

(2020) 09 PAT CK 0339

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 20252 Of 2018

Kisan Sangharsh Samiti And Anr

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 25-09-2020

Acts Referred:

Bihar Sugarcane (Regulation Of Supply And Purchase) Act, 1981 — Section 46, 46(1), 46(2), 46(3)

Bihar Sugarcane (Regulation Of Supply And Purchase) Rules, 1978 — Rule 34

Constitution Of India, 1950 — Article 12, 226

Citation : (2020) 09 PAT CK 0339

Hon'ble Judges : Dinesh Kumar Singh, J;Anil Kumar Sinha, J

Bench : Division Bench

Advocate : Madhurendra Kumar, Yogendra Pd. Sinha, Sankar Kumar, Y.V. Giri, Ashish Giri, Rajat Kumar Tiwary

Final Decision : Dismissed

Judgement

Heard Mr. Madhurendra Prasad, learned counsel for the petitioners and Mr. Ashish Giri, learned counsel for respondent No.6 and Mr. Shankar

Kumar, learned A.C. to AAG-7 for respondent No.1 to 4.

The present writ application has been filed by way of Public Interest Litigation for a direction to respondent No.6 to assess the rate of sugarcane

under General (Medium) quality instead of Rejected quality supplied by the petitioners and other cane growers to Magadh Sugar and Energy Ltd.

(Bharat Sugar Mill), Sidhwalia, Gopalganj and to ensure payment of the price of sugarcane already supplied.

The reliefs, as claimed by the petitioners as stipulated in paragraph No.1 of the writ application read as follows :-

1(I) To direct the respondent No.6 to assess the rate of the sugarcane

supplied by the petitioners and other cane growers of the locality under

General (Medium) quality in place of rejected quality and ensure payment prescribed for Medium quality sugarcane.

(II) To hold that the sugarcane supplied by the cane growers sugarcane seed reri-cop-2061 not come under rejected quality rather Medium quality and

the cane growers entitled for the payment of Rs.290/- per quintal in other of Rs.265/- per quintal.

(III) To direct the respondent authority to properly assess the rate quality of sugarcane supplied by the cane growers and will be supplied the ensure

payment of the same according to the existing rate of medium quality sugarcane in place of rejected quality.

Learned counsel for the petitioners submits that the present writ application by way of Public Interest Litigation has been filed through Kisan

Sangharsh Samiti, an organization of the cane growers, through its President and petitioner No.2 Sushil Kumar Singh who is the member of the said

organization of cane growers. The petitioners have supplied the sugarcane of reri-Cop- 2061 to Magadh Sugar and energy Ltd. (Bharat Sugar Mill),

Sidhwalia, a private sugar cane mill and claimed payment @ 290 per quintal, a rate fixed for the medium quality by the Government of Bihar but they

have been paid @ Rs.265/- per quintal since respondent no. 6 had treated the said sugar cane as Reject quality instead of General/Medium quality, as

a result, the huge loss has been caused to the petitioners.

The petitioner no. 2 represented before the Agriculture and Farmer Welfare Minister, Government of India on 13.2.2018 through registered post as

contained in Annexure 2 and also before the Cane Commissioner, Government of Bihar vide representation as contained in Annexure 3 to the writ

application but the grievances of the petitioners have not been redressed. The quality of the sugarcane supplied by the petitioners has been categorized

as General/Medium quality by the Government of Bihar but instead of that, less payment has been made to the petitioners.

Learned counsel appearing for respondent Nos.1 to 4 submits that in the meeting dated 27.6.2018 held under the Chairmanship of Honâ??ble

Minister, Cane Industries Department, Government of Bihar, the sugar cane quality being COP 2061 has been categorized as â??Samanyaâ??

(general). There is nothing on record to suggest that the sugar mill has treated

the sugar cane of the petitioners as a Reject quality. Moreover, the remedy of the petitioners lies to the Bihar Sugarcane (Regulation of Supply and Purchase) (Amendment) Act, 1993 (hereinafter referred to as the Act). The minutes of the concerned Minister has been brought on record as Annexure B to the counter affidavit.

Relevant paragraph 8 of the counter affidavit reads as follows:

8. That it is pertinent to mention that vide paragraph 5 of the meeting held on dated 27.06.2018 under the Chairmanship of Hon'ble Minister, Cane Industries Department, Government of Bihar, the entire doubt with regard to COP 2061 variety of sugarcane has been sought out and it has been held that the said variety of sugarcane comes under the category of Samanya. It is, therefore, in view of the fact and circumstances, the prayer of the petitioner has no merit and same is fit to be disposed of since the grievance or the petitioner has already been redressed.

It is further submitted that petitioner no. 1 never represented before the concerned authorities and it is more a personal interest litigation as the sugarcane has been supplied by the petitioners to a private sugarcane mill under an agreement. Mr. Ashish Giri, learned counsel for the respondent No.6 submits that the present writ application filed by way of Public Interest Litigation is not maintainable, as basically the petitioner No.2 has raised his personal claim through the present writ application. Moreover, his claim is against a private sugar mill against which writ application is not maintainable. Mr. Giri has relied upon the judgment of Hon'ble Supreme Court in the case of General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrughan Nishad & Ors. reported in (2003) 8 SCC 639 and para 9 of this Judgment reads as under :-

9. Learned counsel appearing on behalf of the contesting respondents submitted that even if the Mill is not an authority within the meaning of Article 12 of the Constitution, writ application can be entertained as mandamus can be issued under Article 226 of the Constitution against any person or authority which would include any private person or body. Learned counsel appearing on behalf of the appellant, on the other hand, submitted that mandamus can be issued against private person or body only if the infraction alleged is in performance of public duty. Reference in this connection may be made to the decisions of this Court in Shri Anandi Mukta Sadguru Shree

Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust

and others v. V.R.Rudani and others (1989) 2 SCC 691 in which this Court examined the various aspects and distinction between an authority and a

person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the

person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the cases of

K.Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering (1997) 3 SCC 571 and VST Industries Ltd. v. VST Industries Workers'

Union (2001) 1 SCC 298, the same principle has been reiterated. Further, in the case of VST Industries Ltd. (supra), it was observed that

manufacture and sale of cigarettes by a private person will not involve any public function. This being the position in that case, this Court held that the

High Court had no jurisdiction to entertain an application under Article 226 of the Constitution. In the present case, the Mill is engaged in the

manufacture and sale of sugar which, on the same analogy, would not involve any public function. Thus, we have no difficulty in holding that the

jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked.â??

Section 46 of Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (hereinafter referred to as the 'Act, 1981') prescribes the manner in

which the dispute with regard to price of sugarcane supplied to the occupier of a factory by any person has to be resolved and the corresponding

provision for resolving that issue is incorporated under Rule 34 of the Bihar Sugarcane (Regulation of Supply and Purchase) Rules, 1978 (hereinafter

referred to as 'the Rule'). Hence, the petitioners had the alternative remedy for redressal of grievances but there is nothing on record to

suggest that the petitioners had resorted to the provision of Section 46 of the Act, 1981 and Rule 34 of the Rule. Hence, on this score also, the writ

application is not maintainable.

Having heard learned counsels for the parties, prima facie, we are of the view that the petitioners have come before this Court for their personal

claim, i.e., less payment for the sugarcane supplied by them to a private sugar mill. Hence, the present writ application is not maintainable as pro bono

publico. Section 46 of the Act, 1981 stipulates decision of certain disputes which

includes the dispute with regard to price of the sugarcane supplied to the occupier of the factory which mandates that the occupier of a factory shall enter the dispute in a register in the prescribed form and refer it within the prescribed period to the prescribed authority and the prescribed authority will decide the dispute after giving the parties a reasonable opportunity of being heard. Sub-section(2) of Section 46 of Act, 1981 stipulates the dispute touching an agreement for purchase of sugar cane by the occupier of a factory. Sub-section (3) of Section 46 of Act, 1981 stipulates that any person aggrieved by a decision made under sub-section (1) of sub-section(2) will approach the Collector within thirty days. Section 46 of the Act, 1981 reads as follows:

46. Decision of certain disputes :- (1) If any dispute arises regarding the price of cane supplied to the occupier of a factory the person entitled to the price or the document on the basis of which the price is claimed, payment of the price shall be withheld and the occupier of the factory to which the cane was supplied shall enter the dispute in a register in the prescribed form and refer it within the prescribed period to the prescribed authority who shall, after giving the parties a reasonable opportunity of being heard and after such inquiry as he may consider necessary, decide the dispute.

Provided that whenever the payment of the price is withheld under this sub-section, the occupier of the factory shall deposit with the prescribed authority in the prescribed manner the amount in dispute, within one week of such reference.

(2) Any other dispute touching an agreement for purchase of cane by the occupier of a factory or its supply to him and any dispute relating to purchase of cane or cane-juice by the owner of a unit and payment of price thereof shall be referred to the authority prescribed under sub-section (1) who shall decide it in the manner laid down in that sub-section.

Explanation :- Where an offer has been made by a cane grower for supply of cane to the occupier of a factory under the provisions of this Act and the occupier has failed to execute the agreement in accordance with the provisions of this Act a dispute relating to such unexecuted agreement shall be a dispute within the meaning of this sub-section.

(3) Any person aggrieved by a decision made under sub-Section(1) or sub-section(2) may, within thirty days of the decision, prefer an appeal to the

Collector who shall, after giving the parties a reasonable opportunity of being heard and after such inquiry as he may consider necessary, pass such order as he thinks fit.

(4) An order of the Collector under sub-Section(3) and subject to such order, the decision of the prescribed authority under sub-Section (1) or sub-Section(2) shall be final.

Rule 34 of the Rules prescribes the procedure for decision of disputes stipulated under Section 46 of the Act, 1981 including the dispute with regard to

sugar cane supplied which suggests that the person raising the dispute shall file a written statement duly signed by him with the occupier of the factory

concerned who shall immediately enter the dispute in a register maintained in Form XIX. Such dispute shall be referred by the occupier of the factory

within a week of receipt of the written statement to the Cane Officer of the area for decision. The price of the sugarcane relating to such dispute and

withheld by the occupier under sub-section (1) of Section 46 of the Act, 1981 shall be deposited by the occupier and thereafter the Cane Officer shall

pass relevant order and that can be executed unless it is being set aside in appeal by the Collector. Rule 34 of the Rules reads as follows:

â??34. Decision of disputes in respect of price of cane _ (1) If a dispute arises under Section 46, the person raising the dispute shall file a written

statement duly signed by him within the occupier of the factory concerned who shall immediately enter the dispute in a register maintained by him in

Form XIX.

(2) Such dispute shall be referred by the occupier of the factory within a week of receipt by him of the written statement, to the Cane Officer of the area for decision.

(3) The price of cane relating to such dispute and withheld by the occupier under sub-Section (1) of Section 46 shall be deposited in R.D. Part I within in the knowledge of the S.D.O./Collector.

The Cane Officer shall issue an order for refund of the relevant amount to the person entitled to receive payment according to his decision on

amicable settlement, if any, arrived at amongst the parties. The refund of the amount under such order shall not be made before the expiry of forty-

five days from the date of the order of the Cane Officer and where an appeal has been preferred against the order the Cane Officer such refund shall

not be made, until the disposal of the appeal by the Collector.

(5) Where the decision of the Cane Officer under this Rule is set aside or modified by the Collector, in appeal, under sub-section(3) of Section 46, the Cane Officer shall issue a revised order in accordance with the order of the Collector.â??

There is no material on record to suggest that the respondent no. 6 -Sugar mill has any financial or administrative control by the government or not.

That apart, from the materials on record, it appears that petitioner no. 1 had made no representation before the concerned authority and that petitioner

no. 1 is a registered organization. The pleadings in the writ petition also do not suggest that the petitioners made any application before the appropriate

authority or made any effort to get the issue resolved either under Section 46 of the Act, 1981 or Rule 34 of the Rules.â??

It is well settled law that where the alternative and efficacious remedy is available then the the exercise of discretionary jurisdiction under Article 226

of the Constitution of India, having self imposed restrictions can only be exercised in exceptional or a compelling situation in cases where there is

violation of fundamental rights, there is gross violation of principal of natural justice or the proceeding or the order are without jurisdiction, we do not

find the case of the petitioner in any one of such exception as has been held by the Honâ??ble Supreme Court in the case of Whirlpool Corporation

Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1. Paragraph 15 reads as followsâ??

â??15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a

writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the

Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bare in at

least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has

been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary

era of the constitutional law as they still hold the field.â??

In view of the discussion made above, basically on the ground that the petitioners failed to avail specific alternative remedy available, this Court is not inclined to exercise its discretion under Article 226 of the Constitution of India.

Accordingly, this writ application is dismissed. However, the dismissal of the present writ application will not preclude the petitioners, if so advised, to take resort to the alternative remedy available in accordance with law.