

(2013) 12 PAT CK 0055
In the Patna High Court
Case No : C.W.J.C. No. 22809 of 2013

Harinagar Sugar Mill Ltd.

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Citation : (2014) 2 PLJR 656

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—There is a counter affidavit on behalf of the State and counter affidavit and supplementary counter affidavits on behalf of private contesting respondent No. 4. All parties have appeared and pleadings being complete, with consent of parties, this writ petition has been heard for its final disposal at this stage itself because of urgency of the matter. The petitioner company has filed this writ petition challenging the order bearing No. 2120 dated 25.10.2013 (Annexure-1) passed by the respondent Cane Commissioner, Bihar by which 12 villages situated on the Western side of the river Gandak, which were already reserved for the petitioner's sugar company for five years, i.e., crushing season 2010-11 to 2014-15 have been de-reserved and, consequently, allotted in favour of private-respondent No. 4, M/s. Tirupati Sugars Ltd. (Bagaha Chini Mill). By the aforesaid order, respondent No. 4 has been permitted to establish two new road cane purchase centers in the said villages. Consequently, the prayer is to restrain respondent No. 4 from making any purchase of sugarcane from the aforesaid 12 villages as also from establishing any road cane purchase centers therein and to allow the petitioner to establish two road cane purchase centers as sought for in respect of 12 villages for the crushing season 2013-14.

2. In nutshell, what the petitioner complains is that after having considered all aspects of the matter once an area was reserved for the purchase of sugarcane

in respect of the petitioner the same could not have been altered to the prejudice of the petitioner without notice and adequate opportunity of hearing in this regard and without following the procedure as prescribed. There is no valid reason for such an action.

3. The petitioner company is a company incorporated, under the provisions of the Companies Act for carrying on, inter alia, the business of manufacturing and sale of sugar by vacuum pan process. It is the biggest and oldest sugar Mill of the Bihar. It has its sugar mill at Harinagar, P.S.-Ramnagar, District-West Champaran. It has a daily licensed cane crushing capacity of 10,000 M.T. (10,000 TCD). It is able to crush much more sugarcane than its licensed capacity.

4. Respondent No. 4, M/s. Tirupati Sugars Ltd. has come into being in recent time having taken over Bagaha Chini Mill situated at Bagaha, P.O.-Naraipur, District-West Champaran and has a licensed cane crushing capacity of 5,000 M.T. per day (5,000 TCD).

5. In order to regulate, inter alia, the supply, distribution and purchase of sugarcane intended for use in sugar factory, the State of Bihar enacted the Bihar Sugarcane (Regulation of Supply and Purchase) Ordinance, 1968 which was followed successively by ordinances till it was converted into an Act in the year 1981, being the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (hereinafter referred to as the "Act"). In exercise of powers conferred u/s 65 of the said Act, the Bihar Sugarcane (Regulation of Supply and Purchase) Rules, 1978 were issued which continued to be in force. In North Western part of Bihar, sugarcane is traditionally grown and the area has consequently sugar mills. In order to avoid disputes as between the sugar mills in respect of purchase of sugarcane and in order to encourage sugar mills to propagate sugarcane farming, this Act and the Rules were framed. One of the main objects, apart from securing cane growing areas to sugar mills, was to ensure adequate supply of sugarcane to the sugar mills which would subserve the purpose both of the cane growers and the sugar mills. Section 2(i) defines crushing year to mean year commencing on 1st day of June and ends in May next year, it is not in dispute that in Bihar, actual cane crushing starts from November and continues up to March next year. For the purposes of securing adequate sugarcane to a sugar mill, the Cane Commissioner, Bihar has been invested with an authority to notify area reserved for supply of sugarcane to a particular factory for a particular crushing year or years with power to modify the same. This is found in Section 31 of the Act, the relevant portion of which is quoted hereunder:--

31. Declaration of reserved area.--(1) The Cane Commissioner may, having regard to the crushing capacity of the factory, the availability of sugarcane in such area and the need for production of sugar and after consulting the council concerned and the occupier of the factory or the occupiers of other affected factories and after considering any objection that may be raised, issue an order, by notification in the Official Gazette, declaring any area to be the reserved area for the purpose of supply of cane to the factory during a particular crushing year

or years and may likewise cancel any such order or alter the extent of the area so reserved:

Provided that in case of a factory situated outside the State of Bihar, such declaration may be made only when the occupier of such factory make an application to the cane Commissioner requesting him in the prescribed form that certain area in Bihar may be reserved for supply of Cane to the factory and such declaration shall be made on the condition that such occupier shall establish a Branch Office in the State of Bihar and deposit a sum of rupees five thousand as security to a Collector in the State of Bihar and gives an undertaking in the prescribed form to purchase of cane grown in the area.

(2) Any person aggrieved by an order of the Cane Commissioner under sub-section (1) may, within thirty days of the receipt of such order or within the same period from its publication in the Official Gazette, appeal to the prescribed authority.

6. A reference to the aforesaid provision would show that the Cane Commissioner has been invested with a very important function and responsibility. He has to make reservations of cane areas so that not only the interest of cane growers is protected but interest of sugar mills are protected as sugarcane is the sole raw material for sugar mills. He has to hear all the parties, look into all objections and then for each crushing year or years pass orders reserving sugarcane areas in respect of individual sugar mills.

7. It appears that earlier this order of reservation was issued on yearly basis u/s 31 of the Act. This created a lot of uncertainty whereby neither the sugar mills could nurture cane area nor could properly plan their crushing in advance. In various decisions by this Court, this Court issued directions for such notifications should be made at least for a period of five years which directions were approved by Division Bench of this Court in the case of M/S Vishnu Sugar Mills Ltd. Vs. The State of Bihar and Others, . The earlier judgments and directions were issued by the learned Single Judge of this Court in various decisions in 2005.

8. It is not disputed that while exercising this important function u/s 31 of the Act, the parties have to be heard. Similarly, as Section 31 of the Act grants power to Cane Commissioner to alter the notifications of reservation whenever such alteration is to be made, the affected parties have to be heard as any order varying the reserved areas would have the severe civil consequences for the sugar mills. Another important facet is that reservations have to be made for crushing year or years and, therefore, it itself predicates that it should be made well within the time fixed which time is guided by Rule 25 of the Rules, the relevant portion whereof is quoted hereunder:--

25. Reservation of areas to factories and procedure for purchasing cane grown in such areas.--(1) The order of the Cane Commissioner, reserving any area to any extent or internal factory shall normally be issued on or before the 31st day of July in each crushing year for which the area is proposed to be reserved.

Provided that, in exceptional circumstances to be recorded in writing such order may be issued any time between the 31st July and the 30th September next following.

9. From reading of Rule 25(1) of the Rules, it would be apparent that normally the notification has to be issued u/s 31 of the Act or before 31st day of July and, in exceptional circumstances, it can be issued between 31st of July to 30th of September. Thus, the time schedule is statutorily provided which does not predicate issuance of any order after 30th of September for a good reason. The reason being that in Bihar crushing, as noted above, actually commences in November by when all arrangements for purchase and transportation have to be in order. This Court has repeatedly held that adherence of time schedule is very essential, virtually mandatory.

10. Now, coming to the facts of the present case. The two sugar mills, in question, i.e., the petitioner, Harinagar Sugar Mill and respondent No. 4, M/s. Tirupati Sugars Ltd. (Bagaha Chini Mill) are both situated on the Eastern side of river Gandak. On the Western side of river Gandak also there are extensive areas of sugarcane but in the vicinity there was no bridge across the river, as such there was great difficulty and making it virtually impossible for sugarcane to be transported across the river to these sugar mills. In such situation, so far as the villages on the Western side of the river Gandak are concerned, they were left earlier unreserved. State of Bihar considering the need for proper bridge across the river connecting the two sides started with the construction of a bridge and, thus, opened potentiality for consumption of sugarcane by these mills from across the river.

11. Considering various objections and after detailed enquiry on 17th of August, 2010, the Cane Commissioner issued two orders u/s 31(i) of the Act. These orders were later notified in the Bihar Gazette Extraordinary on 15th of October, 2010, The first was in respect of respondent No. 4, M/s. Tirupati Sugars Ltd. This notification is Annexure-4 to the writ petition. A reference to the said notification would show that after takeover of the Bagaha Chini Mill by the Tirupati Sugars Ltd. the mill increased its production capacity from 2500 TCD to 5000 TCD. In respect of respondent No. 4, 246 traditional villages were reserved for this respondent for five years, i.e., from crushing year 2010-11 to 2014-15, in addition thereto 56 villages of Dhanha region falling within Madhubani, Piprashi and Bhitaha circles were also reserved for a period of five years and the list of those villages are also appended to the notification. These 56 villages are mostly located on the Western side of river Gandak. It may be noted that out of these 56 villages 5 villages were farthest away.

12. Similarly, in respect of the same period similar notification was issued in respect of the petitioner's mill which notification noticed that the crushing capacity of the petitioner was 10,000 TCD but they were able to crush up to 12,000 TCD. This notification is Annexure-3 to the writ petition. It noticed that apart from the traditional areas consisting of 281 villages, this sugar mill was

allocated in all 24 villages in the Dhanha area under Thakraha and Bhithaha circles for a period of five crushing years.

13. Thus, seen both these competing sugar mills have substantial areas reserved to it u/s 31 of the Act which fell across the river Gandak on the Western side since 2010 for 5 years.

14. When the crushing season for the year 2011 was to start the Cane Commissioner came to know that from 17 villages on the Western side of river Gandak 12 of which were with the petitioner and 5 with respondent No. 4, they were both unable to lift sugarcane because of geographical location of those villages. They were across the river Gandak. The Cane Commissioner also found that because the road bridge is not yet completed there is no road access directly to the sugar mills. The completion of the road bridge would take one or two years more and, therefore, it was thought proper, after hearing both the mills, to de-reserve these 17 villages for one year, i.e., crushing season 2011-12. This notification was published on 14th of October, 2011 and is Annexure-5 to the writ petition. Similarly, when it came to crushing year 2012-13 the situation did not change as the road bridge was not yet ready and again those 17 villages, i.e., 12 of petitioner and 5 of respondent No. 4 were de-notified for one year in the hope that bridge would soon be completed at least by the end of that crushing year. This notification for the crushing year 2012-13 is Annexure-5/A to the writ petition.

15. It may be noted here that neither at the time when in 2010 reservation for five years was made in favour of the petitioner's mill of various villages west of Gandak river nor when they were de-reserved on yearly basis alongwith other such area pertaining to respondent No. 4, any objection was raised by respondent No. 4. They did not challenge the reservation as made in favour of the petitioner's company, which reservation, as noted above, was for 5 years. They did not object when 12 villages of petitioner and 5 villages reserved for respondent No. 4 were de-notified from reservation either in the year 2011 or in the year 2012.

16. Now, when crushing year 2013 was to start notices were issued by the Cane Commissioner on 23rd of September, 2013 with reminder on 27th of September, 2013 (Annexures-8 & 8/A to the writ petition), calling upon the sugar mills to submit the location of road cane purchasing centers in their respective reserved areas. In response to the aforesaid, the petitioner company gave its list of such centers which they proposed for setting up of road cane purchase centers in their reserved area and, in particular, in respect of 12 villages across the river Gandak on the Western side as well. This was so because by then the road bridge had been completed awaiting formal inauguration only. Petitioner's letter in this regard dated 1.10.2013 is Annexure-9 to the writ petition.

17. On 3.10.2013 respondent No. 4 gave their letter, which is Annexure-10 to the writ petition. Petitioner was surprised to find that, respondent No. 4 gave

intimation to set up two road cane purchase centers directly in the area reserved for the petitioner, which was impermissible. These two purchase centers were in respect of villages and area reserved for the petitioner on the Western side of river Gandak. Petitioner immediately protested that such action of respondent No. 4 was illegal and could not be considered. Petitioner filed its objection on 11.10.2013 and is Annexure-11 to the writ petition. The petitioner has also annexed with their objection the order of reservation for 5 years as passed by the Cane Commissioner (Annexure-3) on 17.8.2010.

18. On 25.10.2013 the Cane Commissioner called a meeting of various officers of various companies including the petitioner and respondent No. 4 to discuss establishment of cane purchase centers. The representatives were present at the meeting. State in its counter affidavit has annexed the attendance sheet which shows the purpose of meeting being establishment of cane purchase centers as held on 25.10.2013 as Annexure-B. On the same day, i.e., on 25th of October, 2013, after the meeting the impugned order No. 2120 was issued by the Cane Commissioner. By this order, the Cane Commissioner not only de-reserved the 12 villages, which was reserved for 5 years for petitioner company lying on the Western side of the river Gandak, but it was allocated to respondent No. 4 with permission to establish cane purchase centers there for which respondent No. 4 had already applied on 3.10.2013 (Annexure-10). The result of this was that the notified reservation order issued in the year 2010 was altered by the Cane Commissioner taking out 12 villages from petitioner's reserved areas and handing it over to respondent No. 4 and, that is, the dispute.

19. At this, juncture, I would like to notice a strange fact. Till 25th of October, 2013 these 12 villages were part of reserved area in respect of the petitioner, how and under what circumstances did respondent No. 4 ventured to propose establishment of two cane purchase centers in that area, as evident from their application dated 3.10.2013 (Annexure-10) itself. This could only be possible if there was something happening as between the Cane Commissioner and respondent No. 4 unknown to others. Something more than that could meet the eyes. No one has tried to explain this strange conduct of respondent No. 4. As noted above, later on 25.10.2013, by impugned order these 12 villages were allotted to respondent No. 4 taking it out of petitioner's reserved list.

20. Upon these facts, Mr. R.K. Agrawal, learned counsel for the writ petitioner submits that the actions of the Cane Commissioner in altering reserved area late in the month of October is wholly without jurisdiction as it was impermissible to do so after 30th of September, in view of the mandatory provisions of Rule 25. It was without jurisdiction as it was done without following the procedure, i.e., without due notice in this regard to the petitioner who was highly prejudice by this action. It was mala fide in law inasmuch as it did not refer to the reason as to why in past petitioner could not exploit that area. Those reasons had been considered by the Cane Commissioner when for the past two years the villages had been de-reserved with consent of petitioner, as would be apparent from

Annexures-5 & 5/A, the de-reservation orders for the crushing season 2011-12 and 2012-13. It also did not notice that five contiguous villages, which were reserved for respondent No. 4, was also similarly by the same notifications (Annexures-5 & 5/A) de-reserved for the very same reason. But, all of a sudden, without notice to petitioner 12 villages were de-reserved and allocated to respondent No. 4. Thus, the relief sought for as noted above.

21. On behalf of the State and so on behalf of respondent No. 4 strong objection was taken as to maintainability of this writ petition on the ground of availability of statutory alternative remedy in terms of Section 31(2) of the Act. Learned Additional Advocate General-9 appearing for the State and Mr. Y.V. Giri, learned Senior Counsel appearing for the respondent No. 4 vehemently argued this issue which apparently gives impression that on this technical ground alone the writ petition should be dismissed precluding the Court from examining the facts and issues which led to the impugned order. Their apprehension is that if this Court noticed the facts, the benefit derived by respondent No. 4, courtesy the Cane Commissioner, would not withstand the scrutiny of Court, which apprehension is correct.

22. Mr. Giri further urged that this Court exercising jurisdiction under Article 226 of the Constitution of judicial review was not sitting in appeal. Petitioner should be relegated to the appellate forum statutorily provided. He then sought to argue the reservation order as issued in the year 2010 was not correct in so far as the 12 villages in dispute which were allocated "to the petitioner. He then argued that the petitioner was not lifting the sugarcane in the past and as such those 12 villages had already been de-reserved and as such allocating those areas to respondent No. 4 was neither arbitrary nor illegal. Both State and respondent No. 4 argued that petitioner had adequate notice of fact that the area was being de-reserved in meeting held on 25th of October, 2013. For the said purpose, this issue was discussed. Petitioner's representative was present, as evident from attendance sheet of that meeting, which is Annexure-B to the counter affidavit of the State.

23. In my view, none of the contentions raised by the State and Mr. Giri, learned Senior Counsel appearing for respondent No. 4, deserve merit any consideration for the reasons noted hereinafter.

24. As to the first of the objections taken as to maintainability of this writ petition, in view of statutory alternative remedy available, there are three things that I would like to state. Firstly, this Court exercising jurisdiction under Article 226 of judicial review does not sit in appeal over the judgment of authority. It is to look into not the decision but the decision making process, which is also a part of judicial review. Secondly, that when an order is without jurisdiction, the question of alternative remedy does not apply as that it is one of the exceptions to the rule. Thirdly, the rule of alternative remedy is a self-evolved restrictions and not mandatory proposition of law. In appropriate cases, Court has the jurisdiction to interfere in the matters notwithstanding alternative remedy

available.

25. In the present case, as will be shown, the impugned order of the Cane Commissioner was wholly without jurisdiction. The decision making process was also vitiated. This is so because if we read Section 31 and Rule 25 it predicates two things. First, notwithstanding the power to alter or amend the reserved area being there, the same cannot be done without noticing and hearing the party in this regard because the action has serious civil consequences for the parties concerned. It is now established that unless principles of natural justice are explicitly excluded they are to be read in wherever situation so demands. It is a facet of Article 14 of the Constitution. In the present case, there was no occasion for discussing or passing orders with regard to de-reservation without adequate notice to affected party. State and private respondent No. 4 contended that this impugned decision dated 25.10.2013 was taken in the meeting dated 25.10.2013 which held for this purpose, as evidenced by the attendance register produced by the State as Annexure-B to the counter affidavit of the State. I am not convinced as the purpose of the meeting is indicated in Annexure-B itself. It clearly states that the meeting is with regard to establishment of cane purchase centers and not with regard to de-reservation at all. Thus, it cannot be urged that petitioner had any notice in this regard at all. Here I may usefully refer to the case of S.L. Kapoor Vs. Jagmohan and Others, and in particular what is stated by their Lordships in paragraph-16 of the reports:--

16.....In our view, the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need be a "double opportunity" that is, one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him....

26. In fact, as noticed earlier, there appears to be something more than what can meet the eyes against the petitioner's interest. This is evident that long before this de-reservation was made by the impugned order dated 25.10.2013 private respondent No. 4 had ventured on 3.10.2013 itself to notify establishment of cane purchase centers in the territory reserved for petitioner. Such an action is unthinkable much less permissible. No person can be allowed to establish cane purchase centers in area for another person because that would defeat the whole object of order of reservation as contemplated u/s 31 of the Act. Thus, clearly decision making process stood vitiated. If that be so, then the plea of alternative remedy, as a bar to interference by this Court, cannot be raised. The action was clearly in violation of principles of natural justice as also against mandatory provisions of Section 31 of the Act.

27. Now, if we look to Rule 25 it clearly provides that normally order should be

issued on or before 31st of July in each year and in exceptional cases up to 30th of September. Thus, a conjoint reading of Section 31 with Rule 25 would show that no order of reservation could be issued after 30th of September. This is so because, as noticed earlier, the actual crushing starts from 1st of November and varying the reserved area so close to beginning of crushing is not permitted because it is likely to upset the sugar mill and may be the cane growers also. Moreover, it has to be issued after notice to parties. If that be the restrictions for issuing the orders of reservation then the like restrictions would apply for its amendment. One can refer to Section 24 of the Bihar and Orissa General Clauses Act, 1917 in this regard. Thus, the jurisdiction to make amendment to reservation ceases after 30th of September.

28. In fairness to Mr. Giri, learned Senior Counsel, I must notice at this juncture another connected issue raised by him in this regard. He submits that if this amendment order, as impugned, is bad for being issued on 25th of October, 2013 then the original reservation order, as contained in Annexure-3, was also bad as it was issued on 15th of October, 2010. I am afraid this argument is noted only to be rejected inasmuch as if Annexure-3 is looked into, though the Gazette notification was issued on 15th of October 2010, that itself shows that the order of the Cane Commissioner was, in fact, issued on 17th of August, 2010 long before 30th of September, 2010.

29. Thus, on both issues, I find that the respondent-Cane Commissioner acted not only without jurisdiction but the decision making process was vitiated on account of failure to observe principles of natural justice. Here, I may refer to a direct decision of the Apex Court in this regard in the case of Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, and in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, . In both these decision the Apex Court while dealing with the question of alternative remedy clearly held that there are exceptions to the said self imposed restrictions which are, inter alia, the order being without jurisdiction or being in violation of principles of natural justice.

30. Thus, the plea of alternative remedy being available cannot be raised by respondent No. 4 as the order is not only vitiated on grounds of being without jurisdiction, it is vitiated on account of failure of decision making process.

31. To the argument of respondent No. 4 with regard to the correctness of the reservation order, as made in the year 2010, in favour of the petitioner for a period of five years suffice to say that it was notified in the year 2010. Respondent No. 4 never raised any objection against it. Respondent No. 4 never challenged it. It is now too late in the day to challenge the same when the 3 years of the 5 years period had already expired.

32. Next, to the contention that the area had earlier been de-notified in so far as petitioner is concerned, I am afraid that is not the correct position. As noted earlier, 12 villages from petitioner's reserved area and 5 villages from

respondent's reserved area, with knowledge and consent of the parties, were de-notified first in the year 2011 by Annexure-5 for a period of only one year and then in 2012 again for crushing year 2012-13 only. They were not generally de-reserved. The contention of respondent No. 4 is not correct. Thus, automatically at the end of crushing season 2012-13, the reservations as made by the original notification of the year 2010, for a period of 5 years, revived and operated.

33. So far as the contention of both the State and the private-respondent No. 4 that petitioner was not lifting sugarcane from those 12 reserved villages causing inconvenience to the agriculturists, therefore, the necessity of de-reserving and allocating to petitioner is concerned, it is equally misconceived. The authorities suddenly seem to have become oblivious to the reason, for temporary de-reservation. In the notifications de-reserving the areas earlier, as issued for the year, 2011-12 and 2012-13 which are Annexures-5 & 5/A respectively, the reason is clearly noticed. The reason was that these areas lay on the Western side of the river Gandak and road bridge was still under construction and, as such, they could not conveniently be carried across to their sugar mills. It is for this reason, not only temporarily for a period of one year, petitioner's 12 villages were de-reserved, but respondent No. 4's 5 villages were also simultaneously de-reserved. If that reason is applied to the petitioner, it also applies to respondent No. 4. Both sailed in the same boat but this fact was deliberately ignored by the Cane Commissioner in the impugned order as if the orders, as contained in Annexures-5 & 5/A, were never passed. This establishes mala fide in law on part of the Cane Commissioner. This is what is commonly known as malice in law as held by the Apex Court that if a discretionary power has been exercised for an unauthorized purpose it is generally immaterial whether its repository was acting in good faith or bad faith. Reference may be made in the case of Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, .

34. Thus, for the reasons aforesaid, the impugned order of the Cane Commissioner, as contained in Annexure-1, de-reserving the 12 villages of the petitioner and allocating it to respondent No. 4 cannot be sustained. It is, accordingly, quashed. Consequently, the permission granted to respondent No. 4 to establish and run cane purchase centers in respect of those 12 villages, which is reserved area for petitioner, cannot be sustained and is also quashed. Consequently, the Cane Commissioner is directed to issue necessary orders permitting petitioner to set up cane purchase centers in respect of those 12 villages of its reserved areas, forthwith. Let a Mandamus be issued accordingly. In the result, the writ petition is allowed with a cost of Rs. 10,000.00 to be paid by respondent No. 4 to the petitioner.