(2005) 01 PAT CK 0076

In the Patna High Court

Case No : CWJC No. 9170 of 2002

C.D. and C.M. Union and Another — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 20-01-2005

Acts Referred:
Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 — Section 2, 48

Citation : (2005) 1 PLJR 532

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : Raju Giri, for the Appellant; A.P. Jittu, Vivek Prasad and Ranjan Kumar, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—Heard learned counsel for the parties. The present is a case wherein the fraud played by the State Government not only with the Cooperative Societies but also with the orders of the High Court is apparent. It appears that certain officers being obsessed with their authority and feelings which they have already developed are not ready and willing to adopt the corrective measures and are simply saying to the Court-come what you may, they do not care for anything.

2. Petitioner No. 2 is the Primary Agriculture, Credit Cooperative Society, Mahna Mirzapur and petitioner No. 1 is CD. & CM. Union, Chanpatia, a Union relating to cane development and cane marketing.

3. For due appreciation of the present dispute, it is to be seen that in the year 1981, an Act known as the Bihar Sugarcane (Regulation of Supply & Purchase) Act, 1981 (hereinafter called the Act), was brought into effect. Section 48, as it stood originally, provided that payment of commission on purchase of cane shall not exceed fifteen paise per quintal by the cane purchaser. Out of the said amount of the commission payable under sub-section (1), an amount was to be

paid in such proportion and in such manner as may be prescribed amongst the cooperative societies and the cane development council.

4. In accordance with the laudable objects of the Act, certain rules were also framed. It is to be seen that prior to enforcement of the Act of 1981, the Bihar Sugar (Regulation of Supply & Purchase), Second Ordinance, 1978 (Bihar Ordinance -No. 104 of 1978) was promulgated and while the said ordinance was in vogue in exercise of the powers conferred by Section 65 of the said second ordinance 104 of 1978, the Governor of Bihar was pleased to make the rules. The said rules were published in the Bihar Gazette (extraordinary) on 30th December, 1978. Rule 35 in special, apart from its generality, provided that the commission payable in respect of the cane supplied to the occupier of a factory by any cooperative society, shall be paid to such society at the rate of six paise per quintal for so long as the rate of commission, notified under sub-section (1) of Section 48 does not exceed thirteen paise per quintal and thereafter the cooperative society shall be entitled to payment at the rate of seven paise per quintal of cane supplied and the remainder shall be paid to the Council. It further provided that the commission payable in respect of cane supplied by any person other than a cooperative society shall be paid wholly to the Council concerned.

5. On an earlier occasion, the State Government through the Cane Commissioner issued a letter on 27th August, 1993, to the Registrar, Cooperative Societies, Bihar. In the said letter, it was observed that proper commission be paid to the Cooperative societies. Bypassing the above objects and the laudable cause, for which sub-section (2) of Section 48 was created, on 14.12.2001 (annexure 2), a notification was issued by the State Government observing that in accordance with sub-section (2) of Section 48 of the Act, the whole amount of commission be paid to the Zonal Development Council. It is, however, to be noted that 2% commission per quintal on the price of the cane was fixed. It was categorically observed in the said notification that the Governor of Bihar was pleased to determine the whole amount of such determined commission, under subsection (1) as share of the concerned Zonal Development Council.

6. The petitioner being aggrieved by the said order, came to this Court in CWJC No. 4014 of 2002. It was submitted that in accordance with the letter and the amendments made in the year 1993 the Cooperative societies were still entitled to the commission. The petition was hotly contested by the State Government submitting, inter alia, that the Cooperative societies utterly failed in achieving the objects for serving the cane growers. They have become in fructuous and, therefore, they have been disbanded. It was submitted that it was necessary and proper to pass the orders that the commission payable to the societies be paid to the Zonal Development Council for development work. It was also submitted in the light of the various amendments made in Sections 20, 21, 32, 35, 41 and 42 that the Cooperative societies would not be entitled for commission. This Court after referring to the newly incorporated Section 48, observed that the commission has to be distributed between the Zonal Development Council and

the Cooperative societies. This Court also observed that the percentage of the distribution only is to be determined by the State Government that they would act honest in understanding the observation made by this Court that the commission is to be distributed between the Zonal Development Council and the Cooperative societies and would issue a legal notification.

7. The petitioners filed the present writ application on 8.8.2002 submitting inter alia, that the respondents have not issued any notification, therefore, they be directed to determine the amount of commission payable to the society. They have also prayed for a writ of mandamus commanding the respondents to fix commission of the cooperative societies at 50% of the commission determined for the Zonal Development Council or half of the amount as released under the heading of the commission.

8. The respondent State after being served with copy of the writ application came out of its slumber and I will again repeat, playing fraud issued a notification on 8.8.2002 which was published in the official gazette on 10th of August, 2002. It is submitted in the counter that in accordance with the direction of this Court and the mandate of the Act, they have decided the distribution percentage, therefore, the writ application has become in fructuous.

9. The petitioners have filed their supplementary affidavit challenging the correctness, validity and propriety of the said notification dated 8.8.2002 by saying that the same tantamounts to be a fraud and the respondents are unjustified in saying that the cooperative societies are not functioning or they have lost their purpose. They are not standing to the object for which the commission was to be paid to them. Placing reliance upon the letter dated 10.5.2001 issued by the Cane Commissioner, Bihar, it is submitted that the cooperative societies are now asked to look after the work and as such the respondents cannot be allowed to say that the cooperative societies have lost their purposes.

10. It is submitted by the learned counsel for the petitioners that in accordance with sub-sections (1) and (2) of Section 48 of the Act, the commission has to be determined and out of the said commission payable by the Manager, percentage is to be decided. According to him, percentage would mean a cut from the whole amount. He says that distribution would not mean that one would have every thing and nil would be given to the other. He submits that notification dated 8.8.2002 is contrary to law and even does not bother to take care of the earlier direction issued by this Court in CWJC No. 4014 of 2002.

11. Learned counsel for the respondents submits that a perusal of the notification dated 8.8.2002 would make it clear that the orders have been issued and the notification has been made in accordance with the direction issued by this Court and in exercise of the powers conferred by subsection (2) of Section 48 of the Act the whole amount payable by the Manager has been determined to fail within the share of the Zonal Development Council and cane growers

cooperative societies'' share has been fixed at nil, He submits that when an authority is given the power to distribute the amount recovered then it has to fix percentage as it wants and especially, in a matter like present where cane growers cooperatives societies are not doing anything. Section 48 of the Bihar Act 37 of 1982 has been amended by the Bihar Sugar Cane Regulation (Supply and Purchase) Amendment Act, 1993. Sub-section (1) and (2) of Section 48 of the Amended Act reads as under:-

"(1) The State Government may, by notification in the official Gazette, determine the amount of commission payable by the occupier of the factory on the purchase of sugarcane by such occupier or on his behalf and may by a like notification exempt the occupier of a new factory to be specified in the notification, from the payment of the amount of such commission, for a prescribed period.

(2) The commission payable under sub-section (1) shall be collected in the prescribed manner and the State Government shall determine the share of Zonal Development Council and Co-operative Society."

12. Under sub-section (1) of Section 48 the State Government has to determine the amount of commission payable by the occupier of the factory on the purchase of sugarcane or may by like notification exempt the occupier of a new factory to be specified in the notification from the payment of the amount of such commission for a prescribed period. Sub-section (1) simply provided that the Government may fix the commission payable by the occupier or in the alternative may exempt the new factory from payment of the said commission for a prescribed Period. Sub-section (2) would be material when it says that the commission payable under sub-section (1) shall be collected in the prescribed manner and the State Government shall determine the share of Zonal Development Council and Cooperative Society.

13. Sub-section (2) of Section 48 of the Act does not use the language that the State Government shall decide that who should have the entire amount or who would have the absolute claim over the said amount. The language of sub-section (2) says that the Government shall determine the share of the Zonal Development Council and the Cooperative Societies. When the shares are to be determined then even by applying crude common sense, something has to be given to one party and the rest to the other. One cannot say that while determining the share 100% would be given to one and zero to another and this would be deemed to decide the share. When certain things are to be distributed in share or any proportion, then something is required to be paid to each of the parties. To distribute means to divide amongst several, to deal out or allot, and distribution is an act or process of distributing. The word ''share'' would mean a part allotted or contributed or owned or taken or cut off. Similarly, the words ''to take share'' would mean to divide. The word ''divide'' in its generic sense would mean to separate or distinguish the parts or to allot, etc. The ordinary dictionary meaning of these words, if are read in their true perspective and given all the

common sense and wisdom on one''s command, then it would make it clear that to distribute, to divide or to share would mean to give something to each of the persons amongst whom the things are to be distributed or divided or to be shared. In C.W.J.C. No. 4014 of 2002, this Court made the following observation:

"Sub-section (2) of Section 48 of the Act provides the division of the commission so prescribed by the State Government under sub-section (1) of Section 48. The amount of the commission collected under sub-section (1) of Section 48 is to be distributed between the Zonal Development Council and the cooperative society, what shall be the percentage of the share is to be determined by the State Government.

14. When this court appreciating the language of sub-section (2) of Section 48 had already observed that the commission collected under sub-section (1) of Section 48 is to be distributed then the said amount so collected has to be distributed. It cannot be said by the State Government that they would pay 100% to one and zero to another and this would be deemed to be a distribution. In fact this is no distribution but tantamounts to exclusion of one from getting his share. It is further to be seen that rule 35 relating to payment of commission of cane clearly provided that commission payable in respect of the cane supplied to the occupier of a factory by any cooperative society shall be paid to such society at the rate of six paise per quintal for so long as the rate of commission notified under sub-section (1) of Section 48 does not exceed thirteen paise per quintal and thereafter the cooperative society shall be entitled to payment at the rate of 7 paise per quintal of cane supplied and the remainder shall be paid to the Council.

15. Section 48 as it stood in the year 1981 or in the ordinance, provided that the State Government may by notification in the official gazette require the occupier of factory to pay in the prescribed manner the commission not exceeding fifteen paise per quintal on the purchase of cane made by him or on his behalf and may by like notification exempt the occupier of any new factory to be specified in the notification from payment of such commission for the prescribed period. Sub-section (2) of the unamended Act provided that the commission payable under sub-section (1) shall be collected in the prescribed manner and the amount so collected shall be paid to the Cooperative society and the council in such proportion and in such manner as may be prescribed. According to section 2 clause (m) ''prescribed'' means prescribed by rules. The rules were framed when the ordinance were in force and since thereafter the said rules are being treated to be rules framed under the Act. I am referred to these to bring some light of wisdom to the officers of the State who are not ready and willing to come out of the old age/dark age and are not ready and willing to understand what the law means and what the interpretation made by the High Court means. If rule 35 prescribes a particular payment then by a notification or an executive fiat in form of a notification, the percentage could not be brought to zero. The respondent in their counter have submitted that the Co-operative societies have no role in the

development of the sugarcane and Zonal Development Council plays important role in the cane development hence the respondents have issued the notification, as contained in Annexure 1. The notification simply observes that 100% of the commission recovered from the Manager or the occupier of the factory would be paid to the Zonal Development Council. It does not give any reason why share of the cooperative societies has been fixed at nil.

16. At this stage it would also be necessary to see that the Cane Commissioner, who happens to be authority of the State Government had issued his letter dated 3.1.1994 and, thereafter issued yet another letter on 10.5.2001. A perusal of this letter contained in Annexure 6 would make it clear that number of works/ duties have been assigned to the cooperative societies. The State Government could not take a platonic approach in the matter nor could it be allowed to act in obsessed manner. Obsession may be good in the corridors of the Secretariat but when question of observance of the orders of the High Court is concerned, one has to understand. If he plays fraud with the risk then serious consequence may follow. Action taken by the concerned Secretary of the Cane Development Department cannot be approved. It deserves to and is condemned. The notification dated 8.8.2002 for the reasons aforesaid deserves to and is accordingly quashed. The respondents are hereby directed to keep into consideration the laudable object for which the Act has been made and the Co-operative Societies are held entitled to have some share and, issue necessary direction also keeping in view the provisions as contained under rule 35 of 1978 rules. This notification shall now be issued by the said authority within 15 days from today. Failure on their part would expose them to a serious risk. The petitioner shall be entitled to cost quantified at Rs. 25,000/- (twenty five thousand). The cost shall also be paid within a period of 15 days from today. Non-payment shall be taken to be a serious lapse on the part of the authorities. This application is accordingly allowed with costs.