(1992) 04 PAT CK 0043

In the Patna High Court

Case No : CWJC No. 3670 of 1992

Satya Narain Pd. Bishundeo Prasad — APPELLANT

Vs

General Manager, B.S.S. Corporation — RESPONDENT

Date of Decision : 28-04-1992

Acts Referred:

Constitution of India, 1950 — Article 14
Essential Commodities Act, 1955 — Section 3

Citation : (1992) 2 PLJR 626

Hon'ble Judges : S.B. Sinha, J;B.K. Roy, J

Bench : Division Bench

Judgement

1. After hearing Mr. Nawal Kishore Agarwal, learned Counsel appearing on behalf of the Petitioner, Mr. P.K. Sahi learned Counsel appearing on behalf of the Respondent-Corporation and Mr. Pawan Kumar learned Counsel appearing on behalf of Respondent No. 4, we are disposing of this application at this stage.

2. The fact of the matter lies in a very narrow compass.

3. In terms of a notification dated 27.3.1992 issued by the Central Government as contained in Annexure-A to the counter affidavit filed on behalf of Respondent Nos. 1 to 3 the Central Government directed that Sugar shall be sold in auction. The said order was issued by the Central Government in exercise of its power conferred upon it u/s 3 of the Essential Commodities Act, 1955.

4. Pursuant to the aforementioned notification an auction took place on 11.4.1992. In the said auction, the Petitioner and the two other persons participated wherein the Petitioner purchased 6379 bags of free sale sugar and deposited Rs. 19,137/- i.e. @ Rs. 3/- per bag then and there in accordance with the terms and conditions Admittedly 11.4.1991 was a Saturday.

5. In terms of Clause 2 of the sale notice which is contained in Annexure-2 to the writ application; successful tenderer was entitled to deposit the security amount within the working hours of the next date of holding of auction. As 12.4.92 was a

Sunday, according to the Petitioner he went to the office of the Respondent No. 1 with four bank drafts on 13.4.92 (which are contained in Annexure-4) but was surprised to learn that the sugar in question has already been sold in favour of the Respondent No. 4 after cancellation of the offer of sale made in his favour.

6. The Petitioner has drawn our attention to two letters bearing memo No. 88 dated 13/16th April, 1992 which is contained in Annexure-5 to the writ application as also a letter bearing No. 86 dated 16th April, 1992 which is contained in Annexure-6 to the writ application.

7. From a perusal of the said two letters, it appears the letter (Annexure-5) was issued purported to be on the ground that the Petitioner did not deposit the requisite amount of guarantee upto 5 O''clock, and thus the said offer made by the Petitioner was sought to be cancelled.

8. From a perusal of the letter dated 16.4.1992 (Annexure-6) it appears that the sugar in question namely 6379 bags was directed to be sold by way of gate sale on 13.4.92 itself to the Respondent No. 4.

9. Mr. Sahi learned Counsel appearing on behalf of the Respondent Corporation stated before us that the working hours in the factory is up to 5 O''clock. Mr. Pawan Kumar learned Counsel appearing on behalf of the Respondent No. 4 however stated that the said Respondent had gone to the factory premises for the purpose of lifting 200 bags of sugar which had been sold by the corporation in favour of the Jormal Ram Kumar of Muzaffarpur from whom the Respondent No. 4 purchased the same wherein a delivery of challan was endorsed in favour of the said Respondent. The Respondent No. 4 allegedly had gone to the factory premises at about 3 P.M. on 13.4.1992 in order to lift the aforesaid quantity of sugar sold to in Jormal Ram Kumar and thereafter he came to learn that some gate sale of sugar was to take place as the Petitioner allegedly failed to deposit the requisite guarantee amount.

10. Upon hearing the counsel for the parties, and upon considering the fact of the matter as noticed hereinbefore we are of the view that impugned orders as contained in Annexures 5 and 6 had been passed by the Respondent No. 1 malafide. From a bare perusal of the letter dated 13/16 April, 1992, it appears that impugned letter bears memo No. 88 whereas in the letter dated 16th April, 1992 which is contained in Annexure-6 to the writ application, it is evident that the said letter bearing memo No. 86. Admittedly the letter as contained in Annexure-5 was issued only on 16.4.92. In terms of Clause 2 of the sale notice, the Petitioner was requested to deposit the guarantee amount up to 5 p.m. on 13.4.1992. It is, therefore, clear that neither Annexure 5 nor Annexure 6 could have been drawn up and issued on 13.4.1992. Annexure 5, to us, appears to be an antedated document. In any event such an undue haste on the part of the Respondent No. 1 itself is indicative of malice on the part of the authority of the Respondent No. 1. Further as the Petitioner was to deposit the amount within the working hours on 13.4.92, this offer could have been directed to be cancelled

only on the next day i.e. 14.4.1992.

12. It also does not stand to any reason as to why both Annexures 5 and 6 were despatched only on 16.4.92 and that too Annexure 6 was despatched prior to Annexure 5.

13. It is, therefore, clear that Annexure 5 was issued after issuance of Annexure 6. In that view of the matter the said letter could have been typed on 13th April, 1992.

14. Further in view of condition No. 2 as contained tn Annexure 2 to the writ application, it is evident and as has been contended by Mr. Sahi, the Petitioner was entitled to deposit the guarantee amount within the working hours upto 13th April, 1992.

15. In that view of the matter, it does not stand to any reason as to how the Respondent No. 1 or for that matter, any officer of the Respondent No. 3 could hold negotiations with Respondent No. 4 on 13.4.1992 within the working hours of the said date.

16. We are also of the view that the story put forward by Respondent No. 4 to the effect that he had gone to the factory premises for the purpose of lifting 200 bags of sugar which had earlier been sold to M/s. Jormal Ram Kumar of Muzaffarpur may not be correct. However we are not expressing any final opinion in this regard.

17. For the reason aforementioned, we have no other option but to hold that the action of the authorities of the Respondent No. 3 corporation in issuing the impugned orders as contained in Annexures 5 and 6 to the writ application was malafide both on fact as well as in law and thus violative of Article 14 of the Constitution of India. The said orders, therefore, cannot be sustained.

18. In this situation, we are disposing of this writ application with a direction to Respondent Corporation to deliver the aforementioned 6379 bags of sugar to the Petitioner forthwith.

19. Mr. N.K. Agrawalla, learned Counsel for the Petitioner, however, very fairly suggests that his cliant is also agreeable to pay the price of the sugar @ Rs. 736/- per bag at which rate, the same was directed to be sold to Respondent No. 4 by reason of Annexure 6.

20. In view of the fair offer given by Mr. Agrawal and taking into account the fact that huge amount has now to be deposited by the Petitioner with the Respondent No. 3 Corporation, we allow the Petitioner to lift the aforementioned quantity of sugar within a period of one week from today.

21. It will be open to the Respondent No. 3 to refuse the bank draft which had already been deposited by the Respondent No. 4 and/or to refund the amount in question in its favour forthwith.

22. It is stated at the bar that the Respondent No. 4 has already lifted 400 bags of sugar. We are not expressing any opinion in this regard, as the said matter must be dealt with in accordance with law by and between the Respondent Corporation and the Respondent No. 4 as to whether value of the said quantity of sugar can be adjusted or the Respondent No. 4 should be directed to return to the Respondent No. 3 the aforementioned 400 bags of sugar.

23. This application is, thus, disposed of.

