(2003) 03 PAT CK 0084

In the Patna High Court

Case No : L.P.A. No. 1590 of 1995

Cane Development and Cane Marketing Union Bihta — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 06-03-2003

Acts Referred:

Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 — Section 48

Citation : (2003) 3 PLJR 311

Hon'ble Judges : Ravi S. Dhavan, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : Ravi Ranjan, for the Appellant; Tarun Kumar Sinha, for State and Prem Kr. Jha, for Sugar Corporation, for the Respondent

Final Decision : Allowed

Judgement

1. The Cane Development and Cane Marketing Union Limited, otherwise, an apex society filed a writ petition (CWJC No. 2375 of 1995), in effect, seeking reliefs that payments of sale of the sugarcane during the year 1990-91 and 1991-92 be made with interest.

2. On the writ petition the reliefs were not considered but the petition was dismissed on a technicality that earlier some directions were made in favour of Petitioner No. 2 i.e. in CWJC No. 2663 of 1994.

3. The controversy in any case has not been addressed in the writ petition. The aspect plainly is of price of sugarcane supplied to a unit of the Bihar State Sugar "Corporation not having been paid to the supplier i.e. the Cane Development and Cane Marketing Union, Bihta and its constituents. Even in the counter affidavit there is no categorical statement that on the sugarcane supplied payment had been made. Even today while this order is being dictated, the statement is made that the State of Bihar has made payment to the Bihar State Sugar Corporation which in turn was ment to pay its unit that is to say that the sugar factory. This does not answer the question nor is the solution.

4. The Respondents seem to forget that the sugarcane was supplied under an obligation under the Sugarcane Control Order, 1966 read with Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981. Every year, before the crushing season starts, an area is notified as a reserved area. Sugarcane from a reserved area is first to be supplied to a sugar factory which goes for crushing. In this reserved area there is an assigned area where a particular area is assigned to a sugar factory. The gate where the sugarcane will be supplied is also the subject matter of a notification. Sugarcane in an assigned area cannot be sold any where else except a named factory in a reserved area. In the circumstances a sugar factory cannot buy sugarcane outside the assigned area nor any purchaser can go outside this area and sell to another sugar factory. The liability to supply and the obligation to purchase is of both i.e. sugarcane grower and the sugar factory.

5. The Court is not on the aspect of the price which may have been fixed by the Government. This aspect is irrelevant in the present controversy.

6. Merely because the sugar factory is a unit of the Bihar State Sugar Corporation does not give an immunity not to pay the price of sugarcane which was supplied for crushing at the sugar factory. If a privately owned sugar factory was to evade payment of the price of sugarcane to cane growers then the State will take penal action against the occupier of sugar factory either under the Sugarcane Control Order, 1966 or the Act of 1981. The same standards and provisions will, thus, apply even to an unit which is run by the Bihar State Sugar Corporation or a State owned Sugar factory and it does not matter whoever the person may be within the hierarchy.

7. But the question before the Court is very simple and limited and the payment is also very small. The payment which has not been made is mentioned in paragraph No. 4 of the counter affidavit which has been filed by the State in a chart which is reproduced.

SI. No. Season Cane purchased (Qtls) Amount payable Paid Balance

1 2 3 4 5 6

1 1990-91 42,267.46 17,46,020.60 16,48,335.81 97684.79

2 1991-92 18,971.26 4,74,506.99 4,17,444.60 57282.74

8. The outstanding includes commission to which a cane society is entitled to this statutory commission within the meaning of Section 48 of the Act.

9. The contention in the counter affidavit that there has been gross negligence committed by the concerned authority and the employees of the Bihta Unit of the Bihar State Sugar Corporation is not an aspect with which the cane growers are concerned with. It is entirely upto the State Government to take action against the employees concerned. In so far as the cane growers are concerned they are entitled by law to the dues for supply of sugarcane.

10. The excuses which are given in the counter affidavit that some employees of

the Unit took advance and did not make a payment and that criminal cases have been filed against these employees or for that matter the sugarcane dried up in the factory is a situation with which the cane growers have nothing to do. Further, a said statement that some growers did not (sic)m up because they have taken loan from the factory is a vague statement.

11. These are matters of accounts. Taking of payment has to be certified beyond a reasonable doubt. In the circumstances, the payment against the sugarcane supplied, if not already paid, list has to be verified. After verification the payment is to be made to the Petitioner i.e. Cane Development and Cane Marketing union Society. Hereinafter, it will be en(sic)ely up to the Petitioner to pass an order of payment to its constituents. Between the verification and the final accounting the exercise must also be carried out under the supervision of the Secretary, Cane Department.

12. The suggestion which is being made by the State that the Bihar State Sugar Corporation has gone into liquidation is an inequitable submission. Cane growers cannot be permitted to run the (sic)k in the hierarchy of the mismanagement of the Bihar State Sugar Corporation and contributing to liquidation proceedings. Nearly, the defence of the State Respondents, vague as it is, has on its face value surfaced a circumstance that the price of Sugarcane supplied has not been paid, (sic)to pocketed these monies? These circumstances leave much to be explained. Covering up unexplained money matters with vague explanation certainly makes which matters one of financial audit. As the Bihar State Sugar Corporation is a government company, liquidation is in process it is contended, the Registrar of Companies will cause an audit to made, forthwith in the matter of sugarcane price not of supplies made to units of Bihar State Sugar Corporation. If the Bihar State Sugar Corporation is unable to pay, then this amount should be paid by the State of Bihar to the Petitioner after the amount having been verified.

13. Petition is allowed.