated to a particular sugar factory then the Cane Commissioner definitely sees to it that the area and the sugarcane allotted is more than is required for a particular sugar factory. Also the Court finds that when the crushing year commences, the sugar factory enters into an agreement with the Cane Growers Cooperative Society in Form-C provided under the U.P. Sugarcane Supply and Purchase Order, 1954. All this leads to an inevitable conclusion that when a sugar factory, despite the fact that it has got much more land as reserved area or assigned area, enters into an agreement in Form-C with the Cane Growers Cooperative Society for the supply of sugarcane then it has in

mind the extent of crushing it shall be able to do in a particular crushing year. It definitely keeps in mind the drawl percentage.

From the record we find that the petitioner no.1 was allocated 46705 hectares of land in the year 2019-20 and was allocated 401.20 lakh quintals of sugarcane but it actually crushed only 231.63 lakh quintals. Also we find that in the year 2019-20 the petitioner no.2 had been allocated 40034 hectares of land with the sugarcane crop to the extent of 336.24 lakh quintals but it had actually crushed only 214.50 lakh quintals. This was also the case in the year 2020-21 and in the year 2021-22.

The above discussion, therefore, clearly illustrates that when the Government gave its no objection and had also acknowledged the IEM, it had taken into consideration the availability of sugarcane viz.-a-viz. the existing factories and the factory which was proposed to be established i.e. the respondent no.4.

Sugar industry is a controlled industry. Government has a control on the sugarcane production, distribution, prices as also on the production and marketing of the finished product which is sugar. Whenever a new factory comes up with the earlier existing factories, it is the responsibility of the State to see that sugarcane, which is the raw material for the factories - old and new, is made available to all the factories.

The other aspect which was argued by the learned counsel for the petitioners was that whether the setting-up of a new sugar

mill would impact the availability of the sugarcane to the existing sugar mill in the reserved area/assigned area.

From the various arguments we have heard we are definitely of the view that the argument was misplaced. Whenever there is a reservation order or an assignment order, it is done after taking into consideration as to what would be the sugarcane grown in that area and as to how much of the sugarcane was actually required for any particular sugar factory. In the case at hand we definitely find that much more sugarcane crop was allocated to the existing factories i.e. the petitioners but out of that allocated sugarcane only a certain portion of it was actually purchased by the petitioners. This definitely means that the Cane Commissioner had in mind the capacity of the sugar factory and accordingly he allocates the reserved area and the assigned area. For the petitioners to think that the availability of sugarcane would not be there upon coming up of a new sugar factory, is only an apprehension on the basis of which the Court cannot adjudicate the matter.

The Court, therefore, is of the view that whenever the Government proposes to set-up a new factory, it always takes into consideration the availability of sugarcane. Before every crushing season the reserved area and the assigned area shall be allocated to every factory and every factory would be entering into an agreement with the Cane Growers Cooperative Society in Form-C under the U.P. Sugarcane Supply and Purchase Order, 1954.

What is more, the Court finds that if, by the reservation order any particular factory, is in any manner dissatisfied then it can always file a statutory appeal. Therefore, the Court is definitely of the view that when the new/proposed sugar factory was being brought into existence, the State Authorities which had all the data before them, considered the availability of sugarcane and the impact of a new factory on all the existing factories. Further the Court finds that the setting-up of a new sugar factory at the same location, which is the subject matter of the dispute in Civil Appeal no.3281 of 2011 before the Supreme Court, would not in any manner violate the orders passed by the Supreme Court as well as the High Court. The Court also finds that in fact the respondent no.4 had acquired 400 bighas of land to establish its mill and the IEM which was issued to the earlier factory i.e. M/s. Laxmi Sugar Mill was cancelled vide order/communication dated 1.10.2021 and only thereafter the respondent no.4 was granted the IEM on 12.10.2021.

Further the Court is of the view that by allowing the respondent no.4 to set-up a fresh factory was well within the realm of the powers of the Government and we would refrain from interfering in the matter.

We are also of the view that definitely the coming up of a fresh factory would not in any manner hurt the business interests of the existing sugar factories including the business interests of the petitioners. Therefore, when the petitioners argued that

economic reasons had to be looked into while giving the consent by the Government for the establishment of a fresh factory, the argument was fallacious. The economic reasons while establishing a fresh sugar factory were looked into. Every pre-existing factory and the new factory would get its own reserved/assigned area and every factory would get its raw material in the form of sugarcane for crushing. The policy decision taken by the Government for setting-up of a fresh sugar factory, therefore, does not, in any manner, calls for any interference by this Court. As and when the fresh sugar factory comes in, definitely the percentage of sale of sugarcane to the existing sugar factories along with the new factory would increase and thus more sugarcane would go to sugar factories. In this manner the local farmers would also be encouraged to produce more sugarcane and sell their produce to the sugar factories. This would bring in more prosperity in the area for the sugarcane growers.

For the reasons stated above, the writ petition stands dismissed

Order Date :-06.01.2023
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(Siddhartha Varma, J.)

(Ajit Singh, J.)