

(2000) 01 PAT CK 0030
In the Patna High Court
Case No : C.W.J.C. No. 7897 of 1996

Sunil Kumar

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-01-2000

Acts Referred:

Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 — Section 16(1),
16(2), 2(s), 31
Constitution of India, 1950 — Article 19(1)(g)

Citation : (2000) 4 PLJR 348

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : N.K. Agrawal, K.C.K. Sinha and D.N. Tiwary, for the Appellant; S.P. Thakur for Respondent No. 2 and Mr. K.P. Yadav for the State, for the Respondent

Final Decision : Allowed

Judgement

S.K. Katriar, J.—This writ petition is directed against the order dated 10.11.95 (Annexure 3), passed by Shri. C. Lalsita, Cane Commissioner, Bihar and the appellate order dated 20.4.96 (Annexure 4), passed by Shri. R.C.A. Jain, Secretary, Department of Cane, Govt. of Bihar, in Appeal Case No. 5 of 1995 (Sunil Kumar vs. The Cane Commissioner, Bihar & Ors.). By the said order dated 10.11.95 (Annexure 3), the Cane Commissioner has rejected the petitioner's application u/s 16(1) of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (hereinafter referred to as "the Act"), for grant of a licence for setting up an unit within the meaning of section 2(s) of the Act which, in the present context, means setting up an Unit engaged in the production of Khandsari Sugar by power crusher. The order of the Cane Commissioner has been affirmed in appeal, and impugned herein. The petitioner submitted an application u/s 16(1) of the Act for a licence to set up an Unit for manufacture or production of Khandsari Sugar with power crusher. The petitioner stated that he owns 32 acres of land within Kamaldah Thana No. 182, where he grows sugarcane which is part of a cane growing area reserved for respondent no. 2

(Riga Sugar Company Ltd.), u/s 31 of the Act. He further stated that he has 18 acres of land elsewhere. He wanted to set up his Unit on the said 32 acres of land. Since the entire area Kamaldah Thana No. 182 which includes his own is reserved in favour of respondent no. 2, he shall purchase sugarcane from the adjoining areas which are unreserved. Respondent no. 2 appeared before the Cane Commissioner and submitted its objection to the petitioner's application to the effect that production of respondent no. 2 will be impaired if licence is granted in favour of the petitioner. After hearing both the sides, the Cane Commissioner passed the aforesaid order dated 10.11.95 (Annexure 3), whereby he rejected the petitioner's application u/s 16(1) of the Act.

2. Aggrieved by the said order dt. 10.11.95, the petitioner herein preferred his statutory appeal which was registered as Appeal No. 5/95 (Sunil Kumar vs. The Cane Commissioner & Another), and was dismissed by Shri R.C.A. Jain, Secretary, Department of Cane, Govt. of Bihar, by his order dated 20.4.96 (Annexure 4). Hence the present writ petition.

3. While assailing the validity of the impugned order, learned counsel for the petitioner submitted that he has a fundamental right guaranteed by Article 19(1) (g) of the Constitution of India to carry on any trade or business. He next submits that the appellate authority has not recorded a finding that grant of the licence in favour of the petitioner will "unduly" impair production of sugar by respondent no. 2. He submits that Kamaldah Thana No. 182 covers a huge area and also includes the petitioner's own land covering 32 acres which has been reserved in favour of respondent no. 2 u/s 31 of the Act. He further submits that in such a peculiar situation, he is deprived of utilizing the sugarcane grown by him on his own land which has got to be sold to respondent no. 2. He submits that in the event of grant of licence, he shall be purchase (sic) sugarcane from the unreserved areas. He further invites my attention to the averments made in the writ petition where he says that the requirement of the proposed Unit will be about 50,000 quintals of sugarcane per year. He has grown about 10,000 quintals of sugarcane on his own land outside the reserved area and shall purchase 40,000 quintals of sugarcane from different sources, namely, the agriculturists of non-reserved areas. He further invites my attention to the averments made in paragraph 8 of the writ petition to the effect that 52,500 acres of sugarcane-growing area is reserved in favour of respondent no. 2, and the total sugarcane produced in the reserved area is about 52,50,000 quintals. It is further stated that the existing capacity of respondent no. 2 as on the date of institution of the writ petition was around 25,000 quintals of sugarcane per day, a sugar mill normally works without interruption for a total period of 130-150 days every year. In that view of the matter the writ petition asserts that respondent no. 2 will require about 37,50,000 qntls. of sugarcane for 150 days. In other words, respondent no. 2 will have about 15 lakhs qntls. of sugar cane in excess in its reserved area only to the detriment of the cane growers and others. The writ petition further asserts, respondent no. 2 had worked for 190 days during the year 1994-95 but crushed only 33 lakhs quintals of sugarcane.

4. Mr. K.P. Yadav, learned SC V. appearing for respondent nos. 1, 3, 4 and 5 (the State of Bihar and its functionaries), has opposed the writ petition.

5. Learned counsel for respondent no. 2 (Riga Sugar Company Ltd.) has submitted that the licensing authority as well as the appellate authority have exercised their discretion u/s 16(2) of the Act, and have come to the conclusion that grant of licence to the petitioner will impair the production of sugar by respondent no. 2. The appellate authority has held in the impugned order that the State Government has recommended to the Central Government for expansion of the installed capacity of respondent no. 2 (from 25000 MT to 35000 MT). If it materialises, then the requirement of respondent no. 2 will increase by 40%. In such circumstances, learned counsel submits that the impugned order is within the parameters of section 16(2) of the Act.

6. Having considered the rival submissions, I am of the view that this writ petition has to be allowed. Learned counsel for the petitioner is right in his submission that he has the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India to carry on any trade or business. Law is well settled that fundamental rights can be subjected to reasonable restrictions. The provisions of section 16(2) of the Act may perhaps amount to a reasonable restriction in the present context, and the constitutional validity of which has not been challenged before me. However, one question still remains to be answered, namely, whether or not this power has been properly exercised in the facts and circumstances of the present case. Section 16(2) of the Act is set out hereinbelow for the facility of quick reference:-

16. Licence for crushing and manufacture in a unit.-

(1).....

(2) If, after giving an opportunity of being heard to the owner of the unit and the occupier of the factory concerned, the Cane Commissioner is satisfied that the unit unduly impairs production of sugar by such occupier, he may refuse to grant a licence.

It is manifest from a plain reading of the aforesaid provision that application u/s 16(1) of the Act for grant of a licence to set up an Unit within the meaning of section 2(s) of the Act can be rejected only if the authorities come to a conclusion that grant of the licence will "unduly" impair production of sugar by respondent no. 2. This Court is of the view that the expression "unduly" used in section 16(2) of the Act postulates a situation of some gravity which is not discernible from the two orders in question. The facts stated in the order of the Cane Commissioner or that of the appellate authority discloses no such extraordinary situation which will be created by grant of the licence to the petitioner which will "unduly" impair production of sugar by respondent no. 2. By the use of the expression "unduly" in Section 16(2) of the Act, the legislature has put an extra restriction, i.e. much greater requirement than the ordinary in refusing to grant the licence in favour of the applicant. It appears respondent no.

2 is not able to fully utilize the sugarcane being grown in the Kamaldah Thana No. 182 reserved for respondent no. 2. Furthermore, even if the reasoning given by the appellate authority in the impugned order that respondent no. 2 will require 40% more of sugarcane in case its application for expansion of the installed capacity is granted by the Central Govt. is taken to be correct, even then the requirements are met by the existing reservation of the sugarcane-growing area in its favour. In any case, one of the two authorities have held that grant of the licence will "unduly" umpair the production of respondent no. 2. No such material was placed before the two authorities and natually, therefore, no such finding has been recorded by them that grant of licence in favour of the petitioner will result in undue impairment of production of respondent no. 2. Furthermore, the equities are also in favour of the petitioner. The petitioner's own cane- growing area is within the reserved area ear-marked for respondent no. 2 and he is by the impugned orders being prevented from exploiting sugar cane from unreserved areas. In the result, this writ petition is allowed, the impugned orders dated 10.11.95 (Annexure 3), and dated 20.4.96 (Annexure 4), passed by the cane commissioner and secretary, Deptt. of cane, Govt. of Bihar, respectively, are hereby directed to grant the requisite licence applied for to the petitioner in accordance with law.