(1996) 04 PAT CK 0028

In the Patna High Court

Case No : C.W.J.C. No. 4729 of 1995

Madhu Sudan Sharma APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 19-04-1996

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (1996) 2 BLJR 1097 : (1996) 2 PLJR 276

Hon'ble Judges : R.N. Sahay, J;N. Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N. Pandey, J.—The petitioner is the Executive President of New Swadeshi Sugar Mills Limited. By means of this writ application, under Articles 226 and 227 of the Constitution of India, a prayer has been made on his behalf to quash the entire proceeding arising out of Certificate Case No. 4/92-93 pending in the Court of District Certificate'' Officer, West Champaran at Bettiah as also the notice issued u/s 7 of the Bihar & Orissa Public Demand Recovery Act (in short ''the Act'') and the order passed u/s 9 of the Act dated 14.6.1995, contained in Annexure 6 whereby and whereunder while rejecting objection, the District Certificate Officer directed the petitioner to deposit the certificate dues.

2. Undisputedly, purchase or distribution of sugarcane for use of sugar factories and Khandsari sugar manufacturing units in the State of Bihar are being regulated as per different provisions of Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (hereinafter to be referred to as the ''Sugarcane Act''). Section 65 of the Sugarcane Act empowers the State Government to frame rules to give effect to the purpose of the said Act. Section 32, provides that the Cane Commissioner may, by order notified in the official gazette fix specified quantity and price of Sugarcane to be supplied to different sugar factories. Sub-section (2) of Section 32 requires every sugarcane grower, co-operative society or occupier of the factory to supply or purchase, as the case may be, the quantity

or proportion of sugarcane fixed under Sub-section (1). To carry out the aforesaid requirement a cane grower or a co-operative society at one hand and the occupier of factory on the other are required to enter into agreement or agreements, as the case may be.

3. Section 43 of the Sugarcane Act prescribes mode for payment of price of sugarcane by the occupier of a factory to a sugarcane grower or cooperative society, as the case may be. As per Sub-section (2)(i) of Section 43, as soon as cane is supplied to a factory, the occupier of such factory shall be liable to pay the price of sugarcane so supplied. Clause (ii) of Sub-section (2) is an enabling provision to charge interest at the rate specified u/s 51 from the occupier, in case he makes default in payment. Relevant provisions may be usefully reproduced hereunder:

43. Payment of price of cane.-(1)

XXX XXX XXX(2)(i) XXX XXX XXX (ii) Where the occupier, liable under Clause (i) makes default in payment of the price for a period exceeding fourteen days from the date of supply of cane to the factory, he shall be liable to pay interest thereon at the rate specified in Section 51 from the date of supply.

XXX XXX XXX (6) Any arrears of the price of cane, with interest thereon, if any, shall be recoverable as public demand or arrears of land revenue.

XXX XXX XXX Section 51 prescribes rate of interest in respect of certain dues realisable from the occupier of a factory under the various provisions, including Section 43. The relevant provision can be noticed hereunder:

51. Rate of interest in respect of certain dues.-(1) The rate of interest realisable from the occupier of a factory under Sections 43,.44, 48 or 49 or from any other person u/s 44, shall be eleven per centum per annum.

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4. Before embarking upon to adjudicate the crucial question, it has to be noticed that in the instant case there is no dispute with regard to payment of the principle amount of cane price. The requisition dated 14.10.1992, which gave rise to the certificate proceeding was exclusively with respect to the amount of interest.

5. It appears, the petitioner had earlier moved this Court questioning the validity of the notice u/s 7 of the Act, Ultimately, on 14.10.1993, the writ application was permitted to be withdrawn with a liberty to the petitioner to file objection, it any, u/s 9 of the Act before the Certificate Officer. Thereafter, the Certificate Officer after hearing both the parties and considering the case and counter case, rejected objection by the order contained in Annexure 6.

6.Mr. Giri, learned Counsel appearing for the petitioner, mainly urged the following points to persuade us to invalidate the certificate and the certificate proceeding including the final order:

(a) that the Cane Officer was not authorised under the provisions of the Sugarcane Act to submit a requisition on behalf of the cane growers or cane grower co-operative society for recovery of dues on account of nonpayment of sugarcane price or interest thereon;

(b) The dues payable to a cane grower or co-operative society is riot a dues payable to the Cane Officer, therefore, no certificate can be filed under Sections 4 and 6 of the Act;

(c) In absence of any adjudication about actual dues or liability of the petitioner, it was not open to the Cane Officer to submit a requisition or even to the Certificate Officer to pass a final order for the realisation of such amount.

7. There is no dispute that as per the proviso to Sub-section (6) of Section 43 of the Sugarcane Act, arrears of the price of cane or interest thereon or both, if any, shall be recoverable as public demand or arrears of land revenue. This is also not in dispute that as per various provisions of the "Sugarcane Act", including that of Section 13, a Cane Officer is required within the local limits of his jurisdiction to perform various statutory duties detailed in Sub-section (5) of Section 13. Therefore, a reference to the aforesaid provision would show that a Cane Officer is fully authorised to take suitable steps to regulate sale and purchase of sugarcane, which may be in the interest of sugarcane growers or cooperative societies.

8. According to the learned Counsel for the State, as per the provisions of Rule 39 of the Bihar Sugarcane (Regulation of Supply and Purchase) Rules, 1978 (in short ''the Rules'') a Cane Officer is quite competent to submit requisition fot realisation of such dues on behalf of the Cane growers or a Cane Grower Co-operative Society.

9. Before proceeding to discuss and examine rival contentions of the parties about the authority of Cane Officer, it would be apt to notice the notification bearing No. G.S.R. 97 dated 30th December, 1978, published in the Bihar Extraordinary Gazette dated December. 30, 1978 by the State Government. In exercise of its powers conferred by Section 65 of the Bihar-Sugarcane (Regulation of Supply and Purchase) Second Ordinance, 1978, in order to give effect to the provisions of the Ordinance, Rules were notified. Although by virtue of enactment of the Sugarcane (Regulation of Supply and Purchase) Act, 1981, said Ordinance has merged into the Act but we are told that provisions of said rules have been adopted by the State Government for the purpose of present Act also.

10. As per Rule 39 of the aforesaid Rules dues recoverable under Sections 4, 34, 44, 47 and 48 of "the Act" shall be recovered as public demand payable to the Cane Officer of the area on a written requisition to a certificate officer u/s 5 of the Act. Relevant provisions of the said rule may be usefully noticed hereunder:

39. Requisitioning authority for amounts recoverable as public demand.-The

amounts recoverable as public demand under Sections 4, 34, 44, 47 and 48 shall be recoverable as public demand public to the Cane Officer of the area who shall send a written requisition to the Certificate Officer concerned u/s 5 of the Bihar and Orissa Public Demand Recovery Act, 1914, for recovery of such amounts under the said Act:

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11. It was contended by Mr. Giri, that "dues" on account of non-payment of sugarcane price of interest thereon are not "the dues" as required under Sections 4, 34, 44, 47 and 48 of the Act, Therefore, in absence of any other provisions, it has to be held that instant certificate proceeding on a requisition of the cane officer was without jurisdiction.

12. In my view, a bare reference to certain provisions of Sections 4, 13 or 47 of the Act would be enough to arrive at a conclusion that in fact there is no substance in such submission of the learned Counsel Section 4 deals with the matter pertaining to supply, purchase and price of sugar cane so supplied to the factories, or any such other matter as may be prescribed.

Section 13(5) of the Act gives complete jurisdiction to a Cane Officer to regulate, purchase and supply of sugarcane and call for any information from the occupier or Manager of a factory regarding payment of price of the sugarcane so supplied. In other words, it is the duty of the Cane Officer to get opinion regarding payment of sugarcane price or take suitable steps for payment of such price as and when necessary.

Section 47 is a provision for enforcement of orders passed undff Section 46 of the Act by a competent civil court but any decision or order in respect of price of cane of interest thereon, if any, is to be recovered a public demand or arrears of land revenue. Section 46 therefore, can also be usefully noticed which deals with disputes touching an agreement for purchase of cane, Sub-section (2) of Section 46 is an enabling to a dispute touching an agreement for purchase of sugarcane price etc. by the occupier of a factory incksling payment of price thereof.

13.Undisputedly, having regard to the statutory provisions for payment of the price of sugarcane as required u/s 43(2), the Cane growers had. raised grievances against the occupier about non-payment of such price as also interest etc. due to delayed payment. This is not in dispute that in terms of Sub-section (2) of Section 32, agreements were executed between the cane growers/ cooperative societies and occupiers of sugarcane factories. There is no denial that sugarcane for which price is claimed was in fact supplied by the cane growers to the occupier of the concerned factories. Thus having regard to these eventualities in may view, the Cane Officer was fully competent to file requisition on behalf of the cane growers before the Certificate Officer.

14. Apart from what has been noticed above, it cannot be ignored that entire transaction of purchase and supply of sugarcane is conducted under exclusive

direction and command of the Cane Officer. A cane grower has no option but to supply sugarcane to the occupier of factory in terms of directions of the Cane Officer.

15. Therefore, having regard to the facts noticed above as also the main object of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981, it can be safely concluded that a Cane Officer is fully competent to see that any dispute on account of non-payment of price or interest to a cane grower by an occupier of the factory be property safeguarded and looked into. In this view of the matter, it would be really hard and unjust at this Stage to hold that the Certificate proceeding was not maintainable.

16. Mr. Giri next contended since no requisition u/s 5 of the Act was submitted by the Cane Officer, therefore, entire proceeding including notice issued under Sections 4 and 6 of the Act, copy whereof has been marked as Annexure 1, was wholly illegal and without jurisdiction. It is stated that Cane Officer not being Collection under the Act, had no authority to submit requisition u/s 4 for recovery of the dues of cane growers as a public demand. In support of his contention, he placed reliance on certain decisions of this Court in the case of Vishnu Sugar Mills Ltd. Vs. State of Bihar and Others, and Hari Prasad Agarwalla v. State of Bihar and Ors. 1975 BBCJ 723.

17. There is no dispute that copy of notice which has been marked as Annexure 1 is prescribed under Sections 4 and 6 of the Act. But unfortunately, no copy of requisition has been produced either on behalf of the petitioner or the State authorities.

18. The Certificate Officer while dealing with the instant question held that in fact requisition in this case was made through a letter dated 14.10.1992, which fulfilled all the requirements as set out in Form II. The Certificate Officer further held that provisions of Rule 60 of Rules under the Bihar and Orissa Public Demands Recovery Actives full liberty to use the Form set forth in the Appendix with such variations as circumstances may require in appropriate cases.

19. The ratio laid down in the case of Hari Prasad Agarivalla v. State of Bihar and Ors. (supra) in my view, is not applicable to the facts of the present case. In that case, the Certificate was signed by a Divisional Forest Officer in Form prescribed under Sections 4 and 5 of the Act. The concerned authority was neither authorised by the Collector to submit requisition under Sections 4 or 6 of the Act not he had verified the requisition. Therefore, having regard to all such defects, the Court held that Certificate proceeding started against the petitioner at the instance of the Divisional Forest Officer was without jurisdiction.

20. In the case of Vishnu Sugar Mills (supra) their Lordships held that two expressions are used in Clause (6) of Section 43 of the Sugarcane Act permits recovery of the arrears of sugarcane price as public demand or arrears of land revenue. If it is a simple public demand, the Certificate holder will either be a cane grower or may be officer of the Cane Department of the Government. But if

arrears of price of cane are sought to be recovered as arrears of land revenue, then surely they are sought to be recovered as public demand payable to the Collector.

21. The only distinction between the two modes of recovery of a public demand simpliciter, not payable to the Collector and arrears of land revenue is the different modes of filing the certificate, One is u/s 4 and the other in accordance with Sections 5 and 6 of the Act. Therefore, having regard to the provisions Sub-section (6) of Section 43 of the Act, in my view, the requisition submitted either u/s 4 or Section 5 of the Act for recovery of arrears in question will make no difference.

22. Mr. Giri lastly contended that in absence of a proper adjudication about actual dues or liability of the factory owner, it was not proper for the Cane Officer to submit requisition for realisation of the dues in question. In my view, this is not the stage to raise such question particularly when the principle amount was already paid without any objection. That apart, adjudication of such disputed facts depend upon verification of relevant materials and evidence of the parties which in my view is not possible for this Court while exercising a writ jurisdiction. The petitioner, therefore, for such adjudication should have availed the remedy of appeal or revision etc. which was already available to him.

23. For the reasons stated above, I find no merit in this writ application, therefore, the same is hereby dismissed. But in the circumstances of the case, there shall be no order as to costs.

R.N. Sahay, J.

I agree.

