

(2007) 05 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

MALAPRABHA CO.OP SUGAR FACTORY LTD.THROUGH ITS
MANAGING DIRECTOR, M.K.HUBLI BELGAUM-TALUK/
DISTRICT

APPELLANT

Vs

MANIK, MACHHE, TALUK- BELGAUM, BELGAUM

RESPONDENT

Date of Decision : 21-05-2007

Acts Referred:

Citation : 2007 0 NCDRC 25 : 2007 2 CPJ 276

Hon'ble Judges : M.B.SHAH , RAJYALAKSHMI RAO J.

Advocate : RAJIV TALWAR , KIRAN SURI

Judgement

1. THE present Revision Petition is filed by Malaprabha Co-operative Sugar Factory Ltd., opposite party, against the order dated 2.9.2003 passed by the Karnataka State Commission in Appeal Nos.901 to 922 of 1997 arising out of the order dated 28.10.1997 in Complaint No.3/97 filed by some of the sugar grower, who are members of the opposite party in the District Forum, Belgaum, whereby the complaint was allowed. In the appeal filed by the Petitioner, the State Commission confirmed the order except to the extent of reducing the rate of interest from 18% to 12%.

2. FACTS of the case are : The Complainants/Respondents are members of the Petitioner " Malaprabha Cooperative Sugar factory. The Petitioner society was formed with the sole object of facilitating the Respondent sugarcane growers by utilizing the sugarcane grown, for which entrance fee and membership fee have been received in the form of share amount. As per the terms and conditions of the society, Petitioner-society has to accept all the sugarcane grown on the lands of complainants with a ceiling of land admeasuring 25 acres whatever may be the total yield.

3. IT is stated by the Learned Counsel for the Respondent that sugarcane being perishable, it is to be crushed before expiry of 10-11 months of its plantation. Since sugarcane stock deteriorates after the aforesaid period, it results in loss of sugarcane yield and loss in weightage of sugarcane commences.

4. THE Complainants allege that the Petitioner has failed in its duty to provide expert service in planning, organizing and regulating the cultivation of sugarcane by the producer members taking into account their crushing capacity during the relevant year. Taking into consideration of the sugarcane crop situation, Petitioner Society has taken a decision to lift at least 40 tons per share but did not procure and lift the same for crushing from producer Complainant members. This minimum self imposed obligation could not be fulfilled by the Petitioner Society because of excessive production of sugarcane and Petitioner Society failed in regulating and assigning acreage of sugarcane growing area to each of the producer members as per bye-law No.7 read with 31. Had they adhered to these byelaws and properly managed by correct planning and timely operations, it would not have led to excessive production and hence it is deficiency of service by the Petitioner society. Secondly, as per the bye-laws of the society, although the society was liable to lift sugarcane and crush the same upto 40 tons per share held by all the producer members, sugarcane of 180 members could not be lifted/crushed to the extent of their entitlement for the season 1995-1996. Out of the said 180 members, (Exhibit P-2), 158 members whose sugarcane was not lifted, were paid full sugarcane price at Rs.820/- per ton. The compensation price given to the 158 members was taken from the collection of those members whose sugarcane was crushed more than the above fixed limit. Out of this list of 180 members, 22 members have been left out and they have filed these complaints in the District Forum, who are presently Respondents here. Thirdly, it is pointed out by the Respondents that the Petitioner crushed the sugarcane of influential members in excess of the above limit of 40 tons per shareholder and thus denying crushing of sugarcane to some who are not so influential members.

5. FOURTHLY , aggrieved Respondents were compensated without intimating to them by the Petitioner, a paltry amount of Rs.1800/- which was credited directly to their bank accounts by cheque. It is submitted by the Learned Counsel for the Respondents that the said amount was accepted by the Respondents under the impression that this unexpected payment of Rs.1800/- was credited in their account for some dividend or interest. They were looking forward for the actual compensation but when the same was not paid, then the Respondents filed the complaints before the District Forum. Fifthly, it is contended that the Respondents waited for lifting of sugarcane grown in their land till date of the closure of the factory, i.e. 20.7.1996 and by that time it was too late for them to raise the next crop in their land. Taking into account that the yield per acre even in the subsequent year, i.e. 1996-97 would have been 40 tons per acre; they should be compensated at that rate.

6. KEEPING the aforesaid submissions, Respondents claimed compensation of Rs.1,34,400/- alongwith interest at the rate of 18% p.a. from 23.3.1996, in the District Forum. District Forum partly allowed the complaint. It held that the Co-operative sugar factory was under an obligation to accept at least 40 tons of sugarcane per member. In each of the 22 cases, the District Forum calculated the shortfall in lifting of the cane produced, and awarded varying amounts of

compensation. It also directed the Petitioner to pay interest at the rate of 18% p.a. alongwith some nominal compensation for mental agony at the rate of Rs.500/- for every Rs.10,000/- (or part thereof as compensation).

7. IN the Appeal filed by the Petitioner society, the State Commission partly allowed the appeal by modifying the order only to the extent of reducing the rate of interest from 18% p.a. to 12% p.a. Aggrieved by the same, the present Revision Petition is filed by the Cooperative Society.

8. LEARNED Counsel for the Petitioner society submits that the Petitioner has acted in accordance with its aims and objectives as contained in its byelaws. The issues which were raised and decided in favour of the respondents in the order of the State Commission, as perceived by the Petitioner are that : The Petitioner failed to plan to control excess production of sugarcane by the members, (a) failed to purchase sugarcane from the members in a fair manner without favouring influential members, and (b) Petitioner failed to cut, remove and carry out the sugarcane from all members and fairly to remunerate those members whose sugarcane produce could not be lifted. These are considered to be deficiency in rendering service to the respondents.

9. LEARNED Counsel for the Petitioner argued that the excess yield of sugarcane was beyond the crushing capacity of the Petitioner as in that particular year, there has been an unprecedented production in the history of sugarcane production. Petitioner cannot be held liable for any deficiency in service for not controlling the bumper crop in an area of about 53,200 acres cultivated by 17,000 producer members as that was not expected or anticipated.

10. IT is further stated that the Petitioner provides general guidance about the new variety and technology for upgrading and for better yield of sugarcane. It does not control, monitor or supervise the production of sugarcane of each of the individual producer members. It is reiterated that the production crop for the year was 9,63,270 MTs (21,280 hectares) and the operational period of crushing capacity was increased from 189 days to 221 days and the yield stated by the Respondents to be 40 tons per acre is wrong, misconceived and exaggerated. If at all it should have been 40 tons per hectare instead of 40 tons per acre which is a more realistic yield figure. Learned Counsel for the Petitioner relied on the facts and figures of his statement as given below : (i) Total area within operation of Petitioners - 53,200 acres (ii) Total area of sugarcane as agreed to be sold by Agreement to Petitioners - 43,785 acres (iii) Yield 22 MT/acre (iv) Total production under Agreement 9,63,270 MTs. (v) Total capacity (@ 3500 MT/D) - 6,61,500 MTs. for 189 seasonal days. (vi) Deficit [(iv) " (v)] 3,01,770 MTs. (vii) Actual Output (after operating - 8,21,153 MTs. (viii) Still Deficit 1,42,117 MTs.

It is contended that it was duty of Respondent members to bring up their sugarcane to a pooling place, which is also envisaged under Clause 5 of the byelaws. This information is published by the Petitioner in daily newspaper dated 3.7.1996 whereby all the producer members were requested to bring their

products before 9.7.1996 to the pooling place which some members did not adhere to for reasons best known to them.

11. IT is submitted that as per Annexure P-3 the details showing the sugarcane crushed from 1993-1998 and Annexure P-4 showing the details of the total quantity of sugarcane purchased during the 1995-1996 season of about 8,21,153 MTs., and a mere 2,756.37 MTs. was procured from the non-members which comes to just 0.335%, which is negligible and cannot be considered as deficiency of service or unfair trade practice as projected by the respondents.

12. IT is further submitted that under Clause 5 of Petitioner's bye-laws, it is an obligation on the members/producer to get and bring their produce and they have given a card namely "Sugarcane Cutters Information Card". The Respondents did not act in terms of the notification given on 3.7.1996 to send their produce to the pooling place before 9.7.1996 since Respondents themselves did not bring the produce within time before 9.7.1996. Due to non-availability of the sugarcane produced by the producing members, it was open to the Petitioner society to take extra from some members produce to purchase the sugarcane from non-members. It is submitted that there is no deficiency in service. As far as taking of non-members produce for crushing, in this given situation is very negligible as it amounts to 0.335%. Findings: Heard both the parties and perused the record carefully. As per our order dated 19th October, 2006, the Commission directed the Petitioner as under : "During the course of arguments it has transpired that respondents numbering 22 were offered ex-gratia compensation of Rs.1800/- each by the Petitioner/Society whereas other 158 members were paid compensation @Rs.820/- per acre. In that connection para No.8 of the counter affidavit filed on behalf of respondent is material. Shri Talwar states that some time may be allowed to explain what is stated in this para 8. Two weeks time is allowed to do the needful. One of the submissions advanced by Shri Talwar is that individual notices were sent to the respondents for making available the sugarcane at the places mentioned in notices, but the respondents failed to comply with the notices. Only copy of one such notice is placed on the file. Petitioner will disclose on affidavit if such notices were sent by Registered Post (s) to the remaining respondents. Copies of notices, if issued, be also filed alongwith affidavit."

13. THE Petitioner society, however, failed to comply with our above direction and did not file any affidavit regarding their notices sent by registered post to the respondents for bringing their produce to the pooling centre and the copies of alleged notices were not filed. Firstly, we have to accept that there was no reason to discriminate the complainants from other members of the society who had grown the sugarcane. Admittedly, except Complainants, Petitioner had paid compensation @ Rs.820/- per acre to the other members of the society without any justifiable ground. This would mean that not only Petitioner accepts its deficiency but at the same time justifies the order passed by the District Forum.

14. FURTHER , the Petitioner society in compliance of our order dated

19.10.2006 failed to produce evidence of the notices sent to the Respondents by them which only proves that notices were never sent. In view of non-submission of the affidavit by the Petitioner, we agree with the contention of the Respondents that certain members have been favoured by crushing extra cane from certain favoured members and also an opportunity to non-members was given even though Petitioner claim it to be a negligible percentage such as 0.335%. Hence, it is apparent that the notices sent by the Petitioner were not received by the respondents and there is no reason to disbelieve the case of the respondents that they were put to undue disadvantage as they would have definitely brought the sugarcane produce to the pooling centre within the time given by the petitioner had they received notices. The next submission of the respondents is that the payment of Rs.1800/- as compensation, as decided by the Petitioner, by passing a resolution, cannot be accepted as a fair or reasonable compensation considering the loss suffered by them. It is the responsibility of the Petitioner society to help the members owning lands wherein they have grown sugarcane. On account of the default on the part of the Petitioner the sugarcane grown by the Complainants (members) could not be utilized for the purpose of manufacturing sugar, and the sugarcane being perishable commodity, deteriorated and the members suffered immense loss. That being so, we agree with the findings of the District Forum and the State Commission that there was deficiency in service by the Petitioner due to which the respondents have suffered. Failure on the part of Petitioner to plan and regulate production by assigning acreage for sowing sugarcane also amounts to deficiency in service. Further, when admittedly, the actual members of the Petitioner were awaiting their turn to send the sugarcane to the common pool for collection, there is no reason for the Petitioner to hurry and give this facility to non-members and also to give extra advantage to certain members and this contention is not sufficiently explained by the Petitioner society.

15. IN view of the aforesaid discussion, we find there is no merit in this Revision Petition. We agree with the view taken by the District Forum and the State Commission as they relied on the evidence and decided after appreciating the facts and there is no reason for us to interfere with the well reasoned order of the same in our revisional jurisdiction. Accordingly, Revision Petition is dismissed with a further costs of Rs.5,000/- to be paid by the Petitioner society to each of the Respondents. The order is to be complied with within four weeks from the date of receipt of this order.