

(2015) 12 PAT CK 0075

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11754 of 2015

Anand Mohan Sharma and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-12-2015

Acts Referred:

Citation : (2015) 12 PAT CK 0075

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Shashi Kant Kumar, for the Appellant; Binodji Verma, GP-17 and Tej Pratap Singh, AC to GP-7, for the Respondent

Final Decision : Partly Allowed

Judgement

Jyoti Saran, J.—The seven petitioners herein are Chairman of different cooperative societies registered under the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as "the Act") situated in the district of Patna. The grievance of the petitioners is common and i.e. regarding non-lifting of the paddy/custom milled rice (hereinafter referred to as "the CMR") by the Corporation which they have purchased during the year 2014-15 from their respective member-farmers.

2. The reliefs claimed by the petitioners are founded on a policy decision of the Government of India which was enforced under a circular dated 19.11.2014 of the Chief Secretary with a cutoff date for supply of paddy as 15.4.2015 and for the supply of "the CMR" as 30.6.2015 which was subsequently extended to 31.8.2015.

3. A number of cooperative societies facing difficulty in disposing of their respective stocks moved this Court and the matter was considered in a batch of writ petitions arising from CWJC No. 10728 of 2015 (Auraiya Primary Agriculture Credit Cooperative Society Ltd. vs. The State of Bihar) which was relatable to the societies situated in the district of East Champaran and CWJC No. 11746 of 2015

(Ameya Primary Agricultural Cooperative Societies Vs. The State of Bihar) relatable to the societies situated in the district of Gopalganj. This Court in consideration of the contentions advanced on behalf of the policy maker i.e. the Government of India, the enforcing agency, i.e. the State of Bihar and the executive agency i.e. the Bihar State Food and Civil Supply Corporation and taking into consideration the cutoff date so fixed under the policy decision for supply of paddy and "the CMR" as indicated above, allowed the writ petitions of such of the societies whose balance stock was supported by the enforcement certificates issued by the Enforcement Officer duly appointed by the District Magistrate and the society concerned had approached this Court praying for the disposal of the balance stock within the cut-off date fixed by the Government of India i.e. 31.8.2015. Such of the societies whose balance stock was either not supported with enforcement certificates and/or had not approached the Court before the cut-off date, were not found entitled to the relief prayed.

4. The broad principles which have been settled by this Court in the batch of writ petitions so discussed above are that the societies complaining against non-lifting of the balance stock by the Corporation should have their stock supported by the enforcement certificates and the said societies should have approached this Court within the cut-off date fixed by the Government of India under the policy decision in question, i.e. before 31.8.2015. In the present case the petitioners have approached this Court for the reliefs prayed, before the cut-off date and thus they are entitled to the consideration of their prayer. The petitioners having crossed the first hurdle it is now to be seen whether their balance stock is supported by the enforcement certificates.

5. This Court in consideration of the nature of dispute, had vide order passed on 28.8.2015 directed the District Magistrate, Patna to get a fresh inspection/ physical verification of the stocks held by the Primary Agriculture Credit Cooperative Societies (hereinafter referred to as "the PACS") operational within his district under a leadership of an officer not below the rank of Additional Collector. The team was required to furnish its report on the following issues:

(a) The procurement target of paddy fixed for the respective society by the Cooperative Department for the Kharif Season 2014-15.

(b) The total purchase of paddy made by the respective PACS from its members as on 31.3.2015 and the papers to support such purchase.

(c) The number and date of the enforcement certificate supporting the purchase made by the respective PACS issued by the Circle Officer concerned, if available.

(d) The quantum of paddy delivered by the respective PACS to the Bihar State Food and Civil Supplies Corporation Ltd.

(e) The quantum of paddy sent to the rice mill for converting it to custom milled rice for the paddy season 2014-15; and

(f) The stock of paddy/custom milled rice presently available with the respective

PACS.

6. It was also directed that the report so prepared by the District Magistrate should be countersigned by the Chairman of the society concerned or any member of the Managing Committee of the society concerned duly authorised by the Chairman. It is following the order passed by this Court referred to above that a report has been filed through the District Cooperative Officer by way of a supplementary counter affidavit on 4.9.2015. The physical verification exercise having been completed under the supervision of the District Magistrate, Patna it is to be seen whether the claim of the respective petitioners stands supported by the enforcement certificates vis-a-vis report placed on record by way of supplementary counter affidavit.

(1) The report relating to petitioner No. 1 who happens to be the Chairman of Bhadsara PACS appears at running page 154 of the fact finding report and although the petitioner claimed a balance stock of 2579.60 quintals of paddy of which it was stated that 1000 quintals was lying in the godown of one Devendra Yadav and the balance was with the farmers and though the team has confirmed 1000 quintals stocked in the godown of Devendra Yadav but the verification of the balance stated to be lying with the 57 farmers could not be carried out.

(2) The report in relation to petitioner No. 2 appears at running page 157 of the brief and although the petitioner claims a balance of 724.80 quintals of paddy and the balance claim finds supported in the enquiry report to the extent of 720 quintals.

(3) The report of petitioner No. 3 appears at running page 152 and although the petitioner No. 3 claims balance stock of 3696.80 quintals stated to be lying with Suchitra Rice Mill but during the course of verification the stock claimed was found NIL. The report is signed by the petitioner No. 3.

(4) The report of petitioner No. 4 appears at running page 158 and his case also is the same as petitioner No. 3 as the stock so claimed was not confirmed rather was found to be NIL.

(5) Similar is the case of petitioner No. 7 whose name appears at running page 153 of the brief and the stock so claimed by him was not confirmed by physical presence. The signature of this petitioner is present on record.

(6) In so far as the petitioner No. 5 is concerned, whose name appears at page No. 156 of the brief and although the petitioner No. 5 claims a balance stock of 4694.40 quintals but only 700 quintals was found stored in the godown of Devendra Yadav and the balance stock was not physically present.

(7) In so far as the petitioner No. 6 is concerned, his report appears at running page 155 of the brief and although he claims balance stock of 2632.60 quintals but only 666.80 quintals was found in the godown of Devendra Yadav.

7. Having heard learned counsel for the parties and considering the cases of the

petitioners in the backdrop of the fact finding report submitted by the State along with the supplementary counter affidavit as well as the principles so laid down by this Court in the case of Auraiya Primary Agriculture Credit Cooperative Society Ltd. (supra) arising from CWJC No. 10728 of 2015 and analogous cases, the stock claimed by petitioner Nos. 3, 4 and 7 not being confirmed by the fact-finding team, the relief prayed by the petitioner Nos. 3, 4 and 7, is rejected.

8. In so far as the petitioner No. 1, 2, 5 and 6 are concerned their claim stands modified to the report submitted by the fact finding report and in so far as petitioner No. 1 is concerned he shall ensure the supply of proportionate quantity of "CMR" after getting the balance 1000 quintals of paddy milled and deliver the same to the Corporation within a fortnight from today.

9. Similarly the petitioner No. 2 would deliver the proportionate "CMR" after milling the balance paddy of 720 quintals to the Corporation.

10. The petitioner No. 5 in the similar manner would get 700 quintals of paddy converted and deliver the proportionate "CMR" to the Corporation and the petitioner No. 6 also would get 666.8 quintals of paddy milled and deliver the proportionate "CMR" to the Corporation. The petitioner Nos. 1, 2, 5 and 6 would affect their respective delivery of "CMR" positively within a fortnight from today. The State Food Corporation, the State and the Union of India in its Ministry of Consumer Affairs are directed to accept the balance "CMR" so supplied by these petitioners and also ensure the payment thereof as found admissible.

11. The writ petition is allowed to the aforementioned extent with the directions aforementioned.