

(2002) 03 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No's. 39163 to 39168 of 2001 (GM/RES)

Manohar and Others

APPELLANT

Vs

The Commissioner for Cane Development and The Director of
Sugar, Bangalore and Others

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Sugarcane (Control) Order, 1966 — Section 3, 5 A

Citation : AIR 2002 Kar 330 : (2003) 115 CompCas 695 : (2002) ILR (Kar)
4007 : (2002) 4 KarLJ 565 : (2002) 3 KCCR 175 SN

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : S.S. Halalli, for the Appellant; V.Y. Kumar, High Court Government
Pleader for Respondents 1 and 2, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Writ petitioners are all growers of sugarcane in Belgaum District coming within the notified area of the third respondent, the Raibag Co-operative Sugar Factory (Limited) and within the reserved area meant for supplying sugarcane to the third respondent-factory as required under the Sugarcane (Control) Order, 1966 ("the Control Order" for short).

2. The petitioners are under legal obligation to supply sugarcane grown by them to the third respondent-factory.

3. The petitioners in fact have supplied their produce to the third respondent-sugarcane factory as required under the provisions of the Control Order, but having not received payment for the same in accordance with the price fixed under the Control Order and having petitioned the first and second respondent authorities for taking action to ensure realisation of their price for the sugarcane supplied by them to the third respondent-factory and having failed in their attempts, are before this Court under Articles 226 and 227 of the Constitution of India praying for issue of a writ in the nature of mandamus to

direct the first respondent to take action in consonance with the provisions of the Control Order. The authorities having not taken any action, the petitioners are constrained to approach this Court in these writ petitions.

4. The petitioners made two representations as per Annexure-A and B to the third respondent-sugar factory demanding payment for the sugarcane supplied by them. But the third respondent not having made payment to them, they got issued a legal notice to the Commissioner for Cane Development, calling upon him to take action and had also indicated that the payment having not been made within fourteen days from the date of supply, the third respondent-factory was liable to pay the amount with interest till the amount is paid to the farmers and in spite of such legal notice, the respondents having not taken any action in accordance with the statutory provisions, the petitioners-farmers are compelled to approach this Court for issue of suitable directions to them by a writ of mandamus.

5. Statement of objections have been filed on behalf of the respondents 1 and 2 inter alia submitting that pursuant to the demand notice issued on behalf of the petitioners, the first respondent has communicated a letter dated 10-9-2001 calling upon the third respondent to make payment of the arrears to the sugarcane suppliers as required under the Control Order. It is submitted by Sri V.Y. Kumar, learned High Court Government Pleader that as such it cannot be said that there is inaction on the part of the respondents, but in fact, they have taken steps to help the farmers to realise the amount by addressing such a letter to the third respondent-factory. However, the learned Government Pleader is not in a position to submit or place before the Court any material to show any action taken in response to such a letter and whether the third respondent had in fact made payment to the petitioners as required under the Control Order.

6. The third respondent is represented by their learned Counsel. It is however conceded that the third respondent-factory has not made full payment of the price in respect of the sugarcane supplied by the petitioners, but they have been taking steps to make payments as and when they are in possession of funds and the learned Counsel appearing on behalf of the third respondent assures that the third respondent is ready and keen on clearing the entire arrears of amounts due to the petitioners.

7. The entire transaction and the relationship between the grower, the supplier/s and the manufacturer/s of sugar namely, the factory that receives the supply and the action that is required to be taken by the authorities as also the movement, supply, distribution of the sugarcane and the sugar, are all governed by the Sugar (Control) Order. It is not left to the volition of any of the parties. The entire activity is regulated by statutory provisions namely, the Sugar (Control) Order, 1966. Under the Control Order, the mode of payment is clearly indicated and the third respondent-factory is statutorily bound to make payments in respect of the price of the sugarcane which they have received, within a period of fourteen days from the date of receipt of the sugarcane at the factory gate. It is

not in dispute that the third respondent-sugarcane factory has not made such payments within the stipulated period. The petitioners are aggrieved by such non-payment on the part of the third respondent. The petitioners have also brought this to the notice of the first respondent-authority, who is the Competent Authority to take action in case of default. The first respondent is under a statutory duty and obligation to ensure not only that the growers supply the sugarcane grown by them, but also to ensure that in respect of the sugarcane so supplied by the growers, the recipient factory owner pays the price within the stipulated time. On the failure of the third respondent-factory owner to make payment as required under the provisions of Sugarcane (Control) Order, the provisions of Clause 3 of the Control Order come into operation. The relevant provisions read as under:

"(8) Where any producer of sugar or his agent has defaulted in furnishing information under Clause 9 of this Order or has defaulted in paying the whole or any part of the price of sugarcane to a grower of sugarcane or a sugarcane growers co-operative society within fourteen days from the date of delivery of sugarcane, or where there is an agreement in writing between the parties for payment of price within a specified time and any producer or his agent has defaulted in making payment within the agreed time specified therein, the Central Government or an officer authorized by the Central Government in this behalf or the State Government or an officer authorized by the State Government in this behalf may either on the basis of information made available by the producer of sugar or his agent or on the basis of claims, if any, made to it or him regarding non-payment of prices or arrears thereof, by the concerned grower of sugarcane or the sugarcane growers co-operative society, as the case may be, or on the basis of such enquiry that it or he deems fit, shall forward to the Collector of the district in which the factory is located, a certificate specifying the amount of price of sugarcane and interest due thereon from the producer of sugar or his agent for its recovery as arrears of land revenue.

(9) The Collector, on receipt of such certificate, shall proceed to recover from such producer of sugar or his agent the amount specified therein as if it were arrears of land revenue.

(10) After effecting the recovery, the Collector shall intimate to the concerned growers of the sugarcane or the concerned sugar-cane growers co-operative societies through a public notice to submit their claims in such a manner as he considers appropriate within thirty days:

Provided that the Collector may, for the reasons to be recorded in writing, allow the submission of claims after the period so specified if he is satisfied that there was sufficient cause for non-submitting such claim earlier.

(11) If the amount recovered is less than the amount specified in the certificate under Sub-clause (8), the Collector shall distribute the amount so recovered among the concerned growers of the sugarcane or the concerned sugarcane

growers co-operatives in proportion to the ratio determined by the Collector on the basis of the sugarcane supplied by the concerned growers of sugarcane or the sugarcane growers" co-operative society, as the case may be.

(12) If the amount recovered and distributed under Sub-clause (11) is less than the amount specified in the certificate under Sub-clause (8), the Collector shall proceed to recover the remaining amount, as if it were arrears of land revenue till the full amount is recovered and distributed to satisfy the remaining claims.

(13) If the amount is given to the concerned sugarcane growers co-operative societies, it shall distribute the amount through cheque/draft or any other recognized banking instrument on any Scheduled Bank to the concerned sugarcane growers within ten days of the receipt of the amount from the Collector.

(14) If the concerned sugarcane grower or the concerned sugarcane growers co-operative society do not come forward to claim or collect the amount so recovered by the Collector within three years from the date of the public notice referred to in Sub-clause (10), the unclaimed amount shall be deposited by the Collector in the Consolidated Fund of the State".

8. It leaves no manner of doubt to any one that in the present case the first respondent-Commissioner has failed in his duty to take action in accordance with the requirement of statutory provisions. It is very essential to notice that a period of fourteen days is fixed as the period within which the sugarcane growers are to be paid the price for the sugarcane supplied by them. The supply is for the year 1999-2000 and the farmers are left languishing for payment for the sugarcane that they have been compelled to supply, even after a lapse of two years. The inaction on the part of the first respondent in not ensuring that the growers received their price by issuing a suitable recovery certificate in this regard and directing the second respondent to realise it as land revenue and to ensure that the growers received the price for the sugar-cane supplied by them, is nothing short of gross dereliction of duty, to say the least. The authorities are totally insensitive to the travails of the growers and more so when hapless growers are forced to supply the sugarcane grown by them to the third respondent-factory, but have not been paid the price for the cane supplied. It is crass inaction on the part of the respondent-authorities in not ensuring proper action for the realisation of the price in respect of the cane supplied by the growers.

9. Clauses 3(8) to 3(14) and 5-A(11) to (17) have been added by way of amendments to the Control Order as per Notification dated 29-3-2000 by the Sugarcane (Control) Amendment Order, 2000. These provisions have been specifically added to ensure that farmers who have supplied sugarcane be provided with suitable remedy for prompt realisation of the price of the sugarcane supplied by them. The inaction on the part of the respondents has virtually rendered useless these provisions which have been consciously added to

protect the interest of the farmers.

10. In the result, the writ petition is allowed. A writ in the nature of mandamus is issued to the first respondent to take action as per the provisions of Clauses 3 and 5-A of the Control Order as the case may be by ensuring issue of a recovery certificate in respect of the amounts due to the petitioners from the third respondent-factory and forward it to the second respondent and direct the second respondent to realise the same as arrears of land revenue as required under the provisions of the statute. The first respondent shall issue the necessary recovery certificates and directions within fifteen days from the date of receipt of a copy of this order. The second respondent-Deputy Commissioner is also directed to take action in consonance with such recovery certificate and ensure compliance immediately.

11. Petitions allowed with cost. Rule issued and made absolute.

12. The costs of these petitions is quantified at a sum of Rs. 5,000/- in favour of each of the petitioners to be paid by the first respondent. Costs awarded by this Court may be executed as a decree passed by this Court as against the respondents and the Registrar shall ensure issue of such a certificate to the petitioners unless the costs is deposited before this Court within a period of one month from today.