

(2016) 02 PAT CK 0105

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16453 of 2015 along with Interlocutory Application No. 1670 of 2016 and Interlocutory Application No. 1770 of 2016

M/s New Swadeshi Sugar Mills

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 — Section 31
Constitution of India, 1950 — Article 226

Citation : (2016) 3 PLJR 374

Hon'ble Judges : Mr. Ahsanuddin Amanullah, J.

Bench : Single Bench

Advocate : Mr. Y.V. Giri, Senior Advocate and Mr. Ashish Giri, Advocate, for the Appellant; Mr. Manoj Kumar Ambastha, G.P.-14 and Mr. Subodh Kumar, A.C. to G.P.-14, Mr. Laxmi Narayan Das, Advocate, Mr. R.S. Roy, Sr. Advocate and Mr. Binod Kumar Singh, Advocate, for

Final Decision : Disposed Off

Judgement

Mr. Ahsanuddin Amanullah, J.(Oral)—Heard learned counsel for the parties.

Re: Interlocutory Application No. 1670 of 2016 and Interlocutory Application No. 1770 of 2016.

2. Interlocutory Application No. 1670 of 2016 has been filed purportedly by the villagers, who are affected by the issue involved in the present writ application for intervention in opposition to the writ petition. The applicants of Interlocutory Application No. 1770 of 2016 on the other hand has filed also by some villagers who are also affected with the issue involved in the present writ application though in support of the writ petitioner. However, both claim to have filed their intervention petition to safeguard the interest of the farmers of their village.

3. Upon hearing learned counsel for the parties, in view of the fact that the Court is mindful of the interest of the farmers, it is not deemed necessary to implead

them as formal parties.

4. Accordingly, Interlocutory Applications No. 1670 of 2016 and 1770 of 2016 stand disposed off.

Re: Civil Writ Jurisdiction Case No. 16453 of 2015

5. The present writ application has been filed challenging order bearing Memo No. 2307 dated 24.09.2015 passed by the respondent no. 3 to the extent it has cancelled and reviewed the earlier order bearing Memo No. 2158 dated 24.09.2014 reserving 7 non traditional villages of Block Yogapatti in the District of West Champaran in favour of the petitioner and has reserved it afresh with the respondent no. 6 for the crushing seasons 2015-16 to 2019-20 (5 years) as traditional villages.

6. Learned counsel for the petitioner submits that there was earlier a settlement of non traditional villages including the seven villages in question for the crushing seasons 2014-15 to 2016-17 in terms of order dated 01.09.2014 passed in C.W.J.C. No. 13980 of 2014. He submits that despite the said order having been passed in the presence of the authorities concerned including the respondent no. 6 as well as the representative body of the villages concerned and attaining finality, the respondents have reopened the matter and upon reviewing the earlier order dated 24.09.2014 have issued the impugned order by which the seven non traditional villages have been taken away from the reserved pool/ cluster of the petitioner and has been settled with the respondent no. 6 treating them to be traditional villages, for five years from 2015-16 to 2019-20. It is submitted that the said review is all the more illegal for the reason that under the garb of the petitioner being noticed and called upon to appear before the Department by letter contained in Memo No. 1592 dated 15.07.2015 and Memo No. 1975 dated 03.09.2015 for settlement of traditional villages for the next five years from crushing season 2015-16, the order dated 24.09.2014 being reviewed, the settlement of the seven villages in question which were non traditional, cannot be sustained. Learned counsel submits that though various reasons have been given but neither the proposal asked for nor opportunity given to the petitioner to explain or counter the charges, such a decision could not have been taken moreso, in view of the fact that as per the orders of the High Court and the law settled, the reservation of non traditional villages has to be for three years whereas the traditional ones for five years. Learned counsel submits that this settlement for three years of non traditional and five years for traditional villages was also in terms of the specific direction in the aforesaid referred writ petition in which it was clearly stipulated that the authorities shall act in accordance with the decision of the Court in the case of M/s Vishnu Sugar Mills Limited v. State of Bihar reported in 2005 (2) PLJR 495 which has been affirmed by a Division Bench in the judgment reported in 2011 (1) BBCJ 202. Learned counsel submits that once the original order having been passed pursuant to specific direction of the Court and the period also having been stipulated in the judgment itself, any change in the period or review was not

permissible without taking prior approval of the Court. Learned counsel submits that in that view of the matter, any subsequent decision is in the teeth of the specific order of the Court and not only makes the order unsustainable but also the authority liable to be proceeded against for acting in violation of the law settled by the Courts. Learned counsel submits that even on facts, the order impugned is erroneous as taking into account the ultimate interest of the farmers, the original order dated 24.09.2014 was based on a decision taken in the joint meeting of the stake-holders on 22.09.2014 in which it was specifically discussed that the payment to the farmers is satisfactory as far as the petitioner is concerned whereas dissatisfaction was expressed towards respondent no. 6 and further the recommendation of the Zonal Development Council, which is the competent advisory body, has also been taken note of. Learned counsel submits that even in the order impugned, despite noting that the said Council has recommended the matter in favour of the petitioner even for the current year, still the authority concerned has taken a unilateral decision and gone ahead with allotting the said seven villages to the respondent no. 6 treating it to be the traditional villages. Learned counsel submits that the timing of the decision also is relevant as it is at the threshold of the crushing season so as to prejudice the interest of the petitioner and cause loss to it for oblique reasons which are not justifiable either on facts or in law.

7. Learned counsel for the State submits that the decision was taken in the interest of the parties and the farmers in particular, as ultimately the Government's role is to ensure that the farmers get the best deal. It is submitted that the order impugned itself indicates that there was complaint from the farmers and thus the decision as contained in the order impugned cannot be faulted. Learned counsel submits that even the action of the petitioner in straight away moving to the High Court was premature as there is a statutory forum of appeal before respondent no. 2, which is equally efficacious.

8. Learned counsel for the respondent no. 6 submits that technically he has no role in the present dispute as it was the farmers who had agitated before the authority leading to the seven villages in question being reserved in its favour. However, he submits that going by the actual location of the village, it would transpire that the same are surrounded by villages reserved in favour of the respondent no. 6 and thus from the point of view of convenience and maintaining continuity in the blocks allotted to various parties, the seven villages more appropriately fit into and form a cohesive part of the Block allotted to the respondent no. 6. He also contests the contention of learned counsel for the petitioner that payment is not prompt by the respondent no. 6.

9. Learned counsel for the petitioner, by way of reply submits that the objection of the State with regard to maintainability of the present writ petition in view of there being alternative remedy is not sustainable in the present facts of the case for the reason that at the relevant time the Principal Secretary (respondent no. 2) to whom the appeal lies and the Cane Commissioner, who has passed the

impugned order were one and the same person and thus there could not have been any occasion or justification in moving before him and under those circumstances, the petitioner had moved directly to the High Court and further the order being wholly without jurisdiction and also in violation of the principles of natural justice, availability of alternative remedy is not a bar for moving before the High Court directly under its writ jurisdiction.

10. At this juncture, learned counsel for the State submits that the petitioner did have an effective alternative remedy as on the day when the hearing was initiated in the High Court, the respondent no. 2 was a different person and thus there could not have been any controversy or issue with regard to moving before him.

11. Learned counsel for the petitioner rebutting the said stand of the learned State counsel submits that when cause of action arose and also when the petitioner had approached the High Court, both the posts were held by one and the same person who had passed the impugned order and thus any development subsequent to filing of the writ petition would not render the writ petition as not maintainable and also the issue being of an urgent nature and having been heard at length by the Court, relegating the petitioner to the appellate authority at this stage, as an alternative remedy would be iniquitous. He further submits that the impugned order having been passed by a senior officer of the State Government of the level of the Principal Secretary, any successor to that office cannot be expected to objectively consider an appeal of an order passed by a person of his equivalent status and position and thus moving before him would be a futile exercise.

12. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the contentions of learned counsel for the petitioner. The authority having exercised its power of reserving villages in favour of the sugar mills and that too pursuant to the direction of the Court, cannot be allowed to keep shifting its stand or reviewing its order without adhering to the proper recourse of getting the Court order either reviewed or modified so as to permit it to reopen the issue. Moreover, on facts also the notice to the petitioner to forward its proposal through the local authorities to the Department for settlement of non traditional villages for the next five crushing seasons cannot be construed to be a notice as to why the settlement already made in its favour be also reviewed and reopened. Even the period for such settlement having been indicated and fixed, as per the specific order of the Court, the said exercise, in the manner in which it has been done, is not proper. The materials on record and the intervention petitions having been filed, both in support of the petitioner as well as to oppose him also indicates that there may be local politics involved. However, the Court is not getting into such controversy but would only like to reiterate that the interest of the farmers are foremost and this Court would not shut its eye from safeguarding the same.

13. In light of the discussions made herein-above, in the considered opinion of

the Court, the order impugned cannot be sustained and accordingly, the same, contained in Memo No. 2307 dated 24.09.2015 issued by the respondent no. 3, as far as it relates to reserving the seven villages in question in favour of respondent no. 6, stands quashed. As a result, the reservation of the said seven villages in favour of the petitioner of Block-Yogapatti, District-West Champaran in terms of order contained in Memo No. 2158 dated 24.09.2014, stands revived. The parties shall ensure that the fruits of the order in favour of the party concerned is not allowed to be frustrated for any technical reason.

14. Before parting with the order, the Court would like to deal with another issue, that is, violation of the interim order of the Court dated 17.02.2016, for which the respondent no. 5 had been directed to appear in person today. It appears that under Letter No. 77 dated 23.02.2016, he had directed the petitioner to procure the sugarcane from the concerned villages in question after ensuring that the purchase centre was made operational in accordance with the orders and directions of the Government. The respondent no. 5 is present and has explained the matter through the learned State counsel. As per the stand, the said letter was issued for the reason that the purchase centre has to be operated in accordance with the statutory provisions which require various clearances from the authorities concerned especially relating to certification of the weighing machine(s). He submits that though the petitioner is entitled to purchase sugarcane from the aforesaid seven villages in terms of the order dated 24.09.2014 but he also has to comply with the legal requirement of opening of the purchase centres, if he proposes to do so, in accordance with the procedure prescribed in law. He submits that till date, for the fresh purchase centres which have been opened by the petitioner, the permission has not been obtained, and thus, for safeguarding the interest of the farmers so that their produce is properly weighed, the Court may also direct the petitioner to comply with the relevant statutory requirements.

15. Learned counsel for the petitioner submits that it has already applied to the authorities concerned for operating four purchasing centres in the villages Jagdambapur, Dhabia, Pipra Naurangia and Dhabelwa which were earlier also operated, for fresh revival for the current crushing season, but they are not acting upon the same and thus the matter being beyond its control, it cannot be faulted or made to suffer any loss.

16. Learned counsel for the State, in consultation with respondent no. 5, submits that to show the bona fide of the State authorities, the petitioner may be allowed to run the centres provisionally for the next three weeks with the condition that they should follow-up the matter with the authorities concerned and get the required permission for operating the said purchase centres.

17. The Court finds such stand of the State to be reasonable. Thus, let the petitioner continue with its purchase centres in the aforesaid four villages, subject to them getting a proper permission to operate, latest within three weeks from today. The petitioner shall approach the authorities concerned once again,

along with a copy of this order, who shall take a decision promptly having regard to the urgency of the matter and the spirit of the order. If any shortcoming is found, the petitioner shall be immediately informed and given an opportunity to correct the same. In any case, the final decision of the authority on the request made by the petitioner for operating the aforesaid purchase centres shall be taken within three weeks from today. The Court makes it clear that the petitioner must comply with the requirement of having valid permit/permission for operating its purchase centres after three weeks from today.

18. Material has also been brought on record to show that the respondent no. 6, despite being represented before the Court on 17.02.2016, has still proceeded with purchasing sugarcane from the villages in question in utter violation of the order restoring status quo ante. The Court deprecates such action by a State undertaking and from the receipts brought on record the conduct of accepting/purchasing sugarcane from the said villages cannot be said to be bona fide. The Court was thus inclined to take judicial notice and pass strict orders in the matter. However, on the prayer of learned counsel for respondent no. 6 refrains from doing so with a caution that they have to be careful in future especially relating to matters where there is a specific order of the Court.

19. The Court further directs that the farmers should not be put to any inconvenience with regard to selling their sugarcane and it would be bought at places keeping in mind their convenience and ensuring that they have to cover the shortest possible distance and payment is prompt.

20. The appearance of respondent no. 5 stands dispensed with.

21. The writ petition stands disposed off in the aforementioned terms.