

High Court of Judicature at Allahabad (Lucknow)

Court No. - 2

Case :- WRIT - C No. - 7023 of 2025

Petitioner :- U.P. Sugar Mills Association Thru.
Secretary General Sri Deepak Gupta

Respondent :- State Of U.P. Thru. Addl. Chief Secy.
Revenue , Lucknow And 2 Others

Counsel for Petitioner :- Aishvarya Mathur

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy,J.

Hon'ble Jaspreet Singh,J.

- 1.** An Application for Dismissal of the Writ Petition as not Maintainable has been filed today by Sri Rajesh Tewari, learned Additional Chief Standing Counsel is taken on record.
- 2.** Heard Sri Jaideep Narayan Mathur, Senior Advocate assisted by Ms. Aishvarya Mathur, Sri Anupras Singh and Sri Tarun Agarwal, learned counsel for the petitioner and Sri Rajesh Tewari, learned Additional Chief Standing Counsel representing the State-respondents.
- 3.** At the outset, learned counsel for the State raised a preliminary objection as to the maintainability of this petition at the behest of U.P. Sugar Mill

Association. Learned counsel invited our attention to the bye-laws of the Association, a copy of which has been annexed as Annexure No.4 to this petition and referred to the objects mentioned therein. The submission, in nutshell, was that the object is, *inter alia*, to promote Trade, Commerce and Industry in U.P. connected with sugar mills and to protect the interests of the members of Association. Therefore, the object is confined to protecting the interests of the members of the Association, insofar as sugar mills are concerned and not beyond that, whereas, the subject matter in issue has nothing to do with sugar mills; rather, it relates to the distilleries being run within the campus of the sugar mill, which have a separate licence under a separate enactment. Therefore, this petition is not maintainable at the behest of the Sugar Mill Association.

4. In response, Sri Mathur invited our attention to the notices issued to the petitioner pursuant to the impugned orders, samples of which have been annexed as Annexure No.18. Some of these notices are addressed to both the sugar mills as well as the distilleries. Moreover, he submitted that the company which runs the sugar mill and the distillery within the same campus is one and the same. In fact, the process involves the use of molasses from the sugar mill for captive

consumption in the distillery situated within the campus. He also relied upon the objects stated in the bye-laws, which also speak of protecting the interests of the members of the Association. Now the member of the Association are the companies which are running the sugar mills and the distilleries within the same campus. Therefore, he contends that the writ petition is certainly maintainable for the reason that the Sugar Mill Association has challenged a common Government Order dated 21.06.2025, which is applicable to all its members who also run distilleries aforesaid. The other actions impugned are merely consequential to the said Government Order, which, according to him, is apparently illegal, without any statutory force.

5. *Prima facie*, at this stage, we see no reason to dismiss the writ petition on the basis of the objection raised by the learned State Counsel, especially after going through the objects of the bye-laws and considering the submissions noticed hereinabove. Dismissing the petition at this stage may unnecessarily lead to hundred of individual petitions being filed. The list of members of Association has already been annexed as Annexure No.5. This is particularly relevant in light of the fact that both the sugar mills and distilleries are

being run by the same companies within the same campus.

6. After hearing the learned counsel for the parties, as of now, what comes out is that although the law as to the competence of the State to legislate and demand an import/export pass fee or vending fee has been clarified by declaring the earlier decision in *Synthetics and Chemicals Limited and Others vs. State of U.P. and others : (1990) 1 SCC 109* as bad law and holding that the State is within its competence to demand such a fee as per law, however, the submission of Sri J.N. Mathur, learned Senior Advocate appearing for the petitioner is that assuming it to be so, though not conceding on the said issue for the reason that the question as to whether the judgment applies retrospectively or prospectively is still required to be considered and after answering the reference, the matter has been sent back to the Constitution Bench where the appeals are still pending, the fact remains that by the impugned Government Order dated 21.06.2025, what the State has done is to direct the Excise Commissioner to recover the aforesaid fee in pursuance of the Uttar Pradesh Excise Import, Export, Transport and Possession of Denatured Spirit (Twenty Fourth Amendment) Rules, 2004 with retrospective from 2018, which in fact already stands declared ultra vires by a

Division Bench judgment of this Court in the case of *M/s Industrial Organics Limited vs. State of U.P. & others passed in Writ-Tax No.1646 of 2004 decided on 03.08.2016*, against which the Special Leave Petition was dismissed by the Supreme Court of India on 21.04.2023 and some members of the petitioner's Association subsequently filed separate writ petitions which were allowed, copies of the decisions being annexed as Annexure Nos.15 and 16 to this petition. Therefore, there is no way that merely because of the pronouncement of the Hon'ble Supreme Court judgment dated 23.10.2024 rendered in *Civil Appeal No.151 of 2007 : State of U.P. and others vs. M/S Lalta Prasad Vaish and sons*, the rule would stand revived automatically, certainly not by a Government Order and in the manner in which it has been issued. If at all, the State could proceed to make rules in this regard in the light of the recent decision of Hon'ble Supreme Court in *M/S Lalta Prasad Vaish and sons (supra)*, therefore, the impugned action is bad in law.

7. He also submitted that thousands of trucks carrying industrial alcohol are stranded on account of the insistence of the excise authorities to demand a fee under the impugned Government Order. The submission is that without prejudice to the rights of any of the parties herein and subject

to further orders/final result in this petition, in view of what has been noticed hereinabove, the trucks may be allowed to move out of the campus, but the records of the products carried by them and other relevant details shall be maintained by the petitioner and the excise officials; and in this context, it is stated that there is an excise office in the campus of the distilleries itself. This would facilitate proper adjudication of the matter in the event it is found that the fee in question is payable by the petitioner with retrospective effect, and at the same time, it will protect the petitioner in the interregnum, as apparently, *prima facie*, the impugned Government Order does not have any statutory force.

8. We asked the learned counsel for the State as to whether the order issued by the State Government is referable to any statutory provision. None could be pointed out. However, the learned counsel referred to the unamended Rules of 1931, i.e., the rules as they existed prior to 31.03.2004, a copy of which is annexed as Annexure No.12 to this petition.
9. We asked the learned counsel for the State to refer to the specific unamended Rule under which a Government Order such as the one impugned herein could be issued. None could be pointed out. In fact, the unamended Rule referred in Annexure

No.12 is the one which was quashed earlier by a Division Bench of this Court in the case of *Bindal Agro Chemical Ltd. and another vs. State of U.P. and others : (2004) 5 AWC 4418*, against which the State preferred a Special Leave Petition, which was dismissed on 16.07.2004. Of course, there is a recent judgment by a Larger Bench of Hon'ble the Supreme Court answering the reference dated 23.10.2024, but then, the appropriate course, *prima facie*, for the State is to make rules in conformity with it and at least as of now, we are not satisfied that by a Government Order, a rule which has been declared *ultra vires* earlier, would automatically stand revived merely because of the said decision. Moreover the question as to whether by such a government order fee can be demanded with retrospective effect in the facts noted above, is also an issue.

10. In view of the above discussions, it is provided as under :-

(i) The members of the petitioner's Association shall be allowed to move out their trucks containing industrial alcohol from the distillery, subject to proper records being maintained by the distillery owner and excise officials, and in this exercise, the members of the petitioner's Association shall cooperate fully. If this is done and ultimately it is found that the petitioner is liable to

pay the fee under some Rule or Government Order, then they can be made liable to that effect.

(ii) To facilitate this exercise, all the members of the petitioner's Association shall furnish an indemnity bond before the Excise Officer of the district, clearly stating that in the event the writ petition fails and they are held liable to the fee under the impugned Government Order or any Rule made under a statutory provision, they shall pay the fee, subject of course to further right of appeal, if otherwise available in law.

(iii) It shall be open for the State to act upon the law declared by Hon'ble the Supreme Court in the case of *M/S Lalta Prasad Vaish and sons (supra)* by framing rules, as may be permissible in law, if it so chooses.

This arrangement is subject to further orders/ final result in the writ petition.

11. Let the pleadings be exchanged between the parties.

12. List on **28.08.2025**.

(Jaspreet Singh, J.) (Rajan Roy, J.)

Order Date :- 30.07.2025
Shubhankar