(1958) 12 PAT CK 0004

In the Patna High Court

Case No : Misc. Judicial Case No. 656 of 1958

Sasamusa Sugar Works (Private) Ltd. APPELLANT

Vs

The Cane Commissioner and Others RESPONDENT

Date of Decision : 01-12-1958

Acts Referred:

Bihar Sugar Factories Control Act, 1937 — Section 15
Bihar Sugar Factories Control Rules, 1938 — Rule 24, 24A
Constitution of India, 1950 — Article 4

Citation : AIR 1959 Patna 403

Hon'ble Judges : V. Ramaswami, C.J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : B.C. Ghose, Md. Ayub and Naseem Ahmad, for the Appellant; A.G. and Dinesh Charan, for the Respondent

Final Decision : Dismissed

Judgement

Kanhaiya Singh, J.—This petitioner under Article 226 of the Constitution impugns the validity of the Sugarcane (Control) Order, 1955. The Petitioner is a private limited company carrying on the business of manufacturing sugar under the name and style of Sasamusa Sugar Works (Private) Limited, the sugar factory being located at Sasamusa in the district of Saran. The opposite party are (1) the Cane Commissioner, Bihar, (2) Sasamusa Cane Development and Cane Marketing Union, and (3) Jalalpur Case Development and Cane Marketing Union.

On 12-9-1958, the petitioner obtained a rule from the High Court calling upon the opposite party to show cause why the order of the Cane Commissioner dated 31-7-1958 (Annexure F) issued under the Sugarcane (Control) Order, 1955, by which the Cane Commissioner (Opposite party 1) directed the cane-growers in the villages mentioned in the list annexed thereto to sell cane to the petitioner only through Cane-growers'' Co-operative Society or Societies operating in these villages during the season 1958-59 should not be set aside as illegal and void. The Sugarcane (Control) Order, 1955, under which the Cane Commissioner purported to act was issued by the Central Government in exercise of the powers conferred on it by Section 3 of the Essential Commodities Act, 1955 (X of 1955). Clause 4 of that Order runs as follows:

"The Central Government may by order in the official Gazette-

(a) prohibit or restrict or otherwise regulate the export of sugarcane from any area for supply to different factories;

(b) direct that no gur (jaggery) or sugar shall be manufactured from sugarcane except under and in accordance with the conditions specified in a licence issued in this behalf." Clause 5 provides as follows:

"Every producer, his agent or factory to whom any order or direction is issued under any powers conferred by or under this order shall comply with such order or direction."

Clause 6 provides for delegation of powers and is in the following terms:

"The Central Government may, by notification in the official Gazette, direct that all or any powers conferred upon it by this order shall, subject to such restrictions, exceptions and conditions, if any, as may be specified in the direction, be exercisable also by

(a) any officer or authority of the Central Government,

(b) a State Government or any officer or authority of a State Government."

In exercise of the powers conferred by Clause 6 aforesaid the Central Government delegated its power under Sub-clause (a) of Clause 4, above stated, to the Cane Commissioner, Bihar. By virtue of this delegated power the Cane Commissioner issued the impugned order dated 31-7-1958.

2. Mr. B.C. Ghose representing the petitioner has challenged the Sugarcane (Control) Order, 1955 as unconstitutional, inasmuch as it infringes the fundamental rights guaranteed under Article 14 and Article 19(1)(g). His contention is that the Central Government has conferred upon the Cane Commissioner very wide powers without laying down any principles for exercise thereof and without providing for check by way of appeal or otherwise, and that the delegation or this absolute and arbitrary power uncontrolled by any rules of guidance with the possibility of discrimination in its use is ultra vires and unconstitutional. He further argued that it abridges its right to carry on its trade freely and without restraint, and thereby infringes Article 19(1)(g).

3. On the other hand, the learned Advocate-General representing the opposite party pointed out that the wider question raised by Mr. Ghose did not arise on the facts of this case, and the question of the vires of the Sugarcane (Control) Order, 1955, issued by the Central Government was purely academic, and has no relevance in this case. His submission is that the powers for the assignment of particular sugarcane growing areas to particular sugar factories are vested in the

State Government and the Cane Commissioner (opposite party 1) both under the Bihar Sugar Factories Control Act, 1937, and the rules made thereunder and the Sugarcane (Control) Order, 1955, and the reservation of the area to the petitioner for the year 1958-59 was in fact made by the Cane Commissioner in accordance with the provisions of the Bihar Sugar Factories Control Rules, 1938 (hereinafter referred to as the Bihar Rules), made under the Bihar Sugar Factories Control Act, 1937 (Bihar Act 7 of 1937). He pointed out that the petitioner did not impugn the validity of the Bihar Rules rather the very foundation of his grievance was that the previous system was not adhered to. He has argued that this grievance is misconceived since the provisions of the Bihar Rules were applied.

4. In my opinion, the contention of the learned Advocate General is well-founded and must be accepted as correct. The petitioner overlooks the fact that the Cane Commissioner has been invested with power to regulate the export of sugarcane from any area for supply to different factories both under the Sugarcane (Control) Order, 1955, and the Bihar Rules. The power of the Cane Commissioner for declaration of reserved area is derived from Section 15 of the Bihar Sugar Factories Control Act, 1937. Sub-section (1) of this section provides that the Cane Commissioner may, after consulting the advisory committee or committees if any, or the area concerned and the occupier of the factory and after considering any objections that may be raised, issue an order declaring any area to be a reserved area for the purpose of the supply of cane to a particular factory during a particular season or seasons, and may likewise at any time cancel such order or alter the boundaries of an area so reserved. Rule 24 of the Bihar Rules lays down the various factors which the Cane Commissioner should take into consideration while reserving any area for a particular factory.

If the conditions laid down therein are fulfilled, the Cane Commissioner may, after consulting the occupier of a factory and publishing a notice in the offices of the Collectors and Sub-divisional Officers having jurisdiction over the area concerned and issuing copies thereof to the factories operating in such area, and after consulting the Advisory Committee or Committees, if any, of the area concerned and considering any objections that may be raised, issue an order u/s 15(1) of the Act declaring any area to be a reserved area for the purposes of supply of cane to the factory during the ensuing crushing season or seasons. Rule 24-A, which is important, lays down as follows:

"(1) Where in any village in a reserved area there is a Cane-growers'' Co-operative Society of which not less than two-thirds of the cane-growers of that village are members, the Cane Commissioner may. after consulting the occupier of the factory for which the area is reserved and after considering any objections that may be raised, issue an order on or before the 1st August immediately preceding the crushing season in which the cane is required to be crushed that every cane-grower growing cane in that village shall, if he intends to sell cane to a sugar factory, do so only through the Cane-growers'' Co-operative Society of that village.

(2) An order of the Cane Commissioner under Sub-rule (1) shall be announced by beat of drum in the village and copies thereof shall be pasted at the gate of the factory for which the area is reserved find published at the offices of the Cooperative Development and Cane Marketing Union to which the Cane-growers'' Co-operative Society is affiliated and of the Cane-growers'' Co-operative Society and also at the office of the Sub-divisional Officer and at the police station within the local limits of whose jurisdiction the Cane-growers Cooperative Society is situated, A copy of the order shall also be forwarded to the manager or occupier of the factory for which the area is reserved.

(3) An appeal against the order of the Cane Commissioner under Sub-rule (1) may be preferred to the State Government within fifteen days from the date of the publication of the orders against which the appeal is made."

While these rules were in force the Sugar-cane (Control) Order, 1955, was issued by the Central Government. In 1955, the Central Government delegated the power conferred upon it by Sub-clause (a) of Clause 4 of the said order to the State Government. The notification runs thus:

"Government of India Ministry of Food and Agriculture New Delhi, the 3rd October, 1955.

S.R.O. 2263.-- In exercise of the powers conferred by Clause 6 of the Sugar-cane (Control) Order, 1955, the Central Government hereby directs that the powers conferred on it by Sub-clause (a) of Clause 4 of the said Order, shall be exercisable also by the State Governments of Uttar Pradesh, Bihar, Punjab, Bombay, Madras, Andhra, West Bengal, Orissa, Hyderabad, Rajasthan, Pepsu, Madhya Bharat, Bhopal, Ajmer, Travancore Cochin and Mysore, within their respective jurisdiction.

(No. F. 15/155-SV)"

In 1956 there was similar delegation of powers to the Cane Commissioner per notification given below:

"Government of India Ministry of Food and Agriculture Notification, New Delhi, the 4th January, 1956

S.R.O. ......In exercise of the powers conferred by Clause 6 of the Sugarcane (Control) Order, 1955, the Central Government hereby directs that the powers conferred on if. by Sub-clause (a) of Clause 4 of the said Order, shall be exercisable also by the Cane Commissioner, Bihar, within his jurisdiction.

(No. F. 15/1/55-SV)"

5. It is worthy of note that in 1957 the State Government also issued a direction applying the Bihar Sugar Factories Control Act, 1937, and the Bihar Rules in respect of reserved area as defined by Section 2(n) of the said Act to any area

reserved by the Cane Commissioner under the power delegated to him under the Sugarcane (Control) Order, 1955. I would reproduce below the notification issued by the State Government on 9th November. 1957:

"Government of Bihar, Development (Cane) Department. Notification

No. BVII-03/570-3681. In exercise of the powers delegated by the Central Government under Clause 6 of the Sugarcane (Control) Order, 1955 in the Ministry of Food and Agricultural Notification No. S.R.O. 2263 dated the 3rd October, 1955 read with Clause 4(a) of the said order, the Governor of Bihar is pleased to direct that:

(i) all the provisions of the Bihar Sugar Factories Control Act, 1937 (Bihar Act VII of 1937) and the Bihar Sugar Factories Control Rules, 1938, in respect of ''reserved area'' as defined in Clause (n) of Section 2 of the said Act, shall, so far as may be, apply to any area in which the purchase of sugar-cane grown in that area is to be made by a particular sugar factory to the exclusion of other sugar factories in accordance with an order issued by the Cane Commissioner in exercise of the powers delegated to him by the Central Government under Clause 6 of the Sugarcane (Control) Order, 1955 in the Ministry of Food and Agriculture Notification No. S.R.O. 1863-ESS. Com/Sugarcane dated the 27th August, 1955 read with Clause 4(a) of the said order; and

(ii) Such a sugar factory shall enter into agreement, on or before the 7th December (instead of 30th September, as mentioned in the said Rules) immediately preceding the crushing season, with each cane-grower and cane-growers'' co-operative society, if any, in such an area in Forms XIII and XIIIA respectively, as prescribed under the said Rules to purchase the sugarcane offered by him or it.

By order of the Governor of Bihar, Sd. S.R. Sinha,

Deputy Secretary to Government.

Memo. No. 3681. Dated 9-11-1957.

Copy forwarded to: 1. All Sugar Factories in Bihar.

2. All Cane Inspectors and

3. All A. Rs., C. G. C. S., for information and necessary action.

Sd. S.R. Sinha Deputy Secretary to Government."

6. Thus, the powers which the Central Government possesses under Sub-clause (a) of Clause 4 of the Sugarcane (Control) Order, 1955, are exercisable both by the State Government and the Cane Commissioner. Similar powers have been conferred on the Cane Commissioner under Rules 24 and 24A ot the Bihar Rules. Now, in this case for the season 1958-59 the reservation of the cane-growing area to the petitioner was, as rightly contended by the learned Advocate General, made under the provisions of the Bihar Rules. It will be seen that on 7-7-1958,

the Cane Inspector forwarded to the petitioner a list of 85 villages proposed to be reserved to the petitioner for the season 1958-59 in which more than 66 per cent, cane-growers were members of Cane-growers'' Co-operative Societies and asked the petitioner to examine the claims in respect of all the villages and send its comments thereon so as to reach his office positively by 10-7-1958. This order was issued under Rule 24-A (vide Annexure B to the petitioner''s application).

The petitioner examined the claims and sent its comments to the Cane Inspector, Gopalganj, on 10-7-1958 (vide Annexure C to the petition). This letter of the petitioner is headed as "Sub: Reservation of villages under Rule 24A for the season 1958-59." Admittedly, therefore, action towards reservation was taken under the Bihar Rules. There is no dispute so far. The Cane Inspector examined the objections of the petitioner and found them valid only with respect to five out of 85 villages and by his letter dated 21-7-1958, after giving his reasons for upholding their objections with respect to five villages and rejecting them with respect to 22 out of the remaining 80 villages, made the following recommendation to the Cane Commissioner:

"In the circumstances noted above I recommend that only 80 villages out of the 85 claimed for which list in six copies are enclosed herewith may be notified under Rule 24A of the Bihar Sugar Factories Control Rules, 1938, for the season 1958-59 in respect of Sasamusa Sugar Works Limited, Sasamusa, as I am satisfied that they come under 66 per cent, membership." -- (Vide Annexure 2 to the counter-affidavit).

It will be noticed that the reservation recommended by him was to be made under Rule 24A. In its rejoinder to the counter-affidavit the petitioner vaguely denier" the knowledge of this letter. This denial is wholly baseless. The letter shows that the Cane Inspector discussed the matter with the Officers of the petitioner. The petitioner''s remaining objection mainly concerned 22 villages. The Cane Inspector states in that letter that

"on further verbal clarification too, they did say nothing except that the 22 villages to be excluded from the list of wholesale co-operative supply giving no reasons in support of his statements."

Lower down in the said letter, it is stated by him as follows:

"I along with the Assistant Registrar, C.G.C.S. Gopalganj met the Managing Director and the Cane Manager of the factory, a number of times and discussed the issue with them to know, if they have anything further to say in this connection but despite our best efforts, they did say nothing more spying that they have already intimated in writing whatever they have to say in their letters referred to above. Rather they were verbally of the opinion that the villages really contained 60 per cent, membership and they will have no objections if they are notified as such but they did not come in writing although desired by us."

7. This shows that the objections of the petitioner with respect to 22 villages were overruled after thorough examination and further discussion with the authorities of this sugar factory including the Managing Director, who could not substantiate their objections. There is no denial at all of these statements in the said letter. In the circumstances, it is hard to believe that the petitioner was not heard, or that he was not aware of the rejection of its claims respecting the said 22 villages, As will appear from its petitions it is an old complaint and was never entertained. Acting on this recommendation of the Inspector, the Cane Commissioner issued the impugned order of dated 31-7-1958, which runs as follows:

"Office of the Cane Commissioner, Bihar, Order No. 3238 Patna, 31-7-1958.

In exercise of the powers delegated to me by the Central Government under Clause 6 of the Sugarcane (Control) Order, 1955, in the Ministry of Food and Agriculture Notification No. S.R.O. 1863-Ess. Com/Sugarcane dated 27-8-1955, read with Clause 4(a) of the said Order, I, Cane Commissioner Bihar, hereby direct that every canegrower growing cane in the villages mentioned in the list below, shall if he intends to sell cane to the Sasamusa Sugar Works Ltd., Sasamusa (Saran) do so only through the Cane-growers'' Co-operative Society or Societies operating in these villages, during the season 1958-59.

Sd. J. Pd. Cane Commissioner, Bihar, 31-7. Memo No. 3238. Patna, the 31st July, 1958. Copy forwarded to ..... .for information.

Memo No, 3238, Patna, the 31st July, 1958. Copy forwarded to the Cane Inspector, Gopalganj for information and necessary action. ......

2. The Cane Inspector should get the order published by beat of drum in all the villages mentioned in the list and get copies thereof posted at the gate of the factory to which the cane of the villages is supplied, at the office of the Co-operative Development and Cane Marketing Union to which the Societies are affiliated, and at the Office of the Sub-divisional Officer and the Police Station under which the villages are situated. A copy of the order is being sent to the factory direct. The charges incurred in publishing the order by beat of drum may be met out of the contingent grant of his office.

3. He may take the help of the Organiser, Canegrowers'' Co-operative Societies, in ensuring early publication of this order.

Sd. J. Pd. Cane Commissioner, Bihar. 31-7"

8. It is fully demonstrated that in making reservation of the area to the petitioner by the aforesaid order, the provisions of the Bihar Rules were fully complied with. It will be wrong to say that this reservation was made by the Cane Commissioner arbitrarily acting solely under the power conferred upon him by the State Government under the Sugarcane (Control) Order, 1955. This Order only empowers him to "prohibit or restrict or otherwise regulate the export of sugarcane from any area for supply to different factories." It does not, however,

provide how this power will be exercised. Taking the Sugarcane (Control) Order as it is, it may look like conferring upon the Cane Commissioner; untrammelled power of making reservation of areas to different factories. But, in fact, this is not so. In view of the notification issued by the State Government stated above this power is to be exercised in the manner laid down in the Bihar Rules. There is no conflict between the two. The Bihar Rules merely supplements the Sugarcane (Control) Order, 1955, & prescribes the limits within which the Cane Commissioner is to function in making this reservation. The validity and constitutionality ot the Bihar Sugar Factories Control Rules, 1938, has been upheld by this Court in an unreported decision in the case of Sugauli Sugar Works Private Ltd. Vs. Cane Commissioner and Others, .

In these circumstances it is wholly futile to enter upon a detailed discussion of the vires of the Sugarcane (Control) Order, 1955. It is manifest that the reservation of the area to the petitioner was made after consideration of the various factors . enjoined by the Bihar Rules and alter at-fording adequate opportunity to the petitioner of being heard. In fact, the petitioner submitted its objections to the proposed reservation, and they were disposed of after full investigation and mutual discussion. Therefore, complete justice has been done in its case, and its grievance is wholly without foundation.

9. It follows that there is no merit in this application. It is accordingly dismissed with costs. Hearing fee Rs. 100/-.

Ramaswami, C.J.

10. I agree.