

(2015) 12 PAT CK 0019

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 12512 and 12749 of 2015

Nayan Kumar Sinha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-12-2015

Acts Referred:

Citation : (2015) 12 PAT CK 0019

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Ramakant Sharma, Senior Advocate, Rajesh Kumar and Lakshmi Kant Sharma, Advocates, for the Appellant; Purnendu Singh, GP27, for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.—The eleven petitioners in the first writ petition and the sole petitioner in the second writ petition are the Chairman of the Cooperative Societies registered under the Bihar Cooperative Societies Act, 1935 and are before this Court complaining against the action of the respondent-Bihar State Food and Civil Supplies Corporation in refusing to accept their paddy/Custom Milled Rice ("CMR" for the sake of brevity) produced during the Kharif Season 2014-15.

2. It is in consideration of the similar nature of relief prayed by the petitioners in the two writ petitions that they have been heard analogous and with the consent of the parties are being disposed of at the stage of admission itself.

3. The Government of India in its Ministry of Consumer Affairs, Department and Food and Civil Supplies came up with a scheme for effective disposal of the paddy/CMR by the farmers through the Cooperative Societies of which they were members and the respondent-Corporation was appointed as nodal agency for the purpose to carry out the objective. The scheme of the Government of India was enforced in the State of Bihar under the circular of the Chief Secretary issued on

19.11.2014 explaining the modalities of the scheme and the procedure to be followed. The District Magistrate (s) were directed to appoint Enforcement Officers in each of the district and the Cooperative Societies were given the responsibility of purchase of paddy from the member farmers for their supply at the centers set up by the respondent-Corporation and the Enforcement Officers were to certify the purchase made by these societies. Under the scheme the paddy was to be supplied until 15.4.2015 while the paddy converted in CMR was permitted to be delivered until 31.8.2015. The Government of India is the funding agency although the payment is to be routed through the Corporation.

4. It is in consideration of the fact that the scheme in question was framed by the Union of India that they were added as a party and Mr. S.D. Sanjay, learned A.S.G. and Mr. A.M. Mathur, learned Central Government Counsel have registered appearance on their behalf.

5. The issue raised in these writ petitions regarding refusal at the delivery by the Corporation of the paddy purchased by the Cooperative Societies or the CMR derived there from came up for consideration in a batch of writ petitions arising from C.W.J.C. No. 10728 of 2015 (Auraiya Primary Agriculture Credit Cooperative Society Ltd. v. State of Bihar and Ors.) and analogous cases and this Court in consideration of the stipulations present in the scheme, the argument advanced on behalf of the petitioner, the Union of India, the State of Bihar, the Corporation and considering that the claim raised was based on documentary evidence, decided to get a fresh enquiry carried out regarding the physical stock of the societies under the supervision of the District Magistrate concerned who was directed to submit his report on actual physical position of the stock of the Cooperative Societies operating in the district.

6. An exhaustive report was submitted by the District Magistrate and this Court in consideration of the stipulation present in the Scheme and after hearing the parties on the issue raised concluded in favour of such of the societies whose purchases were made on or before 31.3.2015; whose delivery was supported by the Enforcement Certificate issued by the Enforcement Officer and the society concerned had approached this Court before the cut of date fixed in the scheme i.e. 31.8.2015. Thus the claims advanced by the petitioner societies was decided on the principle that:

(a) The purchases were made on or before 31.3.2015;

(b) The balance stock of paddy/CMR claimed by the society was supported by the Enforcement Certificate issued by the Enforcement Officer; and

(c) The society concerned had approached this Court on or before the cut of date fixed in the Scheme i.e. 31.8.2015.

7. The 2 petitioners have approached this Court before the cut of date hence on the principles laid down by this Court, they are entitled for consideration of their reliefs. It was to be seen whether the claim advanced by these societies, is

supported by the enforcement certificate issued by the Enforcement Officer. To confirm this position and whether the stock claimed by these petitioners stood supported by the enforcement certificate that this Court by order dated 1.9.2015 directed the District Magistrate, Bhagalpur to carry out a fresh inspection and to submit his report on the issues noted in the order, the relevant extract of which runs as follows:

"In the circumstances, let this matter come up under the same heading on 15.09.2015 before which date the District Magistrate, Bhagalpur would carry out a fresh inspection/physical verification of the entire Primary Agriculture Cooperative Credit Societies (hereinafter referred to as "the PACS") operational within the district of Bhagalpur including their godowns or the premises where the stocks are maintained, through a team of officials under the leadership of an officer not below the rank of the Additional Collector. The team would furnish its reports on the following issues:

(a) The procurement target of paddy fixed for the respective society by the Cooperative Department for the Kharif Season 2014-15.

(b) The total purchase of paddy made by the respective PACS from its members as on 31.3.2015 and the papers to support such purchase.

(c) The number and date of the enforcement certificate supporting the purchase made by the respective PACS issued by the Circle Officer concerned, if available.

(d) The quantum of paddy delivered by the respective PACS to the Bihar State Food and Civil Supplies Corporation Ltd.

(e) The quantum of paddy sent to the rice mill for converting it to custom milled rice for the paddy season 2014-15; and

(f) The stock of paddy/custom milled rice presently available with the respective PACS.

The report so prepared by the team should be countersigned by the Chairman of the society concerned or any member of the Managing Committee of the PACS concerned, duly authorized by the Chairman.

Since the Primary Agriculture Credit Cooperative Society in the District of Bhagalpur is represented through their counsel hence it is due notice to the societies concerned, to be available/present with the relevant records supporting their purchase as and when the inspecting team visits their respective office/premises/godowns and no objection regarding absence of notice would be entertained on behalf of any of the society.

List this case on 15.9.2015 under the same heading and if the desired report is not submitted on or before 15.9.2015 then the District Magistrate, Bhagalpur should be present in Court on 15.09.2015 at 10.30 A.M. with a suitable explanation.

Let a copy of this order be handed over to Mr. Rakesh Kumar Sharma, Assisting Counsel to G.P.-27 as well as Mr. Shailendra Kumar Singh learned counsel for the Corporation."

8. It is following the directions that a report has been submitted by the District Magistrate and has been filed in C.W.J.C. No. 12749 of 2015. It is now to be seen is whether balance stock as claimed by the petitioners in the two writ petitions stands supported by the fact finding report and since in my order I had directed the societies to aid and assist the enquiry team hence any objection raised by the petitioners would not persuade this Court for any further exercise.

9. As I have mentioned the report is enclosed with the supplementary counter affidavit filed on behalf of the respondent No. 5 i.e. the District Magistrate, Bhagalpur in C.W.J.C. No. 12749 of 2015 and I shall be making reference to the same while testing the claim of the petitioners.

Re: C.W.J.C. No. 12512 of 2015

10. The petitioner No. 1 is the Chairman of Jaytipur PACS whose name appears at running page 99 of the proceedings and appears at Serial No. 30 of the report which supports the purchase of 938 quintals of paddy by the petitioner, which lies in their stock.

11. The petitioner No. 2 is the Chairman of Channo Pankhoriya PACS whose name appears at serial No. 38 and supports the purchase of 2193.6 quintals of which 520 quintals have been supplied to the respondent-Corporation while 1278.35 quintals has been converted in 856.49 quintals of CMR and 186 quintals remains in paddy form with the society. Thus the report supports a balance stock of 856.49 quintals of CMR and 186 quintals of paddy which remains with the society.

12. Petitioner No. 3 is the Chairman of Signa Bareni PACS whose name appears at serial No. 55 and reports that of the purchases made by the society, 650 quintals has been supplied to the respondent Corporation while 1957.60 quintals of paddy remains with the society.

13. Although a dispute has been raised by the petitioner No. 3 by filing a rejoinder to claim a higher stock and that 850.40 quintals of paddy sent to the rice mill has not been accounted but considering that this Court had directed the societies concerned to assist the fact finding team with supportive documents, in absence of any such objection present, the additional claim is rejected.

14. Petitioner No. 4 is the Chairman of Prashastidih PACS whose name appears at serial No. 31 and reports that of the purchases made by the society, 2750 quintals have been supplied to the respondent Corporation, while 1393.20 quintals of paddy remains in the stock of the society. By filing a rejoinder the petitioner No. 4 has raised objection regarding non payment of 830 quintals of paddy supply to the Corporation on 27.3.2015 and in support of which a purchase-cum-payment voucher has been enclosed but for the purpose the

petitioner society may raise their grievance before the Corporation and which shall be considered and disposed of accordingly.

15. Petitioner No. 5 is the Chairman of Kairia PACS whose name appears at Serial No. 40 and reports that of the purchases made by the society, 1400 quintals is reported to have been supplied to the respondent Corporation, while 2370.38 quintals of paddy have been converted to 1588.15 quintals of CMR and the society has stock of 1091 quintals of paddy yet in his stock.

16. Petitioner No. 6 is the Chairman of Rampur Kharhara PACS whose name appears at Serial No. 52 but the stock shown is not supported by any document.

17. Petitioner No. 7 is the Chairman of Janmahmmadpur PACS whose name appears at Serial No. 36 and reports that of the purchases made by the society, 220 quintals have been supplied to the Corporation while 360 quintals of paddy remains in the stock.

18. Petitioner No. 8 is the Chairman of Banshipur PACS whose name appears at Serial No. 45 and of the purchases made by the society 402 quintals of CMR and 666.40 quintals of paddy remains their stock.

19. Petitioner No. 9 is the Chairman of Janidih PACS whose name appears at Serial No. 41 and of the purchases made by the society, 880 quintals have been supplied to the Corporation while 2708.50 quintals of paddy remains in the stock of the society.

20. Petitioner No. 10 is the Chairman of Mathurapur PACS whose name appears at Serial No. 33 and of the purchases made by the society, 857.50 quintals of CMR and 40 quintals of paddy remains in their stock.

21. Petitioner No. 11 is the Chairman of Maheshamunda PACS whose name appears at Serial No. 36 and of the purchases made by the society, 613 quintals have been supplied to the Corporation and although the balance supported by the enforcement certificate is only 232.8 but the report shows a stock of 330 quintals of paddy which claim would stand modified to 232.8 quintals supported by enforcement certificate.

Re: C.W.J.C. No. 12749 of 2015

22. The sole petitioner in C.W.J.C. No. 12749 of 2015 is the Chairman of Nayagaoin PACS whose name appears at Serial No. 160 of the reports shows that of the purchases made by the society 7697.20 of paddy is converted in 5157.12 quintals of CMR and 1295.77 quintals remains in paddy form, in their stock.

23. The figures discussed hereinabove are reportedly supported by the enforcement certificates issued by the Enforcement Officer appointed by the District Magistrate.

24. In these circumstances, neither the Corporation nor the Union of India in its Ministry of Consumer Affairs or the State can deny to accept the balance stock of

these petitioners or to make payment thereof and the balance stock has to be accepted and the price thereof has to be paid by these respondents to the respective societies.

25. This Court thus while rejecting the claim of the petitioner No. 3 in C.W.J.C. No. 12512 of 2015 in so far as it relates to C.M.R. as well as the claim advanced by petitioner No. 6 on grounds of not being supported with documents and while modifying the claim of the petitioner No. 11 in terms of the Enforcement Certificate to 232.8 quintals and while allowing the petitioner No. 4 to raise his claim before the Corporation for payment of the price of 830 quintals of paddy supplied on 27.3.2015 with supporting documents, would allow the claim of the petitioner Nos. 1 to 5 and 7 to 11 in C.W.J.C. No. 12512 of 2015 as well as the claim of the sole petitioner in the second writ petition in terms of the stock supported by the fact finding team, the details of which I have already discussed hereinabove.

26. The petitioner Nos. 1 to 5 and 7 to 11 in C.W.J.C. No. 12749 of 2015 and the sole petitioner in the other writ petition are directed to effect the supply of custom milled rice in their stock in terms of the report the individual details of which are mentioned hereinabove, without any delay and in so far as the balance stock of paddy is concerned, these petitioners would get it milled and make the proportionate supply of CMR converted therefrom within a fortnight from today. The State food Corporation, the State and the Union of are directed to accept the deliveries and make payment of the price in respect thereof as found admissible.

27. The writ petitions are allowed with the directions/observations aforementioned.