(2000) 06 BOM CK 0118

In the Bombay High Court

Case No : Writ Petition No''s. 2191 and 3297 of 1995 with W. P. No''s. 2195, 2312 to 2318. 232O, 2637 to 2639, 2641 to 2643, 2645, 2646, 2653 to 2659, 2662 to 2664, 2668 to 2670, 2673. 2696, 2697, 3386, 3387. 3410, 3411, 3412, 4398 to 4401, 4405, 4406, 4409, 4412 t

Gurupad Lachamanna Chintalwar APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 28-06-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Essential Commodities Act, 1955 — Section 7

Citation : (2000) 4 ALLMR 84 : (2001) 3 BOMLR 553 : (2001) 1 MhLj 41

Hon'ble Judges : D.S. Zoting, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : N.B. Khandare, V.D. Salunke, for the Appellant; E.P. Sawant, Government Pleader, for the Respondent

Judgement

B.H. Marlapalle, J.—This group of petitions involves common questions to be decided by us and hence they are heard together on 29.4.2000 and are being disposed of by this common judgment.

2. The petitioners are sugar cane growers within the area reserved for the respondent No. 2 - sugar factory as per the Maharashtra Sugar Factories (Reservation of Areas and Regulation of Crushing and Sugar Supply) Order, 1984 (for short ''Reservation Order'') issued under the powers conferred on the State Government by the Sugar cane (Control) Order 1966. The first petitions i.e. Writ Petition No. 2191 of 1995 and Writ Petition No. 2195 of 1995 came to be presented before this Court on 26th May, 1995 seeking for directions against the Karkhana to harvest and crush the sugar cane grown by the petitioners. By an order dated 31.5.1995, the learned Vacation Judge, while issuing notices to the respondents, gave interim directions to the Karkhana to harvest, transport and crush the sugar cane of the petitioners from their agricultural lands located in Taluka Degloor, District Nanded within 7 days. Subsequently, similarly placed

sugar cane growers approached this Court and Writ Petition No. 3297 of 1995 came to be presented by way of an application before this Court by two sugar cane growers on 12.7.1995. This Court, therefore, directed all the connected writ petitions to be clubbed together and placed for orders on 19.7.1995. When the petitions were taken up on 19.7.1995, about 85 petitions were registered before this Court, filed by different sugar cane growers'' within the reserved area of respondent No. 2 sugar factory. It was contended by the petitioners that though they had cultivated sugar cane within the reserved zone of the respondent No. 2 factory, their sugar cane was not harvested and. on the other hand, the respondent No. 2 factory was importing sugar cane from the neighbouring States of Andhra Pradesh and Karnataka as well as from the areas which were outside the reserved area of respondent No. 2 factory. It was also alleged that the petitioners belonged to different political party i.e. Shetkari Sanghatana, the officers of the respondent No. 2 factory solely on account of political considerations refused to harvest and crush the petitioners'' sugar cane. A letter dated 18th July, 1995 addressed by the Regional Joint Director of Sugar, Nanded, to the Assistant Government Pleader. High Court, was also produced confirming thereby that the sugar factory had crushed the sugar cane to the extent of about 4545 metric tons from Andhra Pradesh and 2334 metric tons from Karnataka without there being any authorisation from the Director of Sugar or any other Competent Authority under the Zoning/Reservation Order to issue licence and/or permits. The Zoning/Reservation Order was held to be intra vires and proper by the Supreme Court in the case of Maharashtra Rajya Sahakari Sakhar Karkhana Sangh Limited v. State of Maharashtra and others, and it was further held that the members and non-members of a sugar factory are required to supply their sugar cane to the concerned sugar factory in whose Zone the sugar cane is grown. This Court, therefore, directed by its order dated 19.7.1995 to deposit an amount of Rs. 1,38,00,000/-by the respondent No. 2 sugar factory. An amount of Rs. 32,20,000/-was directed to be deposited within four weeks and the balance amount was to be deposited within 8 weeks by way of interim relief and liberty was granted to apply for withdrawal.

3. This order was challenged by the respondent sugar factory before the Supreme Court. The SLP was withdrawn with liberty to approach this Court for appropriate reliefs. An amount of Rs. 32,20,000/- came to be deposited on 18.8.1995 by the sugar factory. Further amount was deposited making the total of Rs. 62, 20,000/-.

4. By order dated 3rd July, 1996 this Court directed the Regional Joint Director of Sugar, Nanded to conduct an enquiry either by himself or by authorising any subordinate officer not below the rank of Assistant Registrar, Co-operative Societies. The enquiry was to be conducted in respect of the cultivation of sugar cane by the petitioners and/or the persons whose sugar cane for the relevant period was registered with the respondent sugar factory. It was also made clear that the Enquiry Officer was at liberty to enquire in respect of the persons who may approach him directly and who have cultivated sugar cane within the area

reserved for respondent sugar factory including the probable tonnage of the sugar cane of such cultivators. In fact, these petitions were admitted and were made returnable for final hearing on 3.7.1996 but this Court deemed it proper to have the enquiry report before deciding the writ petitions finally.

5. The Enquiry Officer, namely, the Regional Joint Director of Sugar, Nanded, conducted the enquiry and submitted a report to this Court vide his letter dated 4.11.1997. Sufficient notices were given to all the sugar cane growers within the reserved area of the respondent sugar factory by publication in the local'' news papers as well as through other means of communications. The observations of the Supreme Court......"...... Public Interest Litigation and Public Assisted Litigation are today taking over many unexplored fields and the dumb are finding their voice." Life Insurance Corporation of India Vs. Escorts Ltd. and Others, , as recorded by this Court in its order dated 19th July, 1995, proved to be prophetic inasmuch as not only the original 85 petitioners appeared before the inquiry Officer but in addition another group of 245 sugar cane growers put up their grievance before the Enquiry Officer during the course of enquiry proceedings. The Enquiry Officer was assisted by the Deputy Director (Sugar) Nanded and the Agricultural Officer. A representative of the respondent factory was also present during the enquiry proceedings with necessary record. The enquiry has confined to the points as directed by this Court and more particularly the acreage of sugar cane cultivation, its tonnage as per the explanation given from the crushing record of 1994-1995, un-harvested sugar cane etc. It was also revealed during the enquiry that the sugar cane of the petitioners which was not harvested during the sugar cane season of 1994-1995 came to be harvested during the subsequent season i.e. 1995-1996. During the pendency of this enquiry, some of the petitioners were also allowed to withdraw a fixed amount depending upon the stated acreage of cultivation of sugar cane-

6. The respondent Karkhana has filed its affidavit in reply and opposed the petition. It has been contended by the Karkhana that it had crushed about 2,90,000 tons sugar cane during the season of 1989-90 and about 3,40,000 metric tons during the season of 1990-1991. It had undertaken expansion programme and increased its crushing capacity to 4,50,000 metric tons during the crushing season of 1994-1995. It had noticed that the sugar cane under cultivation within the reserved area was to the tune of 3,25,000 to 3,50,000 metric tons and it was required to import about 1,00,000 metric ton sugar cane from outside. Necessary licence was obtained under clause 5 of the Zoning/ Reservation Order on 26.12.1994. It was contended that 7000 metric tons sugar cane was received by it from the neighbouring States and it was harvested and transported by the concerned growers on their own. The sugar factory took a plea that some areas were not accessible by proper roads and due to early rainfall the harvesting labour was not available due to which the balance sugar cane could not be harvested on the remaining about 1128 acres of land within its area, notwithstanding the fact that the factory continued the sugar cane crushing till 30.6.1995. It is also contended that on 15.5.1995 public notice was put up on

Notice Board of the Karkhana as well as through news paper (Godatir Samachar, Nanded) having wide circulation within its area indicating that the cane growers themselves should harvest the cane and supply to the factory at its gate. And the sugar cane growers responded and made arrangements to harvest the sugar cane and supplied to the factory. About 16000 metric tons of additional sugar cane was received in response to the said notices after 15.5.1995 and the petitioners'' sugar cane could not be crushed as they did not take steps to harvest and deliver the sugar cane to the factory gate before 30.6.1995. The Karkhana has also relied upon an order dated 12.7.1995 issued by the Government of Maharashtra stating therein that the State Government had decided to accept the standing sugar cane at the rate of Rs. 460/- per ton and the same would be used as cattle fodder. It is the contention of the respondent sugar factory that on one hand it had taken sufficient steps to lift and crush the maximum quantity of sugar cane within its area of operation and the balance, if any, sugar cane un-harvested was solely due to the reasons not attributable toil, and in any case the Government of Maharashtra had decided to accept the standing sugar cane at the rate of Rs. 460/- per ton and, therefore, the sugar factory was not liable to pay any compensation to the sugar cane growers on account of its failure to harvest, lift and crush the sugar cane during the season of 1994-1995.

7. The State Government has supported the contentions of the respondent sugar factory and opposed the writ petitions. It is also contended that the Government of Maharashtra had announced a compensation of Rs. 4000/- per acre to the sugar cane growers whose sugar cane could not be harvested and crushed by the concerned sugar factory during the season of 1994-1995 and, therefore, no additional compensation is required to be paid to such sugar cane growers by the sugar factory concerned or the State Government.

8. During the course of arguments Shri V. D. Salunke, learned counsel for the respondent sugar factory urged before us that the sugar factory is not an instrumentality of the State within the meaning of Article 12 of the Constitution and, therefore, a writ of mandamus cannot be issued by this Court under Article 226 of the Constitution. Learned Counsel in this regard has placed reliance on the judgments of the Supreme Court in the cases of (1) Som Prakash Rekhi v. Union of India,; (2) Ajay Hasia v. Khalid Mujib,; (3) Tekraj Vasandi alias K. L. Basandhi v. Union of India,; (4) Chander Mohan Khanna v. The National Council of Educational Research and Training and others,'' and the judgments of this Court in the case of Shamrao Vithal Co-operative Bank Limited v. Padubidri Pattabhiram Bhat and another, and Dnyandeo Dattatraya Kale and others v. State of Maharashtra and others,. This Court has consistently taken a view that a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960 is not an authority or instrumentality of the State within the meaning of Article 12 of the Constitution and, therefore, a writ of mandamus under Article 226 cannot be issued against such a society.

9. A similar issue regarding directions to pay compensation to the sugar cane growers on account of failure to harvest, lift and crush the sugar cane by the concerned sugar factory pursuant to the Zoning/ Reservation Order came to be decided by this Court in the case of Girdharilal Bhaulal Pardeshi v. State of Maharashtra and others,. About 278 cane growers had approached this Court contending that they had cultivated sugar cane within the reserved area of the sugar factory concerned and their sugar cane was not harvested and crushed on extraneous considerations like political affinity or relationship and the complaints filed by them before the Director of Sugar or the Regional Deputy Director of Sugar were not attended to. A similar objection, namely a writ of mandamus could not be issued to the sugar factory under Article 226 of the Constitution as the sugar factory is not a State within the meaning of Article 12 of the Constitution was raised before this Court in the case of Girdharilal (supra). This Court observed that it was not necessary to decide the said issue and it was not necessary that a person or authority must be a State within the meaning of Article 12 for being compelled to perform a legal duty by issuance of mandamus under Article 226 of the Constitution. After referring to the Judgments of the Supreme Court in the case of Praga Tools Corporation v. C. V. Imanual and others,5 and in Shri Anadi Mukta Sadguru Shree Muktajee Vandasji Swami Suvarna Jayanti Mahotsav Smarak Trust and others v. V. R. Rudani, this Court held that on account of Reservation Order issued by the State Government a legal right duty relationship between the sugar cane growers and the sugar factory was established and if there was non-performance of the said legal right duty relationship, a mandamus would lie against the erring party. We have no reasons nor have we been persuaded to disagree with the view taken by this Court in the case of Girdharilal Pardeshi (supra).

10. If an area is reserved for the Karkhana under the Zoning/ Reservation Order issued by the State Government, it follows therefrom that the sugar cane growers cannot supply their sugar cane to any other Karkhana other than the Karkhana for which the same area is reserved and clause 14 of the Reservation Order stipulated that any person who contravenes any of the provisions of the said Order or of the terms and conditions of a license/permit shall be punishable u/s 7 of the Essential Commodities Act, 1955. It is thus clear that the sugar cane growers are not only estopped from exporting the sugar cane to some other Karkhana but they are liable to be prosecuted on account of such action. In addition, clause 13 of the Reservation Order gives powers to the Director of Sugar or any officer authorised by him to require production of books of account, documents, Inspection of record, to break, open and search any place, to search, seize and remove and to take into custody the crop of sugar cane. This power is wide enough to cast a duty on the director and his subordinates to ensure that the provisions of the Reservations Order are complied with by all the concerned. It is, therefore, a legal or public duty cast on the sugar factory to harvest, lift and crush the sugar cane cultivated within its reserved area pursuant to the Zoning/ Reservation Order passed by the State Government and the Director of

Sugar and his subordinates are duty-bound to ensure that the terms of the said order are strictly complied with by the parties concerned, namely, the sugar factory and sugar cane growers.

11. Even otherwise, the order passed by this Court on 19th July, 1995 was not interfered with by the Apex Court and the SLP was allowed to be withdrawn. It would be too late for the sugar factory to take a plea that this Court has no powers to direct compensation to be paid to the sugar cane growers whose sugar cane could not be harvested and crushed by the sugar factory though the sugar cane was cultivated within its reserved area. We, therefore, reject the preliminary objection raised by the Karkhana regarding lack of powers to award compensation.

12. A number of factors are required to be examined for deciding the eligibility for receiving compensation by a sugar cane grower and these factors are the acreage under cultivation of sugar cane, its location, acreage notified to the sugar factory, acreage registered in the 7/12 extract, date of cultivation and the maturity of the sugar cane crop for cultivation etc. These issues could not be gone into by a Writ Court and, therefore, this Court had rightly ordered an enquiry to be conducted by the Regional Joint Director (Sugar) at Nanded. The enquiry report is before us and the same has not been seriously disputed by the sugar factory. On the other hand, it is contended by the learned Counsel for the sugar factory that some of the petitioners have withdrawn excess amount and as per the report submitted by the Enquiry Officer, such petitioners are entitled for less amount or in some cases they are not entitled at all. It would be difficult for this Court to enquire into these aspects even at this stage. At the same time, we cannot be unmindful of the fact that strenuous efforts have been put in by the Enquiry Officer to conduct a detailed enquiry by interviewing 85 plus 247 sugar cane growers and an exhaustive report has been submitted in tabular form before us. This report must be accepted as a basic document to consider the entitlement, if any, of a particular sugar cane grower. There are some petitioners who have approached this Court after the enquiry was conducted and contended that though they appeared before the Enquiry Officer they were not heard and they also should be granted compensation. We are afraid, we cannot consider such petitions which are not covered by the Enquiry Officer''s report and it would be expedient to relegate them to approach the Cooperative Court u/s 91 of the Maharashtra Co-operative Societies Act, 1960 to raise a dispute for recovery of compensation so that the respective parties are at liberty to adduce sufficient evidence in support of their contentions and a decree could be passed by the Co-operative Court on assessment of such evidence, as expeditiously as possible.

13. Pursuant to the judgment of the Supreme Court in the case of Maharashtra Rajya Sahakari Sakhar Sangh Limited (supra), the State of Maharashtra had modified the terms and conditions of the Zoning/ Reservation Order and if the ban on export of sugar cane has been lifted, by such an order, there will not be any legal right-duty relationship between the sugar cane grower and a particular

sugar factory inasmuch as, the sugar cane growers would be free to supply the sugar cane to a factory of their choice. In such a situation a writ petition praying for directions to pay compensation on account of failure to harvest and crush the sugar cane would not be tenable before this Court and the affected sugar cane grower would have to approach the Co-operative Court u/s 91 of the Maharashtra Co-operative Societies Act, in case the cane grower is a member of the sugar factory concerned or a non-member sugar cane grower has entered into an agreement with such co-operative sugar factory. In either of the cases the sugar cane growers can pray for interim compensation pending decision in the main dispute and such interim applications shall have to be decided as expeditiously as possible. In the instant case the petitioners consist of both member as well as non-member sugar cane growers and the Zoning/Reservation Order was in operation during the relevant sugar season namely 1994-1995 and, therefore, their claim for compensation will have to be considered on merits and on the basis of enquiry report submitted before us.

14. Learned Counsel appearing for the petitioners have contended before us that the tonnage per acre should be fixed at 40 to 50 per acre and the tonnage recorded in the enquiry report is grossly under estimated and is not realistic. This Court in its interim order dated 19th July, 1995 had recorded a statement of the learned Counsel for the respondent sugar factory that on an average 20 metric tons of sugar cane is grown in one acre. But in the subsequent order dated 5.6.1996 this Court observed that as per the record of the sugar factory, the average tonnage per acre probably was to the extent of 25 metric ton and the same figure was accepted for the purpose of interim orders. The Enquiry Officer had called upon the sugar cane growers to submit 7/12 extract for deciding the acreage of sugar cane cultivation. In some cases such extracts were submitted and the acreage did not tally with the panchanamas drawn in respect of some lands. The sugar factory was not able to submit reliable record so as to work out the acreage as well as tonnage per acre. During the course of enquiry the Enquiry Officer has gone into these aspects and on the basis of the information submitted before him, arrived at and recorded the figures of acreage as well as the tonnage per hectare. In most of the cases the tonnage per hectare is recorded at 40 to 50 whereas on the basis of the interim order passed by this Court on 5.6.1996 the tonnage comes to about 60 to 63 per hectare. The figures arrived at by the Enquiry Officer ought to be treated as more realistic though they have been disputed by the sugar factory as well as the petitioners, as those figures are based on the information submitted during the course of enquiry. We must also note that during the last more than 2 years or so neither the sugar factory nor any of the petitioners has filed any rejoinder disputing the figures of acreage as well as the tonnage as recorded in enquiry report. Consequent to the judgment of the Supreme Court in the case of Maharashtra Rajya Sahakari Sakhar Sangh Limited (supra), the sugar cane price per ton has been fixed at Rs. 600/- as has been recorded by this Court in its order dated 5.6.1996 and therefore, the compensation amount will have to be calculated on the basis of

the said price.

15. The learned counsel for the petitioners have also raised appeal that due to non harvesting of sugar cane during the season of 1994-1995, the sugar cane growers have suffered double loss inasmuch as, the sugar cane was not crushed in time and as it was crushed in the next sugar season, fresh crop for the next season could not be cultivated. On one hand there was a loss due to non crushing of the sugar cane in the 1994-1995 season and, on the other hand, there was no fresh cultivation for the subsequent sugar season. Learned counsel for the petitioners further contended that this aspect needs to be considered while calculating the amount of compensation. We are afraid, we are not persuaded by these submissions and more particularly keeping in mind the fact that the Government of Maharashtra has not only paid an amount of Rs. 400/- per acre for the season of 1994-1995 and Rs. 5000/- per acre for the next season byway of compensation but also had shown its willingness to purchase the standing sugar cane crop at the rate of Rs. 460/- per metric ton so as to use it as the cattle fodder. The sugar factory shall be, therefore, liable to pay the compensation only in respect of the sugar season 1994-1995 on account of Its failure to harvest and crush sugar cane in that season and in most of the cases, as is clear from the enquiry report, the sugar cane has been harvested in the subsequent sugar season and. therefore, the plea for double compensation deserves to be rejected.

16. The enquiry report reveals that in some cases the petitioners did not either cultivate sugar cane or did not own agricultural land in their names. Such petitioners would not be entitled for any compensation on the basis of the Zoning/ Reservation Order as applicable for the relevant year. The sugar factory has not been able to produce before the Enquiry Officer the sugar cane cultivation register nor was any notice addressed to any of the sugar cane growers as issued by the sugar factory intimating the excess cultivation or inability to harvest the sugar cane produced before the Enquiry Officer. The fact remains that the sugar factory has crushed about 4,50,000 metric ton sugar cane in the relevant sugar season and about one lakh metric ton sugar cane was imported either from outside the reserved areas or from the neighbouring States. The explanations given by the sugar factory regarding its inability to harvest and crush the sugar cane of the present petitioners, who have appeared before the Enquiry Officer, did not persuade us to deny compensation to the concerned agriculturists.

17. The vital question that remains to be decided is the amount of compensation payable, if any, to the individual agriculturists, who appeared before the Enquiry Officer. It would not be possible for us to examine individual claims even on the basis of the enquiry report submitted before us and calculate the amount of compensation. This exercise will have to be done by a separate committee consisting of two members, namely, the Additional Registrar (Judicial) of this Court and the Enquiry Officer, who has submitted the report before us. This committee will have to go through each individual case covered by the enquiry

report and work out the compensation solely on the basis of the said report and no other pleas or considerations will be allowed by the said Committee. This exercise should be completed within a fixed period and there is no question of hearing to be given to the individual agriculturists as well as sugar factory or their counsel by the committees while calculating the compensation. In case the committee comes to the conclusion that in given cases the amount of compensation is less than the amount already withdrawn, the difference shall have to be re-deposited with the registry of this Court within a fixed period and the respondent Karkhana shall be entitled to claim there fund of such balance amount if any.

18. In the result, we dispose of this group of petitions by the following order :

(A) A Committee consisting of the Additional Registrar (Judicial) of this Court and the Enquiry Officer, who conducted the enquiry, shall work out the compensation claim of the Individual agriculturists who appeared before the Enquiry Officer and these claims shall be worked out and decided as expeditiously as possible and preferably within a period of six weeks from today.

(B) The Enquiry Report shall be the basis for deciding the compensation and the figures of acreage as well as tonnage per hectare etc. as embodied in the enquiry report shall be final. The compensation claim shall be calculated on the basis of the price of Rs. 600/- per metric ton. Needless to mention, the amount deposited by the Karkhana shall be apportioned accordingly.

(C) In case the Committee comes to the conclusion chat any of the agriculturists have received excess amount, such amount shall be re-deposited in the Registry of this Court or with the sugar factory within a period of 4 weeks from the date of intimation issued by the Committee.

(D) The petitioners who did not appear before the Enquiry Officer for any reason whatsoever or whose cases are not covered by the enquiry report, may approach the Co-operative Court u/s 91 of the Maharashtra Co-operative Societies Act and if such disputes are filed within a period of 4 weeks from today, the concerned Co-operative Court shall decide the claim for compensation on its own merits and in case there is any question of limitation, the period of pendency of their petitions before this Court shall be taken into consideration. The Co-operative Court should decide the compensation claims as expeditiously as possible and preferably within a period of one year from the date of its presentation.

19. Rule made absolute in terms of the above order. Costs in cause.

