

(2016) 01 PAT CK 0109

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13477 of 2015

Bhurhia Mahiyama PACS Sanhaura

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 PLJR 343

Hon'ble Judges : Mr. Jyoti Saran, J.

Bench : Single Bench

Advocate : Mr. Yogendra Mishra and Mr. Pratap Sharma, Advocates, for the Appellant; Mr. Ashok Priyadarshi, GA-4, Mr. Nirmal Kumar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Jyoti Saran, J.(Oral)—Heard Mr. Yogendra Mishra, learned counsel appearing for the petitioner, counsel for the State and Mr. Nirmal Kumar, learned counsel appearing for the Bihar State Food and Civil Supplies Corporation.

2. The petitioner is a cooperative society registered under the Cooperative Societies Act, 1935 (hereinafter referred to as "the Act") and is aggrieved by the action of the authorities of the Bihar State Food and Civil Supplies Corporation (hereinafter referred to as "the Corporation" in not making payment of 1518 quintals of paddy supplied by them on the purchase centre so established for the purpose on 31.3.2015.

3. It is the case of the petitioner that of 3633 quintals of paddy supplied by the society at the purchase centre established by the respondent-Corporation for the purpose although they have received payment of 2115.80 quintals of paddy but the payment in respect of 1518 quintals of paddy supplied by the petitioner vide purchase-cum-payment vouchers placed at Annexure-2 series has not be paid and the representation in this regard has no avail.

4. A counter affidavit has been filed by the Corporation denying the receipt of any such paddy and which has been responded to by the petitioner supporting the factum of supply.

5. I have heard learned counsel for the parties and I have perused the records.

6. Mr. Mishra, learned counsel appearing for the petitioner with reference to Annexure-2 series submits that the supply stands established by the receipt issued by the Purchase Centre Incharge. He submits that the Corporation raised the dispute regarding non-receipt of paddy before the District Magistrate, Bhagalpur vide letter of the District Manager, State Food Corporation, Bhagalpur bearing No.5048 dated 22.12.2015 present at Annexure-F and the matter was entrusted by the District Magistrate, Bhagalpur to the District Cooperative Officer, Bhagalpur whose report is present at Annexure-7 certifying that the paddy was supplied by the petitioner within the prescribed time but it was not reported by the Purchase Centre Incharge to the Corporation.

7. A very short submission has been made by Mr. Mishra to support the prayer made in this writ petition. He submits that the supply stands established by the report of the District Cooperative Officer present at Annexure-7 and who specifically mentions about the lapse of the Purchase Centre Incharge in not delivering the paddy to the Corporation. He submits that the cooperative society cannot be made to suffer for no lapse on their part and for reasons attributable to the Purchase Centre Incharge.

8. The argument of Mr. Mishra has been contested by Mr. Nirmal Kumar, learned counsel appearing for the Corporation to submit that the Purchase Centre Incharge is a person appointed by the District Magistrate and even if he may have received the paddy in question, its non-supply to the Corporation does not oblige the Corporation to make any payment. He thus submits that since the paddy was never supplied to the Corporation hence the Corporation was not obliged to make payment and since the scheme stands lapsed on 31.3.2015 hence the Corporation is within its jurisdiction not to accept any further supply.

9. The issue in contest arises from a scheme of the Government of India framed by the Ministry of Consumer Affairs enforced in the State vide circular dated 19.11.2014 of the Chief Secretary whereby the cooperative societies concerned were given the responsibility to purchase the paddy from its members and the paddy purchased until 31.3.2015 was to be supplied to the Corporation in paddy form until 15.4.2015 and where after it had to be converted into custom milled rice (hereinafter referred to as 'the CMR?') which also had to be supplied latest by 31.8.2015.

10. The issue so raised in this writ petition has been exhaustively dealt with by this Court in the judgment rendered in CWJC No.10728 of 2015 (Auraiya Primary Agriculture Credit Cooperative Society Ltd. v. The State of Bihar) and in CWJC No.11746 of 2015 (Ameya Primary Agricultural Cooperative Society v. The State of Bihar) and analogous cases and the claim of such of the cooperative societies

which was supported by the enforcement certificate issued by the Enforcement Officer appointed by the District Magistrate in this regard for found entitled to consideration of their claim subject to the condition that the societies concerned had approached this Court within the cut-off date fixed under the scheme i.e. 31.8.2015.

11. In so far as the case in hand is concerned, the petitioner-society having filed the writ petition on 26.8.2015 it has crossed the first hurdle.

12. Considering the claim on merits, while the objection raised by the Corporation regarding non-supply of the paddy in question stands confirmed by the report of the District Cooperative Officer present at Annexure-7 but then the lapse is not attributable to the petitioner who has admittedly supplied the paddy in question on 31.3.2015 at the purchase centre so established by the respondent Corporation which is manifest from the purchase-cum-payment voucher present at Annexure-2 series. That a part of the supply so affected by the Society to the tune of 2115.80 quintals stands delivered by the Centre Incharge leaving a balance of 1518 quintals, its non-delivery to the Corporation is entirely attributable on the Purchase Centre Incharge.

13. The issue thus which falls for consideration is whether for the lapse of the Purchase Centre Incharge so appointed under the scheme, the petitioner can be penalized. It is not a case where the supply has not been affected by the petitioner or the purchase vouchers are incorrect. The enquiry report of the District Cooperative Officer submitted pursuant to the direction of the District Magistrate on the complaint of the Corporation present at Annexure-F completely vindicates the stand of the petitioner. The enquiry report leaves no room for doubt that the petitioner had made his supply before the cut-off date i.e. 31.3.2015 and that it is the lapse of the purchase centre incharge in not carrying out his part of obligation to deliver the paddy in question rather allowing it to remain at the Middle School, Mahiyama. Annexure-6 of the writ petition substantiates that 1518 quintals of paddy is lying in the Middle School, Mahiyama and is duly certified by the Headmaster. The document also bears the statement of the Purchase Centre Incharge that he is going to deliver the same to the Corporation but the fact remains that this exercise was never carried out and the paddy remains in the school as physically verified by the District Cooperative Officer. The District Cooperative Officer has also recommended for disciplinary action against the Purchase Centre Incharge for this lapse.

14. In the circumstances where there is no dispute regarding the supply of paddy within the time stipulated under the scheme as discussed above, and considering that non-delivery of paddy to the Corporation is entirely attributable to the Purchase Centre Incharge this Court while not finding fault in the stand taken by the Corporation in not making payment but considering that the delivery made by the petitioner was well within the cut-off period of the scheme, would direct the petitioner to convert 1518 quintals of paddy into ?CMR? within a fortnight from today and deliver the same to the Corporation and the respondent District

Manager and the Managing Director of the Corporation shall ensure the payment of the ?CMR? as found admissible within a fortnight thereafter.

15. The writ petition is allowed.