

(2012) 07 PAT CK 0082

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4639 of 2005

M/S Vishnu Sugar Mills Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 — Section 15, 17, 18, 2(a), 22
Constitution of India, 1950 — Article 14, 162, 245, 245(1), 246
Essential Commodities Act, 1955 — Section 3

Citation : (2012) 3 PLJR 788

Hon'ble Judges : Vikash Jain, J; Shiva Kirti Singh, J

Bench : Division Bench

Advocate : Y.V. Giri, in CWJC No. 4639 of 2005, CWJC No. 11679 of 2000, CWJC No. 2403 of 2007 and CWJC No. 515 of 2009, Mr. Raju Giri in CWJC No. 4639 of 2005 and CWJC No. 2403 of 2007, Mr. Vikasratan Bharti and Mr. Zaki Haider in CWJC No. 4639 of 2005, Mr. Sanjay Kumar Giri in CWJC No. 11679 of 2000, Mr. Vikas Ratan Bharti in CWJC No. 2403 of 2007 and Mr. Ashish Giri in CWJC No. 515 of 2009, for the Appellant; S.D. Sanjay, A.A.G.-12 for the State in CWJC No. 4639 of 2005 and CWJC No. 11679 of 2000, Mr. Susmita Mitra, Shailendra Kumar, Sanjay Kumar Mishra, Kunwar Narayan Jamuar, Mani Bhushan Kumar -1 and Mr. D.N. Tiwari in CWJC No. 4639 of 2005, Mr. Sandeep Mishra, K.N. Jamuar, Md. Faiz Ahmad and Mr. (Ga4) in CWJC No. 11679 of 2000, Mr. (AAG8) Mr. S.K. Mishra, Surya Narayan Sah and Mr. Krishna Ballabh Sharma in CWJC No. 2403 of 2007, Mr. (GA3) Ms. Sushmita Mishra Mr. Krishna Ballabha Sharma in CWJC No. 515 of 2009, for the Respondent

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—All the four writ petitions have been heard together and are being disposed of by this common judgment in view of stand of the petitioners that they involve similar questions of law and facts. Mr. Yadu Vansh Giri, learned senior counsel has appeared and argued for petitioners in all the four cases. Arguments were advanced mainly in respect of C.W.J.C. No. 4639 of 2005 which raises a challenge to the vires of proviso to Section 31 of the Bihar Sugarcane

(Regulation of Supply and Purchase) Act, 1981 (hereinafter referred to as the 'Act'). Hence facts have been referred to generally from that case unless indicated otherwise. M/s Vishnu Sugar Mills Limited, situated in the district of Gopalganj in the State of Bihar, is the petitioner in C.W.J.C. No. 4639 of 2005. The prayer made in that writ petition is for the following reliefs :

(1) To declare and hold that the proviso to Section 31(1) of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 as amended by Bihar Act II of 1994 is ultra vires Articles 245 and 246 of the Constitution of India on the ground of having extra-territorial operations.

(2) To any other relief or reliefs for which the petitioner is entitled to.

2. C.W.J.C. No. 11679 of 2000 has also been preferred by M/s Vishnu Sugar Mills Limited. The main prayer in that writ application is for a writ of mandamus commanding the State Government and the Cane Commissioner, Bihar not to entertain any proposal of a Sugar Factory situated outside the State of Bihar in relation to reservation of area or establishment of purchase centres for the purpose of purchase of sugarcane by the said Sugar Factory situated outside the State of Bihar for production of sugar until and unless the entire requirement of sugarcane by the petitioner Sugar Factory in terms of its net requirement is fulfilled. Some ancillary reliefs as regards minimum tenure of reservation and establishment of purchasing centers have not been pressed.

3. C.W.J.C. No. 2403 of 2007 has been preferred by M/s Vishnu Sugar Mills Limited and two other Sugar Mills of district of Gopalganj seeking quashing of order dated 30-10-2006 passed by the State Government confirming the order of Cane Commissioner dated 30.09.2005 by which reservation of number of villages was made in favour of respondent No. 3 of that case M/s Pratappur Sugar Mills situated in the district of Deoria of Uttar Pradesh for five years which period has already expired by 2009-2010. Since the period of reservation of cane area is over, that writ petition is already infructuous.

4. C.W.J.C. No. 515 of 2009 has been filed by Bihar Sugar Mills Association and three other Sugar Mills situated in the district of Gopalganj who are also petitioners in C.W.J.C. No. 2403 of 2007. In this case also the challenge is to an order of Cane Commissioner, Bihar reserving some cane area in favour of M/s Bajaj Hindustan & Industries Ltd. (Formerly M/s Pratappur Sugar & Industries Ltd.)

5. Since the period of reservation of M/s Bajaj Hindustan & Industries Ltd was for a period which is over in 2010-11, this writ petition is also practically infructuous because the ancillary relief that Cane Commissioner should not reserve any cane area in favour of a Sugar Factory of Uttar Pradesh unless there is surplus sugarcane in the State of Bihar, has also been sought in other writ petitions noticed above.

6. The writ petitions have been opposed not only by the State of Bihar and Cane

Commissioner Bihar but also by M/s Pratappur Sugar & Industries Ltd and the Cane Commissioner, Uttar Pradesh.

7. The only basic facts relevant to be noticed are that through these writ petitions three sugar mills situated in the district of Gopalganj, Bihar are seeking to make out a case that their net requirement of sugarcane must be satisfied first and then only the Cane Commissioner, Bihar can be justified in reserving any cane area for a factory which is, admittedly, situated in the State of Uttar Pradesh though almost on the border of that State and Bihar. M/s Vishnu Sugar Mills is the most aggrieved Sugar Mill of Gopalganj because it claims that due to geographical proximity it is entitled for inclusion of the villages which are being reserved for the Sugar Factory in U.P., in its own cane reserved area. It is the case of M/s Vishnu Sugar Mills that a joint meeting of Cane Commissioner of U.P. and Bihar held in 1964 resulted in certain decisions. There was a mutual understanding and agreement wherein certain cane areas were reserved for the Sugar Factory in U.P. situated near border i.e. M/s Pratappur Sugar & Industry Ltd. and certain cane areas in U.P. were reserved for Sugar Factory of Bihar situated near the border of U.P. This arrangement continued for some years but since 1995 the State of U.P. has stopped reserving cane areas for sugar factories of Bihar but still Cane Commissioner of Bihar continues to reserve cane areas in favour of M/s Pratappur Sugar Mills and as a result not only the concerned sugar mills of Bihar are adversely affected but the State of Bihar is also losing excise revenue mainly on account of molasses produced from sugarcane supply to U.P. factory. Such losses, according to petitioners come to about Rs. 131 crores for the period 1994-95 till 2007-08. It is their further case that recently a Bench of Allahabad High Court by a judgment dated 11th May, 2005 in Civil Misc. Writ Petition No. 9105 of 2005 (M/s Triveni Engineering & Industries Ltd Unit Deoband Vrs. State of U.P. and others) has held that the provisions of U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1952, can be applied only to the Sugar factory and the cane areas situate within the territorial limits of the State of Uttar Pradesh and therefore, no reservation/ assignment order can be issued under the said Act in favour of a Sugar factory situate outside the territorial limits of the State of U.P. It is, however, an admitted position that against such judgment Laxmi Sugar Mills has preferred Civil Appeal No. 5955 of 2005 in the Supreme Court which has been referred to a larger Bench vide an order dated 5-4-2011 in view of earlier judgment of the Supreme Court in the case of The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, in which it has been stated in paragraph-23 that the Cane Commissioner can make a reservation of cane area in Bihar for a factory in U.P. It is for securing the desired relief that the Cane Commissioner, Bihar should not make reservation of any cane area in favour of Sugar Factory in U.P. that the petitioner M/s Vishnu Sugar Mills has challenged the vires of proviso to Section 31(1) of the Act. The challenge is mainly on the following grounds :

(i) The proviso is in conflict with several provisions of the Act and the Rules and renders the Act unworkable.

(ii) The proviso violates Article 14 of the Constitution of India because it wrongly treats a Sugar Factory out-side Bihar as an equal to a Sugar Factory of Bihar.

(iii) The proviso vests certain unlimited powers in the Cane Commissioner without providing any guidelines. Hence the delegation of power is excessive and amounts to abdication of Legislative function in favour of the Cane Commissioner, Bihar and

(iv) the proviso suffers from vice of extra-territorial operation and violates Article 245(1) of the Constitution of India.

8. In reply, the stand of the learned counsel for the State and other respondents is that the proviso does not provide anything new except laying down some more conditions which must be met by an external factory situated out side of Bihar if it is desirous of applying for reservation of cane areas. The specific stand of the State in this regard is that even before the introduction of the proviso through Bihar Act II of 1994, the Act and the Rules permitted and provided for reservation of cane areas in favour of factories out-side the State of Bihar, in accordance with the guidelines laid down in Section 31(1) of the Act. The stand of the petitioners that since the Act is by Legislature of Bihar, therefore, factory as defined u/s 2(a) of the Act must be only a factory situate in State of Bihar was strongly contested. In support of such a stand reliance was placed upon Rule-2 of the Bihar Sugarcane (Regulation of Supply and Purchase) Rules, 1978 (hereinafter referred to as "the Rules"). It was shown that Rule 2(d) defines "External Factory" to mean a factory situated outside State and as per Rule 2(f) "Internal Factory" means a factory situated within the State. As per Rule 2 (k) the "State" means the State of Bihar. According to respondents a careful reading of the Preamble of the Act and its different Chapters particularly Chapter IV dealing with purchase and supply of cane would disclose that the purpose of the Act is primarily to regulate the production, supply and distribution of sugarcane intended for use in Sugar factories and Khandasari Sugar Manufacturing Units and other matter which may be incidental thereto. For this purpose the location of sugar factories cannot assume primacy.

9. It is the stand of State of Bihar that the State Legislature is competent to enact provisions contained in the Act which enable the Cane Commissioner to reserve cane areas in Bihar even for an External Factory provided the conditions prescribed in Section 31(1) with its proviso as well as in the Rules are met by such factory. If the Cane Commissioner ignores the guidelines or passes a wrong order then his order may be appealed against as it has been made appellable before the State Government. But provisions in the proviso u/s 31(1) of the Act do not suffer from lack of legislative competence in the State Legislature because the provisions have ample territorial nexus with cane areas within the State of Bihar. It was further contended on behalf of State that the impugned provisions do not violate Article 14 of the Constitution of India nor they suffer from vice of excessive delegation. According to the stand of the respondents, the power vested in the Cane Commissioner to reserve cane areas for an External Factory is

governed by a clear policy discernable from section 31(1) of the Act and the proviso merely adds to the conditions which an External Factory must fulfill additionally before its application for reservation of cane areas can be considered. These provisions exhibit sufficient policy guidelines.

10. Although other grounds have also been raised to assail the validity of the proviso to section 31(1) of the Act, the main ground of attack is on the basis of Article 245 (1) of the Constitution of India. Hence that issue is required to be taken up first. But before that it will be useful to notice the relevant statutory provisions of section 31 of the Act. It reads as follows :

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 are 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 out-side 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.

(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.

11. Article 245 of the Constitution prescribes the extent of law made by the Parliament or by the Legislature of a State. It reads thus :

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra- territorial operation.

Clearly while the law made by the Parliament has been accorded protection that it shall not be deemed to be invalid on the ground of extra territorial operation, no such protection is available to laws made by Legislature of State which has been authorized to make laws for the whole or any part of the State.

12. According to learned counsel for the petitioners, the impugned provision has an extraterritorial effect because it explicitly permits for reservation of cane area in Bihar in favour of a factory situated out-side Bihar. The main thrust of the argument on this point is that since the factory situated out-side the State of Bihar cannot be subjected to any regulation by the State of Bihar through laws made by Legislature, the State Legislature has clearly exceeded its legislative power by enacting such a provision. To buttress this submission, reference was made to Sections 7, 15, 17, 18, 22, 24 and 27 of the Act. On the issue of territorial nexus reliance was placed on behalf of petitioner upon a judgment of learned single Judge of Allahabad High Court in the case of M/S Triveni Engineering & Industries Ltd., Unit Deoband Vrs. State of Uttar Pradesh and Others (annexure-22) and upon the following two judgments of the Supreme Court : (1) Shrikant Bhalchandra Karulkar and Others Vs. State of Gujarat and Another, , (2) State of A.P. Vs. National Thermal Power Corporation Ltd. and Others, .

13. On the other hand, the stand of the respondents is that the impugned provision is a part of section 31(1) which falls in Chapter-IV of the Act dealing with purchase and supply of cane and it requires to be understood only in the context of the said Chapter. According to learned counsel for the State, scrutiny of the impugned proviso in the proper context i.e. in the context of purchase and supply would reveal that it has no operation out-side the territory of Bihar. The intending External Factory is obliged to establish a branch in the State of Bihar, deposit a security as prescribed and give an undertaking in the prescribed form to purchase cane grown in the reserved area. Only on fulfilling these condition precedents, the application in the prescribed form i.e. Form- XI, prescribed by Rule 25 of the rules can be entertained and considered as per guidelines indicated in section 31(1) of the Act for the purpose of reserving a cane area in favour of such factory. It has further been submitted that in any case there is sufficient territorial nexus between the impugned provisions and the State of Bihar because: (1) the cane areas and the concerned authorities are within the State of Bihar and (2) the External Factory has to establish a branch in the State of Bihar for making an application within the State of Bihar after meeting the relevant requirements. Learned counsel for the State has relied upon judgment of the Supreme Court in the case of Shrikant B. Karulkar (supra) as well as following judgments of the Supreme Court : (1) AIR 1959 SC 2002 (State of Bihar Vrs. Sm. Charu Sila Dasi) and (2) GVK Inds. Ltd. and Another Vs. The Income Tax Officer and Another, . In the case of Srikant B. Karulkar (supra) the Supreme Court considered the doctrine of territorial nexus in the context of a provision in the Gujarat Agricultural Lands Ceiling Act, 1960 which provided for taking into consideration land held by a person in any other part of India for determining the permissible ceiling area under the Act. In paragraph-7 of the judgment, it was made clear that a State Legislature has plenary jurisdiction to enact laws in respect of subjects in Lists II and III, Seventh Schedule, Constitution of India. Such laws may be in respect of persons within the territory

or property-immovable or movable-situated within the State, or of acts and events which occur within its borders. So long as the law made by the State Legislature is applicable to the persons residing within its territory and to all things and acts within its territory, it cannot be considered extra-territorial. If there is a territorial nexus between the persons/ property subject-matter of the Act and the State seeking to comply with the provisions of the Act, then the Statute cannot be considered as having extraterritorial operation." In paragraph-8 the territorial connection in that case was found to be real and sufficient because the sine quo non for the application of the relevant Gujarat Act was the holding of land within the State of Gujarat.

14. In the case of State of Andhra Pradesh Vrs. National Thermal Power Corporation Ltd. (supra), a Constitution Bench of the Supreme Court considered the issue- whether the State of Andhra Pradesh could impose levy of duties on the cess of electrical energy generated at a Thermal power station of NTPC within the State of Andhra Pradesh, and sold to Electricity Board of different States in pursuance of contracts of sale occasioning inter-State movement of electricity. The Supreme Court held that such sales can be held only as inter-State sales. In this context it was held that if sale and consumption take place in different States, territorial nexus shall be lost for the State where only the sale takes place. This was on account of peculiarities in the case of electricity where sale and consumption were found to be inseparable. Clearly the facts of that case were quite different.

15. In the case of State of Bihar Vrs Sm. Charusila Dasi (supra), the Supreme Court was called upon first to decide whether the Trust in question was a public or private trust. Since the Court held the trust to be a public trust, the other issue that fell for consideration was whether Section 3 of the Bihar Hindu Religious Trusts Act, 1951 could apply to such a trust which, though situated in the State of Bihar, has property out-side Bihar and further whether the State Legislature had power to affect trust properties situated out-side the State. Learned counsel for the State highlighted that the Apex Court reiterated the principle of law that there is a general presumption that the legislature does not intend to exceed its jurisdiction, and that if the occasion arises and if it is possible, a legislative Act should receive such an interpretation as will make it operative and not inoperative. On the doctrine of territorial connection or nexus, the Apex Court referred to the case of Tata Iron and Steel Company Limited Vrs. State of Bihar, AIR 1958 SC 452 and relied upon the proposition that sufficiency of territorial connection involves a consideration of two elements, namely, (1) the connection must be real and not illusory and (2) the liability sought to be imposed must be pertinent to that connection. Reference was also made to the judgment in the case of The State of Bombay Vs. R.M.D. Chamarbaugwala, for holding that principle of territorial nexus could be extended to cases involving legislations other than taxing statutes also. In that case the organizer of a prize competition was out-side the State of Bombay and also the paper through which the prize competition was conducted but since it had a wide circulation and it was

found that "all the activities which the gambler is ordinarily expected to undertake" took place mostly, if not entirely, in the State of Bombay, these circumstances constituted sufficient territorial nexus which entitled the State of Bombay to impose a tax on the gambling that took place within its boundaries and the law could not be struck down on the ground of extra-territoriality. In view of such decision, in the case of *Sm. Charusila Dasi (supra)* also it was held that since the religious endowment was situated in Bihar and the Trustees functioned there, the nexus was real and not illusory. It was clarified that since the religious institution and its property form one integrated whole, hence if any liability is imposed on the trustees such liability can affect the entire trust property, even situated out-side the State of Bihar. Hence, the relevant Act was found applicable to the entire trust property and it was further held that its provisions could not be struck down on the ground of extra-territorial operation.

16. On the same issue the State has placed reliance upon judgment of the Supreme Court in the case of *G.V.K. Industries Ltd.(supra)*. In this case the Court was required to consider the doctrine of territorial nexus in the context of power of Parliament and not the State Legislature. Hence, that judgment need not be examined in detail in the present case which relates only to legislative power of a State Legislature.

17. On behalf of some interveners including *M/s Pratappur Sugar Company*, reliance was placed upon a Division Bench judgment of this Court in the case of *Purtab Pore Company Limited Vrs. Cane Commissioner, Bihar, 1969 BLJR 46*. While it was fairly pointed out that the main issue decided in this case- whether the Cane Commissioner could act under the directions of the superior officer, was reversed by the Supreme Court in appeal as per judgment reported in *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, it was shown that the Division Bench of this Court decided another relevant issue with respect to territorial nexus of the executive order passed by the Cane Commissioner and decision on this issue rendered under similar facts was not disturbed by the Supreme Court in appeal. A perusal of paragraphs 26 and 27 of the reported judgment shows that although the order passed in that case by the Cane Commissioner was by virtue of delegated powers under Clause (ii) of the *Sugar Cane (Control) Order 1966* framed u/s 3 of the *Essential Commodities Act, 1945*, yet the Division Bench decided to consider a point raised by one of the respondents that since the jurisdiction of the Cane Commissioner did not extend beyond the limits of the State of Bihar, the main order passed by him dated 30th December, 1966 by which 208 villages in Bihar were reserved in favour of the U.P. factory, must be struck down because the beneficiary was situated in U.P. out-side the jurisdiction of Cane Commissioner, Bihar. This issue was decided because both the parties had argued on this question. The Division Bench placed reliance upon the two judgments of the Supreme Court in the case of *State of Bombay Vrs. R.M.D. Chamarbougwala (supra)* and *State of Bihar Vrs. Sm.Charusila Dasi (supra)*. It noted that the heading of clause (6) of the order was "Power to regulate distribution and movement of Sugarcane." It further

noted as such :

The cane- growing areas sought to be affected by the impugned orders are all within the territorial jurisdiction of the Cane Commissioner. The liability sought to be imposed on the areas in the sense of reserving them for particular factory is also pertinent to the territorial connection. Merely because the beneficiary, viz, the petitioner's factory, is outside the territorial jurisdiction of the Cane Commissioner, his order cannot be said to have an ex-territorial operation. It was urged that, inasmuch as, the factory was outside the jurisdiction of the Cane Commissioner, he would not compel the factory to furnish figures about its capacity, its need for production of sugar and other allied matters which he is required to take into consideration before reserving any area for the factory. It is the look out of the factory which wants the benefit of the reservation of an area in Bihar to furnish the necessary materials to the Cane Commissioner. But this cannot affect the jurisdiction of the Cane Commissioner to reserve an area in the State of Bihar for a factory wherever it may be located. His order, in essence, is in respect of sugar-cane and not in respect of a factory, though the latter may be either benefited or adversely effected by the order. It is true that I have held that the impugned order are not legislative orders but merely administrative orders; but this cannot affect the validity of its ex-territorial operation because, on the principle of Article 162 of the Constitution, the executive power and the legislative power are co-extensive.

18. Upon consideration of law settled by the Supreme Court in the decisions noticed above and in the light of Division Bench Judgments of this High Court noted above and upon consideration of some of the Rules, particularly, Rule 25 and Form XI prescribed there-under, we find that any factory situated out-side the State of Bihar has the option to apply for reservation of area in Bihar by furnishing required particulars which can enable the Cane Commissioner, Bihar to take appropriate decision as section 31(1) of the Act. It is found that power to reserve cane area in favour of an external factory was available even in absence of the impugned proviso which only imposes certain further restrictions and liability upon external factory desirous of seeking reservation of cane areas in its favour. It is further found that sufficient and real territorial connection or nexus exists between the subject matter of the impugned provision, the concerned cane area and the State of Bihar. Such territorial nexus is not lost even if the beneficiary Sugar factory happens to be an external factory, located out-side Bihar. Such provisions in the Act cannot be invalidated on the ground of extra-territorial operation in view of doctrine of sufficient and real territorial nexus which is found to exist in the present case. This issue is, therefore, decided against the petitioners and in favour of State. No doubt, a single Judge of Allahabad High Court appears to have taken a different view in the matter but that view is under challenge in a matter pending before the Supreme Court. Further, with due respect, we are unable to agree with that view in the light of law settled by the Supreme Court as noticed above.

19. The other attack upon the validity of the impugned proviso is on the ground of discrimination and violation of Article 14 of the Constitution of India. On this issue, we find that the basic submission on behalf of petitioners suffers from misconception. Petitioners have presumed that since their sugar factories are operated under licence granted by the State of Bihar, they constitute a different class and they cannot be equated with an external factory which does not have licence from the State of Bihar. This submission is fallacious because object of the impugned provision as also of the Act is mainly to regulate supply and purchase of sugarcane and not the sugar factory. The purpose of granting licence under Chapter III of the Act has a different object and it was rightly pointed out on behalf of M/s Pratappur Sugar Mills that Section 23 of the Act which is in Chapter III grants power to the State Government to exempt, in appropriate circumstances, class of persons from the operation of such provisions. We are of the considered view that Chapter IV of the Act dealing with purchase and supply of cane need not be limited in its operation only in favour of factories situated within the State of Bihar for the purpose of reservation of cane areas. No objection can be taken if for protecting the larger interest of sugar cane production, its producers i.e. the farmers and the State, the legislature in its wisdom has treated the internal factories and external factories as equals for the purpose of Chapter IV of the Act. In our considered view, the petitioners cannot be taken seriously in respect of their grievance that they are being discriminated vis-?-vis the factories situated out-side Bihar on account of impugned enabling provision. Their submissions are based upon a misconceived claim of superiority, that being factories of Bihar they should be given higher priority in accommodating their claim for reservation of larger sugar cane areas. Their claim is not a claim for equality in the matter of reservation of sugarcane areas but a claim for preferential treatment. No doubt, the Cane Commissioner, on consideration of all the relevant facts, may order for reservation of larger area in favour of an internal factory but he has to keep under consideration all the competing interests and relevant facts including production of sugarcane and interest of sugarcane growers. We do not find any merit in the submission advanced on behalf of petitioners that the proviso is discriminatory and violates Article 14 of the Constitution of India.

20. A number of judgments on the issue of discrimination and equality have been cited on behalf of both the parties. Petitioners have placed reliance upon the following two judgments of the Supreme Court: (1) *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, and (2) *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . These judgments do not help the petitioners on the issue of violation of Article 14 of the Constitution of India or discrimination. They are more relevant for the question raised on behalf of petitioners that the proviso is bad on account of excessive delegation without any guidelines. They are, however, of no help to the petitioners even on that issue for the reasons indicated hereinafter. On the question of excessive delegation without proper guidelines or policy indication by the Legislature, one has to first

go through the impugned proviso. On a careful perusal of the proviso it is found that it merely adds to the conditions which are now to be additionally met by the external factories before the Cane Commissioner can entertain their application on the basis of guidelines for reservation of cane areas as per provisions in Section 31(1) of the Act. It is not the case of the petitioners that Section 31(1) suffers from the vice of excessive delegation and abdication of legislative function by the State Legislature. Thus, on mere reading of the relevant provisions in Section 31(1) and the impugned proviso added thereto, we find that the submission advanced on behalf of the petitioners that the Legislature has not indicated its policy and has not given any guidelines to the Cane Commissioner for making reservation of cane areas for external factories is wholly unfounded. The cases cited on behalf of petitioners and noticed in the preceding paragraphs do not help the case of the petitioners at all. Since the relevant issues, thus, stand determined against the petitioners, it is not essential to discuss the following judgments cited on behalf of the State and other respondents : (1) Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, , (3) Mylapore Club Vs. State of Tamil Nadu and Another, and (4) Dilip Kumar Garg and Another Vs. State of U.P. and Others, .

21. We also find merit in the submission advanced on behalf of respondents that the State Legislature has not only indicated guidelines and policy for reservation of cane areas but has vested such power in a Statutory Authority, the Cane Commissioner, Bihar whose orders have been made subject to appeal before the prescribed authority which is the State Government.

22. Some interveners claiming to be cane growers have argued in favour of the petitioners and some have argued in favour of the respondents but their arguments were mostly confined to facts for advancing the claim of the petitioners or to support the stand of the State. Such submissions do not require further consideration because they do not relate to the issue of vires of the impugned proviso in any manner. So far as some of the writ petitions through which challenge has been made to particular orders and decision of the Cane Commissioner, Bihar or the appellate authority are concerned, from the facts it is apparent that those matters as indicated earlier, have become infructuous by lapse of time and hence it is not necessary for us to decide the issues of facts raised in those writ petitions. They are dismissed as infructuous. The issue of vires in C.W.J.C. No. 4639 of 2005 is decided against the petitioners and on that account C.W.J.C. No. 4639 of 2005 is found to be without merits. It is dismissed accordingly. Through C.W.J.C. No. 11679 of 2000 a mandamus has been sought to be issued that no reservation of cane area be made by Cane Commissioner, Bihar for factories out-side Bihar. Such prayer cannot be allowed because no mandamus can be issued against law which has already been discussed and decided in this case. Hence, this writ petition is also dismissed. Thus, all the writ petitions stand dismissed. In the facts of the case, the parties shall bear their own costs.

Vikash Jain, J.

I agree