M/s. Tiveni Engineering Works Ltd. and another Vs Union of India and others

Court: Allahabad High Court

Date of Decision: May 15, 1996

Acts Referred: Constitution of India, 1950 â€" Article 14, 19, 226
Essential Commodities Act, 1955 â€" Section 3
Industries (Development and Regulation) Act, 1951 â€" Section 11, 3, 30
Registration and Licensing of Industrial Undertakings Rules, 1952 â€" Rule 11, 15, 15(1), 15(2), 9
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 â€" Section 15, 16, 16(1), 16(2)(d), 28

Citation: AIR 1996 All 420

Hon'ble Judges: U.P. Singh, J; S.K. Phaujdar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.K. Phaudhar, J.
All these writ petitions relate to grant of letters of intent (LOIs, in brief) to different industrial undertakings for setting up

new sugar mills at different places in the State of Uttar Pradesh. The above petitions have been filed by existing sugar mills and by certain

competitors and the LOIs have been challenged on different grounds. On the basis of the points raised, writ petitions may be categorised in 3

classes :

(1) Petitions in which the guidelines of the Government have been challenged as having violated the provisions of Articles 14 and 19 of the

Constitution ;

(2) the petitions in which the validity of the guidelines have not been seriously challenged but the action of the Government have been challenged on

the ground that the guidelines have been violated; and

(3) one petition in which a competitor for a location of a new sugar mill has challenged the LOI in favour of another on the ground of non-

observance of statutory provisions of certain Acts and Rules.

2. We shall come to the details of these petitions in subsequent paragraphs.

3. The sugar industry is a controlled industry in the sense that the Government has a control on the sugercane production, distribution, prices, as

also on the production, marketing of the finished product, sugar. By sugar, we mean the sugar produced by [he process known as vaccum pan

process. The sugar factories produce sugar through this process only. There are other crushers and units to produce khandsari and gur for which

also legislations are there to control the production etc., but we are concerned in these writ petitions with sugar only and not with khandsari and gur

etc. except for some passing reference to the legislations controlling khandsari. Legislations for sugar and sugarcane are both Central and State

ones. The first one we may refer to is Sugar Cane Act, 1934 (Central Act No. XV of 1934). It regulates the price of sugarcane intended for use in

sugar factories. It empowers the State Government to declare any area as a controlled area, and also to fix a minimum price for purchase of sugar-

cane in that area. We may also refer to Sugar Cane Control Order, 1966, which was made by the Central Government under its power u/s 3 of

the Essential Commodities Act. This order speaks of the controlled re served area which means any area where sugar-cane is grown and reserved

for a factory under sub-clause (1)(a) of Clause 6. Clause 6 speaks of power to regulate distribution and movement of sugarcane and the Central

Government is authorised to notify any area as reserved area where sugarcane is grown for a factory having regard to the crushing capacity of the

factory and availability of sugarcane in that reserved area and the need for production of sugar with a view to enabling the factory to produce the

quantity of sugar cane required by it. The same clause also empowers the Central Government to determine the quantity of sugarcane a factory will

require for crushing in any year. This order also empowers the Central Government to license power crushers and khandsari units and to regulate

khandsari units and to regulate purchase of sugar by them. Under clause 11 of the Sugar-cane Control Order the Central Government has a right

to delegate the powers under clause 6 and other clauses to State Government or any officer or any authority of a Slate Government.

4. We may now come to certain orders and legislations of the State of Uttar Pradesh. The U.P. Khandsari Sugar Manufacturers Licensing Order,

1967 indicates that the Central Government had delegated under Clause 11 of the Sugar Control Order, 1966. the powers under Clauses 6, 7, 8

and 9 of that order and this U.P. Order of 1967 was made under such delegated powers for regulating manufacture of khandasari sugar. In this

Order, there is a definition of ""assigned area"" which means an area assigned to a factory u/s 15 of the U.P. Sugar Cane (Regulation of Supply and

Purchase) Act, 1953. This Order of 1967 forbids manufacture of Khandsari sugar without a licence. Another order under the delegated powers

under the Sugar Control Order was made by the State of U.P. namely, the U.P. Restriction on Sugarcane Purchase Order, 1966. Under this

order, no sugarcane was to be purchased by a power crusher or for manufacture of sugar, sakkar, khandasari etc. except under and in

accordance with a permit issued by or on behalf of the Cane Commissioner.

5. Then there is the Slate Act No. 24 of 1953, namely, the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953. This Act was

intended to regulate the supply and purchase of sugarcane required for the use in sugar factories, gur and khandsari manufacturing units. It defines

assigned area"" as an area assigned to a factory u/s 15 and it also defines ""reserved area"" as an area reserved for a factory u/s 15. Section 15 may

be quoted in toto:

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 called 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 quality of cane grown in that

area and offered for sale to the factory, as may be determined by the Cane Commissioner.

(4) An appeal shall lie to the State Government against the order of the Cane Commissioner passed under sub-section (1).

The law relating to sugar factories contained in Section 16 of this Act says that the State Government may, for maintaining supplies, regulate the

distribution, sale or purchase of cane in a reserved or assigned area and may also regulate purchase of sugarcane in that area other than the

reserved or assigned area. Section 28 of this Act empowers the State Government to make rules to carry into effect the provisions of this Act.

6. The rules framed under the above Act are known as the U.P: Sugarcane (Regulation of Supply and Purchase) Rules, 1954. Under Chapter 6 of

these Rules, reservation and assignment of areas have been dealt with. In the writ petitions before us, arguments were laid around interpretation of

the term "reserved area" and for that purpose only reference to these rules have been made.

7. The U.P. Sugarcane (Regulation of Supply and Purchase) Order, 1954, was made in terms of the power u/s 16 of the U.P. Sugarcane

(Regulation of Supply and Purchase) Act, 1953. It speaks of the rights and procedure concerning purchase of sugarcane in reserved and assigned

areas.

8. So far as the establishment of sugar factories is concerned, it is controlled by the Central Government under the Industrial Development and

Regulation Act, 1951. u/s 3(i) of this Act, a schedule industry means any of to industries specified in the 1st Schedule. In the said Schedule, at item

No. 25, we have the sugar industry as a scheduled industry. Under this Act existing Industrial undertakings are to register themselves if they fall in

one or the other descriptions of the scheduled industries. Section 11 of this Act spoke of licensing of new industrial undertakings and required that

no person or authority other than the Central Government shall, after the commencement of the Act. establish any new industrial undertaking,

except under and in accordance with a licence issued in this regard by the Central Government Section 13 of this Act empowers the Central

Government to make rules for securing the purposes of this Act covering matters which may be taken in the granting of licences including previous

consultation by the Central Government with the Advisory Council or the Development Council.

9. The Registration and Licence of Industrial Undertaking Rules, 1952, were made under the powers u/s 30 of the above Act. It spoke of how a

licence is to be applied for, how it is to be processed and how an order of grant or refusal is to be made. Rule 18 of these Rules speaks of review

of licences by a sub-committee and it may be quoted in toto:

18. Review of licence by a sub-committee--A sub-committee of the Central Council shall be constituted which will review all licences issued,

refused, varied, amended or revoked from time to time, and advice the Government on the general principles to be followed in the issue of licences

for establishing new undertakings or substantial expansion of the existing undertakings. The results to the review shall be reported to the Central

Advisory Council.

10. In addition to these legislations (Acts, Rules and Orders) the Government also issued from time to time certain guidelines for grant of new

industrial licences. Those"" guidelines are annexed as Annexure 9 in Writ Petition No. 41516 of 1993 and have also been referred to in the other

writ petitions. We shall refer to those guidelines at the proper time.

11. With the above back-ground of the legal position, we are to take up the cases as made out in the writ petitions. The present petitions are all

intended for invoking this Court''s power under Article 226 of Constitution of India and, accordingly, it is necessary for the petitioners to show that

their fundamental right or any other legal right has been affected by the impugned actions of the State or the Central Government.

12. In Writ Petition No. 41516 of 1993, the applicants, M/s. Triveni Engineering Works Ltd. have challenged the grant of LOIs in favour of

respondent Nos. 7 and 8. The existing sugar mill of the petitioners is at Khatauli. district Muzaffarnagar, and the proposed sites of the factories to

be established by respondent Nos. 7 and 8 area at Hussainpur and Budhana. The LOI in favour of the respondent No. 7 for Hussainpur was

issued on 7-3-1994 and is annexure 13-A .to the writ petition. The LIO in favour of respondent No. 8 for Budhana is dated 31-3-1994 and is

annexure 13-B to the writ petition. The petitioners in Writ Petition No. 41516 of 1993 challenged the very guidelines as being violative of Articles

14 and 19 of the Constitution. The main contention of the petitioners in this writ petition is that the guidelines were originally framed keeping in view

the cane availability in the area for supply to the sugar factory and it has been changed arbitrarily without application of mind. It was stated that

initially there was a restriction in the guidelines that no sugar factory will be established within a spatial distance of 40 kms. from one existing

factory. This distance was arbitrarily changed to 15 kms the Government in suitable cases to establish a factory even at a distance of 15 kms. from

an existing one.

13. It was contended that the statistics of sugarcane production and crushing by the sugar mills and diversion of sugarcane for domestic use and for

seed and for khandsari unit. would indicate that there was shortage of supply of sugarcane and licensing a new sugar factory in the area would be

disastrous to the existing mills at they would be starved of raw material and this fact was not considered by the authorities while granting the LOIs.

It was also the contention of the petitioners that only recently they have been allowed to expend their production capability from 5000 TCD to

10,000 TCD and they also authorised to go in for production of 25 per cent more than the capacity and, keeping these facts in view, the

authorities should have held that no surplus sugarcane could be available for any new sugar factory. According to them, the new unit would pounce

upon the reserved area of Khatauli Sugar Factory and would thereby adversely affect their production. In this writ petition a challenge was made

to the industrial policy of giving an incentive to new units while denying the same to the factories who has been permitted to expand their capacity

of production.

14. Almost similar were the lines of attack in Writ Petition No. 45249 of 1993 (Gangeshwar Ltd. (Sugar Unit) v. Union of India). In this case the

existing sugar mill at Deoband, district Sariaranpur, is of the petitioners. The proposed sugar mill is at Nagal. tehsil Deoband, district Saharanpur.

for a capacity of 2500 TCD. In this writ petition also the vires of the guidelines were challenged and a plea was raised that there was scarcity of

sugarcane even in the existing mills and grant of new licence at the proposed site would be prejudicial to the interest of existing mills. In this writ

petition as well, the press-note dated 8-11-1991 containing the guidelines of the Government of India regarding establishment of new sugar

factories was sought to be struck down as the guidelines arbitrarily fixed a spatial distance of a new unit from the existing one and as the guidelines

did not indicate the proper procedure to be followed to determine the availability of sugarcane and also because the guidelines were against the

recommendation of the expert bodies. The policy dated 10-3-1993 was also challenged on the ground of discrimination as it had given an incentive

for expanding existing units. The LOI granted in favour of the respondent No. 7 in the writ petition for establishment of a new factory at Thoi,

district Haridwar, was also sought to be struck down.

15. In Writ Petition No. 16159 of 1994, the petitioner are M/s. Rai Bahadur Narain Singh Sugar Mils Ltd. The existing mills of the petitioners in

this case are situated at Lahksar in the district of Haridwar with a licensed crushing capacity of 3500 TCD. The factory was initially established

with a capacity of 400 TCD and in course of the last about 50 years, its capacity has increased to the above level. It is stated that the State

Government had agreed by its letter dated 1-11-1990 to maintain the reserved area for the petitioners'' above factory and prohibiting the diversion

of sugarcane to khandasari and gur units. The above commitments were made to enable the petitioner to expand his capacity of production in the

existing factory. However, the Government of India has granted an LOI in favour of M/s. Associated Sugar Mills Ltd. Saharanpur, to establish a

new factory at Thoi, district Haridwar, at a distance of 13.5 km. from the petitioner''s existing factory. This was in clear violation of the distance

restriction in the guidelines set out by the Government of India and was, thus, liable to be struck down. It was contended that if such new factory is

allowed to be set up at the chosen site, supply of sugar cane to the existing factory of the petitioners would be seriously affected to the prejudice of

the petitioners. It may be pointed out here that the letter of intent spoken of in this writ petition is dated 31-3-1994, and is under challenge in Writ

Petition No. 4524 of 1993 as well, albeit on different grounds. It was contended that the distance restriction was imposed in the guidelines keeping

in view the cane availability of an area and the latest guidelines fixed the minimum distance between two mills at 25 kms. and this distance could be

reduced to 15 kms. exceptional circumstances only. It was the case of the petitioners that the area in question was not sugarcane incentive and the

sugarcane production was not 20 per cent above the national average, and there was no reason to minimise the distance from 25 to 15 kms. and in

any case, it could not have gone to a distance of less than 15 kms. Here also a plea was taken that by selling up the new mill the reserved area of

the existing mill would be affected and much of the cane would be taken way by the new mill to the prejudice of the existing mill. In this case, the

LOJ for setting up a factory at Thoi was challenged on another ground as well. In the initial application for the new factory the site was village

Khair, district Aligarh. The proposal for this location alone was considered by the State Government subsequently. The site was changed from

Khair to Mohammadpur in the district of Haridwar by a simple Idler and again it was changed by another letter for Jabharpur, district

Muzaffarnagar and finally the LOI was granted for the location at Thoi in the district of Hardwar. All these changes in site were made by simple

letters addressed by the concerned respondent and not according to the procedure set out in the rules as submitted by the petitioners.

16. In W.P. No. 9668 of 1994, the petitioners are Sir Sadi Lal Enterprises Ltd. The petitioners have their existing sugar mills at Shamli in the

district of Muzaffarnagar. The petitioners are aggrieved by grant of an LOI dated 7-3-1994 at Uun in the district of Muzaffarnager in favour of

respondent No. 6 M/s. Kasturi Sugar Mills Ltd. A prayer was made in the writ petition to quash, by an appropriate writ, this letter of intent. The

grounds of attack were various. It was contended that the action of the Central Government in granting the LOI at Uun was arbitrary and violative

of An. 14 of the Constitution as having contravened the guidelines of the Central Government in this regard. It was further staled that the site

initially was at Chausana and it was changed to Uun without any investigation. It was contended that giving a licence for establishment of the new

sugar factory at Uun would curtail the reserved area of the petitioner''s existing factory as there will be dearth of supply of sugarcane. It was also

contended that the site was changed not for any legal consideration, but under political pressure.

17. In W.P. No. 9256 of 1992, the petitioners are M/s. Shri Ram Industrial Enterprises Ltd. They have their reserved areas in the district of

Muzaffarnagar and Meerut and they have contributed liberally towards the development of sugarcane areas on their own volition for the growth of

sugar production and they have gained vast experience and expertise towards the development of sugarcane and production of sugar. In this writ

petition recommendation of grant of a licence in favour of respondent No. 4 and grant of LOI in his favour for setting up a factory at Hussainpur

was challenged. Incidentally, it may be mentioned that this LOI is also under challenge in Writ Petition No. 41516 of 1993 on the grounds as

mentioned above, while dealing with that writ petition. In the present writ petition, the LOI in favour of Sudhish Prakash has been challenged on

grounds absolutely different from the ones set out in Writ Petition No. 41516 of 1993. It is contended in this writ petition that the petitioners were

also applicants for selling up a new sugar factory at Hussainpur and, in fact, they were the first to make the application for this site. The petitioners''

claim, however, was rejected and the claim of Sudhish Prakash was allowed without any valid and reasonable considerations and on

misappropriation of facts, as Sudhish Prakash was not the first applicant for this site. It was contended that Sudish Prakash hail initially made the

application for Rooppur and without following the procedure there was a prayer on his behalf to change the site. There was no investigation so far

Sudhish Prakash is concerned for Hussainpur. And in any case, the statutory provisions of Rule 15(1) and 15(2) of the Registration and Licensing

of Industrial Undertaking Rules. 1952, were not followed. It was contended that after the filing of the writ petition, the petitioners were given a

post-decisional chance to show cause which was, in fact, a negation of the right available to an applicant in case his application for setting up a new

industry is refused.

18. All these writ petitions were appended to by statistical figures concerning sugarcane production, sugarcane utilisation by the sugar factories,

diversion of sugarcane towards khandsari and other units as also comparative statistics regarding different districts in Uttar Pradesh and different

States of the country.

19. In all these writ petitions although the Union Government was a party and although in the first mentioned writ petition certain interrogatories

were posed to them, the Union Government had not come up with any reply either on the averments made in the writ petitions nor on the

interrogatories. The respondents who were granted the LOIs, however, had contested the claims mainly on two grounds. It was contended that on

their behalf by their respective counsel that the petitions were untenable as the petitioners had no locus and to file writ petitions as the same were

premature. On merits of the case also, it was contended that the guidelines were simply a working formula and were not to be observed in letters,

but to be observed in spirit only and the spirit behind was the availability of sugarcane. The respondents relied on the statistics submitted by the

petitioners to indicate that the sugarcane availability in the district was sufficient to sustain even the new factories and the expanded capacity of the

old ones and the apprehension that there would be short supply of sugarcane was baseless. The petitioners raised the plea of legitimate expectation

on the ground that they had developed their reserved areas and they have been permitted to expand their capacity and they could normally expect

that the Government will not fail them in supply of sugarcane and any interference in this legitimate expectation would give them a right of redressal

by the Court. In reply to this, it was contended that reserved area was nothing sacrosanct for any existing sugar mills as it was to be reserved for

one crushing season only and was open to change even during the crushing season. There was, therefore, no legal or vested right created in any

sugar factory over the reserved area and the concept of legitimate expectation may not arise in the present case.

20. We shall lake up the point of locus at the outset. On the question of locus the contending respondents submitted that all these writ petitions

were pre-mature as having been based on mere apprehension and not on the actual state of affairs. As indicated in the first paragraph of this

judgment, some of the writ petitions had challenged the guidelines as violative of the provisions of Articles 14 and 19 of the Constitution while in

some other petitions, the action of the Government in not following the guidelines has been made the ground of attack. In the third category of writ

petitions, it was stated that the Letters of Intent in favour of the respondents could not be sustained on the ground of non-observance of statutory

provisions of certain Acts and Rules. We shall first take up the two categories of cases which cover the question of guidelines, whether they were

unconstitutional or whether they gave a present fight to the petitioners. These guidelines are open to change and had really been changed on several

occasions. The first of the guidelines referred to in the affidavit of the parties, is contained in press note No. 1 of 1987 series issued by the Ministry

of Finance. Government of India (Annexure-9 to the writ petition of M/s. Triveni Engineering Works Ltd., Khatoli). The press note speaks of a

decision on the part of the Government to grant industrial licence under the Industrial (Development and Regulation) Act, 1951, for the

establishment of expansion of sugar factories in areas of assured sugarcane availability with potential for further development of sugarcane. It

indicates that the guidelines spoken of were broad ones and the basic criterion for establishment of a new sugar unit would be the adequate

availability of sugarcane in a compact area around the pro-posed factory site. The potential for cane cultivation would be only an additional factor.

It was indicated herein that where there were a large number of sugar factories located in one district, the State Government should make proper

zoning of sugarcane areas for each existing sugar factory before a request for expanding the capacity of any existing factory or installation of a new

sugar factory in that district is considered. The State Government have been delegated with powers to regulate reservation of such areas under the

Sugarcane (Control) Order. 1966. It was further indicated in the guidelines that to ensure supply of adequate availability of sugarcane for existing

capacity as well as for future expansion, no licence would normally be granted for establishment of new sugar factories within a radius of 40 kms.

of an existing unit.

21. This press note was followed by another press note No. 27 of 1989 series. This was, however, in respect of licensing of new and expansion of

existing sugar factories and receipt of applications for that purpose. Prospective entrepreneur were required to submit the industrial licence

application for setting up new sugar factories direct to the Secretariat of Industrial Approvals in the department of Industrial Development. Upon

receipt of such applications, the same were to be circulated to the concerned scrutinising agencies and the concerned State Government for their

comments. The procedure being followed by the department of Pood for ascertaining the position of cane availability etc. from the State

Government and the consideration of the proposal by the screening committee under the department of Food would continue to be followed. This

press note is Annexure-10 to the aforesaid writ petition.

22. The third press-note being No. 4 of 1990 series (Annexure-11 to the writ petition) spoke of guidelines for licensing new sugar factories during

the 8th Five Year Plan. It superceded the earlier guidelines as per press note No. 1 of 1987 series and certain other press notes. It indicated that

licences for new sugar factories were to be issued subject to the condition that there was no sugar mill within a radial distance of 15 Kms. This

press note No. 4 was again superseded by press note No. 16 of 199l series (Annexure-12 to the writ petition). It again reiterated that the basic

criterion for grant of licence for new sugar units would be their validity from the point of view of cane availability and potential for development of

sugarcane. It was indicated in this press-note that licence for new sugar factories would be issued subject to the condition that the distance

between the proposed new sugar factory and an existing/already licensed sugar factory should be 25 kms. This distance criterion of 25 kms. could,

however, be relaxed to 15 kms. in special cases where sugarcane availability was justified.

23. These guidelines, as they appear from the changes made therein in the course of four years from 1987 to 1991. were only broad ones to be

followed in the matter of grant of licence for establishment of new sugar factories and could not be read in spirit and not in letters. The spirit behind

these guidelines is again reflected from the guidelines themselves. From 1987 to 1991, the spirit behind these guidelines had always been the

adequate availability of sugarcane in a compact area around the proposed site. The distance restriction in these guidelines, in our view, was only a

factor for rough estimate, the real estimate was to be made not from the distance between an existing and a proposed mill, but the availability of

sugarcane in the area and the potential for cane cultivation therein. That the distance was nothing but an approximation is reflected from the fact

that initially it was 40 kms; subsequently, it was made 15 kms and again it was raised to 25 kms. with a discretion given for relaxation of this

minimum distance, in special cases, to 15 kms. and the criterion for such relaxation was cane availability. The latest guidelines also clearly indicate

that the basic criterion for grant of licence for new sugar units would be their viability mainly from the point of view of cane availability and potential

for development of sugarcane. It would. therefore, be not necessary to lay any special emphasis on the minimum distance restriction if materials are

available from record on the point of sugarcane availability.

24. The minimum distance restriction was not the basic criterion was also appreciated by the petitioners themselves and accordingly, they raised a

plea that by establishment of the new sugar units to the violation of distance restriction would adversely affect the cane supply and existing units

would starve of supply of sugar-cane.

25: Before we enter into statistics, we may point out that these guidelines were simply the work formula for the Government to consider an

application for establishment of a new sugar factory. The guidelines under the aforementioned press notes were not issued under exercise of any

statutory power and cannot take the place of statutory rule, order or regulation. The Government is to set up a policy and the policy set up was to

raise the sugar production in the country and for that purpose to develop cultivation of sugarcane as well. With this policy in the back-ground, the

press notes were issued as work-formula giving the guidelines for establishment of sugar mils. The declaration of this policy may not, therefore, be

open to challenge under the exercise jurisdiction of the High Court, and, moreover, when the basic purpose of such policy was for public good by

way of development of the sugar industry. The first set of writ petitions which challenged the vires of the guideline--must, therefore be declared

incompetent on that point.

26. As indicated above, the second attack on the guidelines was that the same were not followed so far the distance restriction was concerned.

This Court has found that distance restriction was a secondary aspect, the primary one being cane availability in the area. Once it is found from the

statistics that has come on record that cane availability was there for establishment of new sugar factories, the second aspect of the attack on the

guidelines would fail as premature as the same would be based on a mere apprehension and not on real set of facts. These statistics are also

contained in the affidavits of the parties. We may refer to the counter-affidavit of respondent No. 7 in Writ Petition No. 41516 of 1993.

27. It was contended in the affidavit of respondent No. 7 that an associate of M/s. Triveni Engineering Works Ltd. had itself made an application

for establishing a new .sugar factory at Budhana and another associate had made an application for an area adjacent to Hussainpur. It was

contended that the writ petition was really filed for maintaining monopoly of the petitioners in the sugar industry with a view not to let in any new

entrepreneur in the arena. Annexure-CA 3 to this counter-affidavit gives the statewide utilization of sugarcane in India for different purposes. The

figure indicate what is the utilization for manufacture of sugar in the Uttar Pradesh. Utilisation of sugarcane for the manufacture of sugar and gur and

khandsari stood in the following percentage for the years noted below :

Year Sugar Gur & Khandsari

1986-87 32.0 54.2

1987-88 33.3 54.0

1988-89 27.4 58.8

1989-90 34.2 52.0

1990-91 31.6 54.6

1991-92 36.7 49.5

28. A comparison to the corresponding figures for other States indicates that in Andhra Pradesh, Haryana, Karnataka and Punjab the percentage

of utilization of sugarcane for sugar industry was much more and Punjab specially this percentage was a growing one from year to year so far the

sugar industry was concerned.

29. Annexure CA-4 to the affidavit of the respondent No. 7 gives a break-up of mill wise utilisation of sugar and the statistics indicated that the

quantity of sugarcane cm shed in the sugar mill wax minimal compared to the sugarcane production and even for Khatoli it was never more than

about 50 per cent.

30. Annexure CA-4, as aforesaid, also contains a table showing the area of sugarcane cultivation, total production and total consumption in sugar

mills, in to district of Muzaffarnagar, for the years 1990-91, 1991-92 and 1992-93. While the total production of sugarcane was to the tune of

1300/1400 lakhs of quintals, the sugar mills could utilize only about 300 to 350 lakhs of quintals in these years, the percentage of utilization varying

between 19.53 to 24.66 only.

31. A future table, Annexure C.A. 5, indicates that sugar-cane production was largest in Uttar Pradesh. The production showed upward trend

from 1984-85 onwards and the total production rose to 108433000 tonnes in 1991-92. However, the total sugarcane crushed in the sugarcane

factories in Uttar Pradesh in the year 1991-92 was only 39717000 tonnes.

32. The above statistics would belie the apprehension expressed in the concerned writ petitions that by the establishment of the new sugar mills,

there would be dearth of supply of sugarcane to the existing sugar mills, rather the figures suggest that there would be surplus sugarcane even after

meeting to demand of the expanded capacity of the existing mills.

33. This apprehension has been expressed in another manner in the writ petitions stating that the new sugar mills would pounce upon the reserved

areas of the existing sugar mills for which the existing ones had spent there money and efforts for development of sugarcane production. The

principle of legitimate expection has been raised as a plea by the petitioners urging that by their sincere efforts cane production in the area was

enhanced and now it would be unethical for the Government to allow the area to any other mill or to carve out a portion of the area for another

mill. The reply to this contention, as already indicated, was that there was nothing sacrosanct for the reserved area for the existing sugar mills. The

law on the point has already been indicated in the earlier paragraphs of this judgment and may be reiterated in short. The term ""reserved area

occurs in the Sugar Cane (Control) Order. 1966, issued by the Central Government u/s 3 of the Essential Commodities Act. Clause 6 of this

Control Order speaks of power to regulate distribution and movement of sugarcane and states that the Central Government may, by order notified

in the official gazette, reserve any area where sugarcane is grown (hereinafter in this clause referred to as the ''reserved area'') for a factory having

regard to the quashing capacity of the factory, availability of the sugarcane in the reserved area and the need for production of sugar with this view

to enabling the factory to purchase the sugarcane required by it. This clause also empowers the Central Government to fix by order notified in the

official gazette the quantity of the sugarcane grown by the growers is to he supplied to a factory concerned. Clause 11 empowers the Central

Government to delegate its powers including the power under Clause 6 to State Government.

34. The word ""reserved area"" also occur in the U.P. Sugarcane (Regulation of Supply of Purchase) Act, 1953, and Section 15 there of has been

quoted in toto in the earlier paragraphs of this judgment. This reserved area is to be declared by the Cane Commissioner for the purpose of supply

of cane to a factory during one or more crushing seasons. The Cane Commissioner has also been given the right to cancel the order declaring the

reserved area or to alter the boundaries thereof at any time. Once an area is declared reserved area for a factory, the occupier of such factory

shall, if so directed by the Cane Commissioner, purchase of the cane grown in that area which is offered for sale to the factory. Section 15

indicates that when the Cane Commissioner exercises his power under sub-section (1), that is, when he makes an order declaring any reserved

area, an appeal would lie to the State Government against such order of the Cane Commissioner.

35. The above provisions would indicate that a reserved area is not anything in the nature of a permanent lease or permanent arrangement of any

type for any sugar mill. The purpose of declaring a reserved area is only to see that the sugarcane produced by the cane growers is not wasted and

a factory may be asked by the Cane Commissioner to purchase all the sugarcane that is offered for sale in the factory. The law is clear on the point

that the Cane Commissioner retains to authority to change the boundaries of a reserved area or even to cancel the declaration of any area as a

reserved area for a factory. The only purpose of this last mentioned power of the Cane Commissioner is, as appears to us, the proper consumption

of the sugarcane produced in an area. In any view of the matter, if an area is once declared as a reserved area and, subsequently, is cancelled or

modified, the order of the Cane Commissioner has been made appealable to the State Government and the mere apprehension that an

establishment of a new factory may curtial the reserved area of a particular mill, may not give rise to any legal right to the existing sugar milts for

moving a writ petition as it would always be open for the mill in case of any change in reserved area to file an appeal before the State Government.

In this view also, the writ petitions are premature on the ground of apprehended change in the reserved area of the particular sugar mills.

36. In Writ Petition No. 9256 of 1992. M/s. Sri Ram Industrial Enterprises has challenged the grant of LOI in favour of respondent No. 4 of the

writ petition for setting up a factory at Hussainpur. This LOI was challenged in Writ Petition No. 41516 of 1993 also but the grounds were

different. The grounds raised in the Writ Petition No. 41516 of 1993 have already been covered on the question of locus. The grounds taken in the

present Writ Petition No. 9256 of 1992 are that the petitioners herein were also applicants for setting up a new sugar factory at Hussainpur and

they were first to make an application for this site. The claim of the petitioners was rejected while the claim of respondent No. 4 Sri Sudhish

Prakash was found valid and reasonable and the same was accepted.

37. The petition M/s. Shri Ram Industrial Enterprises Limited has challenged the grant of LOI to respondent No. 4 Sri Sudhir Prakash for setting

up of a sugar factory at Hussainpur on the grounds :

(a) That the petitioner, over the years, have gained vest experience in cane development and are already running two/sugar factories and have also

applied for the expansion of one of their existing units namely. "Mawana Sugar Factory". Further they claimed that they helped and added to the

development of cane in and around Muzaffarnagar and Meerut and in particular, around Hussainpur, which is adjacent to their factory at Mawana

and their cane purchase centre at Bahadurpur. Thus, it was contended that the same is against the government policy of setting up units within 25

kms. of an existing factory and, any reduction of 15 kms. can only be given if there is excess or abundance of sugarcane.

(b) According to the guidelines of the Government, it has laid down that in case of everything being equal, if, more than one application is received

for setting up of a factory in any zone of operation, then, priority will be given to the application received earlier. The petitioner had made an

application to [he authorities u/s 11 of the Industrial Development Regulations Act for gram of licence at Hussainpur on 7-7-1993 and, till such

tune, there were no other applicant for the site at Hussainpur and, therefore, the recommendation of the committee in favour of respondent No. 4

was unjustified.

(c) That the provision of Rule 15 was not followed and no opportunity was afforded to the petitioner to present his case before grant of LOI in

favour of respondent No. 4.

These objections of the petitioner on any of the three counts are not well founded. As on count (a), the fact that the petitioner had himself applied

for a licence for the same site, would itself prove that there is abundant availability of sugarcane in the area in question and. if there is abundance of

cane, then in no way, the petitioners" right in its reserved area will he affected. In fact, the petitioner would get unequal benefit, if, he is allowed to

establish a new factory at the same place. This would give rise to monopolistic trade practices in favour of the petitioner. It is not in dispute that the

site at Hussainpur was advertised as a prospective site for a sugar factory after a careful consideration, by the respondent authorities, of all the

parameters like the availability of cane in the area and as to whether the establishment of such factory would impinge upon the rights and

advantages of another factory in the vicinity and so on so forth.

38. As on count (b). the admitted position is that the petition, had. for the first time, made an application for grant of a licence for a sugar factory at

Hussainpur only on 7-7-1993. The admitted position is that the respondent No. 4 had made such an application on the prescribed form, for a

sugar factory us early as on 7-8-1992 but for a different site. It is not in dispute that respondent No. 4 made an application on 5-7-1993 asking

the authorities for a change of location to Hussainpur on the same application earlier filed by him on 7-8-1992. This application was considered by

the authorities permitting the change and treating the application of the respondent No. 4 dated 7-8-1992 for the sugar factory at Hussainpur.

Therefore, the claim of the petitioner that their application was first in time falls to the ground since it is factually incorrect. The claim of the

petitioner in respect of the date of application is further negatived by the contents of the letter dated 31 -5-1994 issued by the respondents

informing the petitioner that there was an older application of respondent No. 4 to that of the petitioners.

39. As on count (c). the interpretation of Rule 15 forwarded by the petitioner is both sided and based on misleading. On proper consideration of

the ambit and scope of Rule 15. both clauses (i) and (ii) stipulate that within three months the authorities have to inform of their decision to the

applicant concerned, that is to say if they have decided under Rule I5(i) that the licence or permission should be granted, it will inform the applicant

accordingly, thus issuing LOI in his favour. The LOI is not grant of licence, but is only the intention of the authorities that they have found the

applicant, prima facie, sound to be granted such licence. On the other hand, should the authorities decide that the licence or permission should be

refused, fallowing that case an opportunity is required to be given to the applicant to state his case before the authorities reached to a final decision.

But, in both the events the period stipulated is three months. The provision contained in clauses (i) and (ii) of rule 15 do not envisage the pre-

objection before issuance of a LOI. The objection is sought before the final grant of licence. In the present case, the petitioner was given an

opportunity to state their case and the letter dated 31-5-1994 was issued calling upon them to state their case. To this, the petitioner replied by

stating that they would file their objection only if the LOI in favour of respondent No. 4 was withdrawn, since their present writ petition was also

pending in this Court, wherein, they had challenged the grant of LOI to respondent No. 4.

40. The contention raised on behalf of the petitioner that before granting LOI in favour of respondent No. 4, the petitioner should have been given

an opportunity of hearing and put their objection, cannot be accepted on the true and correct interpretation of Rule 15(i) & (ii). The provisions

contained therein may be noticed besides, clauses (iii) & (iv) are also relevant to be noticed :

15. Power to cause investigation to be made into scheduled industries or industrial undertakings. -- Where the Central Government is of the

opinion -

(a) in respect of any scheduled industry or industrial undertaking or undertakings -

(i) there has been, on is likely to be, a substantial fall in the volume of production in respect of any article or class of articles relatable to that

industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be; for which, having regard to the economic

conditions prevailing, there is no justification; or

(ii) there has been, or is likely to be, a marked deterioration in the quality of an article or class of articles relatable to that industry or manufactured

or produced in the industrial undertaking or undertakings, as the case may be, which could have been or can be avoided; or

(iii) there has been or is likely to be a rise in the price of any article or class of articles relatable to that industry or manufactured or produced in the

industrial undertaking or undertakings, as the case may be, for which there is no justification; or

(iv) it is necessary to take any such action as is provided in this Chapter for the purpose of conserving any resources of national importance which

are utilised in the industry or the industrial undertakings, as the case may be; or

41. Rule 15 deals with the grant of licence or permission for renewal of the licence. Clause (i) contemplates that if the Ministry of Industrial

Development, or consideration of the report submitted to it under Rule 11, decides that a licence or permission, as the case may be, be granted

then it shall inform the applicant accordingly within three months from the date of receipt of the application or the date on which additional

information under Rule 9 has been furnished, whichever is later.

42. Sub-clause (ii) of Rule 15 contemplates that in case where the said Ministry considers to attach certain conditions to the licence, or the

permission or to refuse the licence or permission then it shall give an opportunity to the applicant to state his case before reaching a decision, which

shall not be later man three months on the date of receipt of the application or the date of furnishing additional information under Rule9, whichever

is later.

43. Sub-clause (iii) states that in case of refusal of a licence or permission, the applicant shall be informed of the reasons of refusal, and sub-rule

(iv) states that such licence or permission shall be in form, "F" appended to these Rules. Thus, on a plain reading of clauses (i) to (iv)of Rule 15 of

the Registration and Licensing of Industrial Undertakings Rules, 1952. It is obvious that no opportunity is contemplated to be given before granting

the LOI and according to sub-rule (ii), in case the Ministry considers that the licence or permission should be refused then only it requires to give

an opportunity to the applicant to state his case before reaching at such a decision and after refusal of such licence or permission the applicant shall

be informed of the reasons for its refusal.

44. In the facts of the present case, this stage, as contemplated by sub-rule (ii) or (iii) of Rule 15, has not cached, and in the letter dated 31-5-

1994 the petitioner was given an opportunity, calling upon them to state their case before reaching at a decision that the licence or permission

should be refused. The said letter dated 31-5-1994 has been annexed and marked Annexure-A1 to the second amendment application filed in the

present writ petition, which reads as under :--

No. R-326(93) IL

Government of India

Ministry of Industry

Department of Industrial Development Secretariat for industrial Approvals LC-Cum LA (I)_ Section.

New Delhi, the 31st May. 1994.

Shri/M/s Shriram Industrial Enterprises Ltd. 12th Floor, Surya Kiran Building, 19, Kasturba Gandhi Marg, New Delhi-110 001.

Subject : Application (S. No. 326/93-IL) for a licence under the Industries(D&R) Act, 1951 for the manufacture of Sugar falling under Scheduled

Industry No. 25.

Dear Sir/Sirs,

I am directed to refer to your above application and to say that an older applicant with sound industrial/financial background has been granted a

letter of intent for the same location.

2. In the circumstances, Government of India do not find themselves in a position to consider your request for a licence. However, Government

would be pleased to give you an opportunity to state your case before reaching a final decision. You may, therefore, send your representation, if

you wish to that one, in the directorate of Sugar, Krishi Bhawan, New Delhi, within a period of three weeks from the date of issue of this letter. A

copy of this letter is being endorsed to the State Government and your representation, when received, will be examined in consultation with the

State Government. Final orders will be passed after full consideration of the points urged by you and the State Government provided

representation is received from you not later than three weeks from the date of issue of this letter.

3. You are further requested to address all your future correspondence in the matter to the Directorate of Sugar, Krishi Bhavan, New Delhi.

Yours faithfully,

Sd. C. L. Kaushal,

Officer on Special Duty.

45. To this, the petitioner simply replied by stating that they could only file their objection if the LOI in favour of respondent 4 was withdrawn. As

held above, no such prior objection as contemplated under Rule 15 before issuance of a LOI, was received. The objection is sought only before

the final grant of licence. In the present case, the petitioner was given this opportunity in the communication of the Government of India dated 31 -

5-1994 (supra) but they did not avail this opportunity. We, therefore, find no merit in the contention of the petitioner and the same is accordingly

rejected.

46. In the result, all these writ petitions challenging the grant of LOIs to different Industrial Undertakings for setting up new sugar mills at different

places in the State, are dismissed, there shall, however, be no order as to costs.

47. Petitions dismissed.