

**(2005) 02 PAT CK 0040**  
**In the Patna High Court**  
**Case No : CWJC No. 15586 of 2004**

M/s. Vishnu Sugar Mills Limited

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

---

**Date of Decision :** 28-02-2005

**Acts Referred:**

Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 — Section 13(8), 31

**Citation :** (2005) 2 PLJR 495

**Hon'ble Judges :** Aftab Alam, J

**Bench :** Single Bench

**Advocate :** Y.V. Giri, Jyoti Sharan in 15586, M/s. Raghib Ahsan and Khaid Ahsan in 16311, 174 and 343, for the Appellant; Raghib Ahsan, Khaid Ahsan also for private respondent No. 4 (in 15586) and Mr. Satish Kumar Sinha for the State, for the Respondent

---

## Judgement

Aftab Alam, J.—All these four writ petitions arises from disputes over reservation of villages made in favour of different sugarcane mills for exclusive purchase of sugarcane grown in those villages. M/s Vishnu Sugar Mills Limited filed C.W.J.C. No. 15586 of 2004, challenging the communication, dated 30.9.2004 enclosing a copy of the order passed by the Cane Commissioner, Bihar on 28.9.2004 by which 23 villages (a list of which is appended to the order) of East Champaran district were reserved for crushing season 2004-05 in favour of respondent No. 4 M/s Sasamusa Sugar Works Limited. According to the petitioner, for the purpose of reservation of villages in terms of Section 31 of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981-a meeting was convened by the Cane Commissioner on 24.9.2004 in which the representatives of ail sugar mills took part and in which the proposals submitted by the different sugar mills for reservation of villages in their favour were considered. It was alleged by the petitioner that neither in the proposal made by respondent No. 4 nor in course of the meeting held on 24.9.2004, there was any suggestion of the 23 villages in question being reserved for respondent No. 4. It was further the case of the petitioner that after the meeting was over, a supplementary proposal (for which

there is no provision in the Act) was submitted on behalf of respondent No. 4 for reservation of 36 additional villages of East Champaran in their favour. On the supplementary proposal, the Cane Commissioner asked for a report from the Cane Officer, Motihari. From the record, it would appear that the report was submitted on 29.9.2004 but the impugned order showed that the reservation of the disputed 23 villages was made in favour of the respondent No. 4, a day earlier, even without waiting for the report from the Cane Officer even though the order purports to refer to the report by the Cane Officer. Mr. Y.V. Giri, Senior Advocate appearing for the petitioner submitted that the reservation of the 23 villages of East Champaran (apart from the 390 villages that are traditionally reserved to respondent No. 4 from year to year) was quite illegal, in violation of the provisions of Section 31 of the Act apart from being in breach of the principles of natural justice.

2. In the counter affidavit filed on behalf of the State, the allegations made by the petitioner are denied. It is stated that on the supplementary proposal made by the respondent No. 4 the Cane Commissioner indeed called for a report from the Cane Officer, Motihari which was received on 29.9.2004. He passed the impugned order, in the light of the report of the Cane Officer on 29.9.2004 but due to inadvertence put the date 28.9.2004, below his signature on the impugned order. According to the counter affidavit, the order was passed on 29.9.2004 and the mentioning of the wrong date 28.9.2004 due to mistake was of no consequence.

3. To the writ petition filed by M/s Vishnu Sugar Mills Limited (C.W.J.C. No. 15586 of 2004), M/s Sasamusa Sugar Works Limited-respondent No. 4 responded by filing three writ petitions. In two of the writ petitions being C.W.J.C. Nos. 16311 of 2004 and 174 of 2005, the reservation of villages of East Champaran district came under challenge and in C.W.J.C. No. 343 of 2005 M/s Sasamusa Sugar Works Limited sought to challenge the entire reservation made in favour of M/s Vishnu Sugar Mills Limited and M/s Bharat Sugar Mills Limited.

4. All the four writ petitions were heard together on different dates and at one stage, the Court also summoned the Cane Commissioner and heard him in person on various issues raised in this batch of writ petitions.

5. So far the specific disputes raised in these writ petitions are concerned, those appertain to the crushing season 2004-05. The current crushing season has been very brief and, therefore, the disputes regarding reservation for this crushing season are no longer of any practical significance. The crushing operation in M/s Vishnu Sugar Mills Limited stopped on February 27, 2005. In M/s Sasamusa Sugar Works Limited, the crushing is unlikely to go beyond the first week of March, 2005. The sugar mills are, therefore, no longer buying sugarcanes, though the crushing season 2004-05 would come to an end only on June 30, 2005. Any dispute over reservation of villages in favour of different sugar mills for the current crushing season, therefore, becomes practically of no consequences.

6. But these writ petitions have thrown up some very basic and fundamental questions and it appears that the relevant provisions of the law are being followed by the Government functionaries/Statutory Authorities more in breach than in observance. The declaration of reserved area is made u/s 31 of the Act which is as follows :

"31. Declaration of reserved area- (1) The Cane Commissioner may, having regard to the crushing capacity of the factory, the availability of sugarcane in such area and the need for production of sugar and after consulting the council concerned and the occupier of the factory or the occupiers of other affected factories and after considering any objection that may be raised, issue an order, by notification in the official Gazette, declaring any area to be reserved area for the purpose of supply of cane to the factory during a particular crushing year or years and may likewise cancel any such order or alter the extent of the area so reserved: Provided that, in the case of a factory situated outside the State of Bihar, such declaration may be made only on receipt, by the Cane Commissioner, of an application in the prescribed form from the occupier of such factory requesting that an area in Bihar may be reserved for the supply of cane to such factory and on condition that such occupier establishes a branch office in the State of Bihar and deposits a security of five thousand rupees with a Collector in the State of Bihar and gives an undertaking in the prescribed form to purchase cane grown in the reserved area solely through a co-operative society of such area.

(2) Any person aggrieved by an order of the Cane Commissioner under subsection (1) may, within thirty days of the receipt of such order or within the same period from its publication in the official Gazette, appeal to the prescribed authority.

(Emphasis added)

7. From a plain reading of this Section, it is evident that the reservation(s) made in favour of a cane factory can be legally made and it can become effective only by notification in the official Gazette. The first thing that appeared highly curious to the Court was that though the different sugar mills were fighting over the issue of reservation of villages, there was no Gazette notification under which the disputed reservations might have been made. In order to clarify the issue, the Court asked the State Counsel (J.C. to AAG I) to ask the Cane Commissioner to appear personally with copies of the Gazette notifications for reservations made u/s 31 of the Act for the past five crushing seasons. The Cane Commissioner came empty handed and stated that though the notifications were sent to the Government Press, Gulzarbagh, those were never published and accordingly, he was not in a position to produce the Gazette notifications of reservations either for the past five years or for the current year 2004-05. In the absence of Gazette notification, the legal position is that no reservation is made in favour of any sugar mills in the eyes of law and any right claimed by any sugar mill on the basis of the order of reservations or any action taken by the authorities for any

alleged contravention of the reservation order would be non-est and void. This is a very serious lacuna that goes to the roots of the reservation order not only for this year but orders passed for the past years and the Court is quite distressed over the fact that no appropriate action is being taken by the Statutory authorities to avoid this irregularity.

8. Another serious anomaly that comes to the notice of the Court is that no order is passed discussing the relevant facts and circumstances and taking into account the considerations as specified in Section 31 of the Act.

9. From the reservation order for the crushing season 2004-05 made in favour of M/s Vishnu Sugar Mills Limited, M/s Bharat Sugar Mills Limited and M/s Sasamusa Sugar Works Limited, it appears that what is done in exercise of powers u/s 31 of the Act is to simply issue lists of villages that are reserved in favour of the different sugar mills. The result is that though villages in vastly different numbers are reserved in favour different sugar mills, the appellate authority or this Court or anyone else may not ever come to know the reasons for the number of villages being vastly different in favour of different sugar mills or a particular cluster of villages in one district falling in favour of one sugar mill and not to the other. Differences are bound to be there in the crushing capacity and in other material factors in different sugar mills but the point is that those differences must be reflected in a proper order of reservation passed by Cane Commissioner and the order must show the reasons for different numbers of villages in different areas being reserved in favour of the sugar mills.

10. In this regard, Mr. Raghib Ahsan rightly referred to a decision of the Supreme Court in *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, . In paragraphs 17 and 20 of the decision which are reproduced below, the Supreme Court held beyond all doubt that the proceedings of reservation before the Cane Commissioner was a quasi-judicial proceeding.

"17. There is hardly any doubt that the modification of the reservation made in favour of the appellant would have had serious repercussions on the working of the appellant's mill. It was bound to affect its interests adversely. Hence it is not possible to accept, the conclusion of the High Court that the proceeding before the Cane Commissioner was not a quasi-judicial proceeding."

"20. On applying the various tests enunciated in the above decisions, there is hardly any doubt that the proceeding before the Cane Commissioner was a quasi-judicial proceeding. In this connection reference may be usefully made to the decision of the Court of Appeal of New Zealand in *New Zealand Dairy Board vs. Okitu Co-operative Dairy Co. Ltd.*, 1953 NZLR 366. We are referring to that decision because the facts of that case bear a close resemblance to the facts of the present case. Therein as a result of a Zoning Order made by the Executive Commissioner of Agriculture in May, 1937, the respondent dairy company, carrying on business in Gisborne and the surrounding district, and the *Kia Ora Co-operative Dairy Co. Ltd.*, became entitled to operate exclusively in a defined area

in the Gisborne district. They were excluded from operating outside that area. The zoning conditions so established continued to exist, until 1950, when the appellant Board issued the zoning orders which were impugned in that case. It may be noted that the zoning orders were made in the exercise of the statutory power conferred on the appellant Board. Before 1942, the respondent company was approached by the Health Department with a request that it undertakes the treatment and supply of pasteurised milk to the public companies had declined the proposal. The company complied with the request, after overcoming the difficulties of finance. The scheme was put into operation. In 1942 the respondent company put up a treatment plant and expanded its business. This expansion resulted in an annual turnover in the company's milk department going up to about 90,000 pounds as against 43,000 pounds in its butter department. In March 1950, the Kia Ora Company, by letter expressed its desire that the appellant Board (which had been substituted by regulation for the Executive Commissioner) should examine the question of cream and milk supplies in the Gisborne and surrounding districts. This letter was, in substance, an application to the Board to review the whole question of zoning and to require the respondent company to cease the manufacture of butter. Moreover, the letter set out the circumstances in a manner prejudicial to the respondent company. After various meetings and negotiations between the appellant Board, companies concerned, and interested parties, at none of which were the contents of the Kia Ora Company's letter to the Board disclosed to the respondent company, no agreement was reached. The result of discussions with the Kia Ora Company and detailed replies to complaints were given to the Board by the respondent company, and its letter ended with a statement to the effect that it would appreciate the privilege of appearing before the Full Board with the object of stating its case more fully or of answering any questions. The Board ignored this specific request. At a full meeting of the Board held on May 31, 1950, Board decided that only one butter factory should operate in the Gisborne district. On August 3, the Board by resolution, decided to give notice of its intention of issuing a zonal order to operate as from October 1, 1950 assigning to the Kia Ora Company the cream collection area over which the two companies then operated. On August 29, the respondent company wrote to the Board protesting and for an opportunity of being heard. On September 2, 1950, the appellant Board in exercise of the power conferred upon it by Resolution 16 of the Dairy Factory Supply Regulations, 1936 and in terms of its resolution of August 3, 1950, made Zoning Order No. 120 which was the subject of the proceedings before the Supreme Court of New Zealand. That order was to come into force on October 1, 1950. Its effect was to assign exclusively to the Kia Ora Company the area defined in Zoning Order (No. 30) of 1937 as that in which the two companies could jointly collect cream produced in that area, and to prohibit the respondent dairy company after October 1, 1950, from collecting or receiving any cream so produced for the purposes of manufacture into cream or butter."

11. From the decision of the Supreme Court, it is manifest and clear that the

order of reservation must be a speaking order and it must assign reasons for reservations of different villages in favour of the different sugar factories. The issuance of merely a list of villages reserved for the different sugar factories can by no means be taken as an appropriate exercise of power and jurisdiction u/s 31 of the Act. To give an analogy, an order of reservation u/s 31 of the Act would be like an award of the Tribunal/ Arbitrator that should consider the case of the parties (in this case, the proposals coming from the different sugar companies), give reasons for accepting or rejecting the proposals of different sugar companies either wholly or in part and the final award that is to say the final order of reservation. The whole of the order alongwith the list of villages reserved for different sugar factories must then be published in the Gazette as is the requirement of the law as it stands at present. It is well known that the Government Printing Press at Gulzarbagh is not functioning properly and it takes weeks and in some cases months for the publication of a Government notification. If it becomes impossible or very difficult to get the reservation notification published in the official Gazette in time, the Government may even consider amending the law and deleting the words "by notification in the official Gazette" from Section 31 of the Act. But as long as the law stands in its present form, in the absence of a Gazette notification, no reservation can legally take place in favour of. any sugar factory.

12. The third anomaly was pointed out by Mr. YV. Giri and it is that reservation of villages are made in favour of different sugar mills on a year to year basis. Mr. Giri submitted that this practice had two vices. It discouraged and prevented the sugar factories from taking any steps for the development of the villages reserved in their favour and it also made them run to the Secretariat every year and that involved not only harassment but also encouraged several undesirable practices. Mr. Giri submitted that there was no reason that reservations should not be made for a longer period of 3-5 years as was provided in Section 31 itself. Mr. Giri submitted that if reservation of villages was made for 3-5 years, it would save the Cane Commissioner from writing the detailed award/order every year; it would save the sugar factories from coming to the Secretariat every year and it would also encourage the sugar factories to take some steps for the development of the villages reserved for them.

13. In this regard, Mr. Giri pointed out that for the purpose of reservation villages fell in two categories. There were certain villages that were traditionally reserved in favour of a sugar factory every year. For example, M/s Sasamusa Sugar Works Limited had 281 traditional villages that were reserved in its favour every year without break; M/s Vishnu Sugar Mills Limited similarly had 276 traditional villages and M/s Bharat Sugar Mills Limited & other sugar factories had certain villages as their traditional villages. Apart from the traditional villages, there were a large number of villages which were earlier reserved in favour of some other sugar factories that went out of operation and consequently those villages had to be redistributed among the sugar factories that were still under operation and the disputes of reservation mostly related to these villages. It was the

contention of Mr. Giri to which Mr. Raghbir Ahsan wholly agreed that atleast the reservation of traditional villages should be made for a longer period. In this regard, the only objection raised by the Cane Commissioner was that if reservation was made for a longer period than one crushing year then what would happen to those villages if the sugar factory in whose favour those were reserved closed down during the period of reservation. In my view, the objection does not have much substance. In case, the sugar factory closed down, the order of reservation can always be amended and modified and those villages can be reallocated in favour of sugar factories that are in operation.

14. In this regard, Mr. Giri rightly referred to provisions of Section 13(8) of the Act.

15. Needless to say that the legal requirement of notice and an opportunity to hearing to all concerned would have to be followed even for passing a supplementary order with regard to any reallocation of villages or modification in the existing arrangement of reservation.

16. Mr. Giri fourthly submitted that though the provisions of the Act and the Rules laid down, a detailed Cane calendar it was hardly followed by the statutory authorities.

17. On hearing counsel for the parties and the State Counsel and the Cane Commissioner, the Court deems it fit and proper to issue the following directions to be strictly adhered to in future for making reservations u/s 31 of the Act: (1) The Cane Commissioner must follow the statutory calendar strictly and must ask for and receive the reservation proposals as provided under the statutory calendar.

(2) After holding meeting(s) and after hearing the parties on their respective proposals and after consulting the Zonal Development Council, the Cane Commissioner must pass a speaking order of reservation taking into account the proposals of the respective sugar factories, his reasons for accepting or not accepting or partly accepting the proposals of any of the sugar factories and finally his direction regarding reservation of villages in favour of different sugar factories.

(3) Reservation of traditional villages in favour of different sugar factories must be made atleast for five years. In case during the period of five years, any of the sugar factories is closed down, it will be open to the Cane Commissioner to pass a supplementary order for one crushing season or for the remaining period of the reservation dealing with reallocation of the traditional villages of the closed sugar factory(ies) to other sugar factories after observing the requirements of notice and hearing as provided u/s 31 of the Act.

(4) The reservation of villages other than the traditional villages shall be for a period of not less than three years. The provision for making a supplementary order in case the sugar factory closes down shall apply also in the case of these

villages.

(5) The order must be sent to Gulzarbagh Printing Press well in advance so that it is duly published atleast a fortnight before the start of the crushing operations.

All these writ petitions stand disposed of with the aforesaid observations and directions.