(2015) 11 KAR CK 0171

In the Karnataka High Court

Case No : Writ Appeal No. 100131 of 2015 [GM-RES]

The Gem Sugars Ltd. APPELLANT

Vs

The State of Karnataka and Others RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0171

Hon'ble Judges : S. Abdul Nazeer and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : S.S. Naganand, Senior Counsel for Veeresh R. Budhihal, Advocate, for the Appellant; Ravi V. Hosamani, AGA, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—This writ appeal is directed against the order in Writ Petition No. 78973 of 2013 (GM-RES), dated 09th February 2015, whereby the learned Single Judge has disposed of the writ petition reserving liberty to the appellant/ writ petitioner to approach the Civil Court for appropriate relief, if so advised.

2. Appellant/Company has set up a 4000 TCD Sugarcane Plant along with 22.5 MW Co-generation Plant in Kundaragi village of Bilagi Taluk of Bagalkot District. It is contended that the appellant had entered into an agreement for supply of sugarcane from the registered cane growers to respondent No. 5/Sugar Factory, as the appellant could not commission the sugar project as per schedule. It is contended that the appellant had to supply sugarcane cultivated from the cane growers from its command area to respondent No. 5 in terms of the agreement at Annexure ''A''. It is further contended that the appellant supplied sugarcane of the registered cane growers on 28.12.2000 and received an advance sale consideration. Subsequently, inspite of appellant''s best efforts, they could not recover the balance of the amount from respondent No. 5. In the meantime, a recovery certificate at Annexure ''B'' was issued by the Commissioner for the Cane Development and Director of Sugar, under the provisions of the Sugarcane (Control) Order, 1966. It is further submitted that respondent No. 5 has not fully

settled the bills so far. Therefore, the appellant had filed the instant writ petition seeking following reliefs:

(i) "Issue a Writ in the nature of Mandamus, directing the Respondent 1 to 4 authorities to take the necessary action to recover the amount from the respondent No. 5 Sugar Factory and to pay it to the Petitioner herein.

(ii) Grant such other relief, which are deemed fit and necessary under the circumstances of the case in the interest of Justice and equity."

3. After hearing the parties, learned Single Judge was of the view that the writ petition, for the relief sought, was not maintainable and that it should establish, its dues, if any, by the respondent No. 5 before the jurisdictional Civil Court and obtain a decree.

4. Sri. S.S. Naganand, learned Senior Counsel, appearing for the appellant, would contend that it was the obligation of respondent Nos. 1 to 4 to recover the amount from respondent No. 5 in terms of the Recovery Certificate at Annexure ''B'' dated 28th August 2003. Learned Senior Counsel has taken us through various documents in order to show the dues of respondent No. 5.

5. Learned AGA appearing for respondent Nos. 1, 2 and 4 submits that, having regard to Rule 3(8) of the Sugarcane (Control) Order, 1966, question of recovering the amount from respondent No. 5 and paying the same to the appellant does not arise. It is argued that there is no plea in the writ petition that the appellant has paid the price of the sugarcane to the growers. Even the Recovery Certificate does not state that the amount has to be paid to the appellant herein. Therefore, he prays for dismissal of the writ appeal.

6. We have carefully considered the arguments advanced by the learned counsel made at the Bar and perused the entire materials on record.

7. The agreement at Annexure ''A'' indicates that the purchase and supply of the sugarcane by the appellant in favour of respondent No. 5 was for the sugar season 2000-2001, subject to certain terms and conditions specified therein. As rightly submitted by the learned AGA, there is no plea to the effect that the appellant has paid the entire price of sugarcane to the growers. In paragraph (2) of the writ petition, the appellant has stated that, it has supplied seeds, manure and advance amount to the cane growers. The appellant has not produced any materials in support of the said contention.

8. Clause 3(8) of the Sugarcane (Control) Order, 1966 authorises the competent authority to issue a Recovery Certificate, when a producer of sugar or his agent has defaulted in furnishing information under Clause 9 or has defaulted in paying the whole or any part of the price of sugarcane to a grower of sugarcane or a sugarcane growers'' co-operative society within fourteen days from the date of delivery of the sugarcane, or where there is an agreement in writing between the parties for payment of price within the specified time and any producer or his agent has defaulted in making payment within the agreed time specified therein,

a certificate specifying the amount of price of sugarcane and interest due thereon from the producer of sugar or his agent for its recovery as arrears of land revenue.

9. The Certificate at Annexure ''B'' dated 28th August 2003 certifies the amount to be recovered together with interest at 15% thereon till the date of actual payment due to the cane growers who had supplied sugarcane to respondent No. 5. Thus, the Certificate does not authorise payment of cane price to the appellant herein. Therefore, question of directing respondent Nos. 1 to 4 to take necessary action to recover the amount from respondent No. 5 and pay the same to the appellant does not arise.

10. Even otherwise, as observed by the learned Single Judge, the matter involves disputed questions of fact. Therefore, the writ petition has rightly been disposed of reserving liberty to the appellant to approach the Civil Court for appropriate reliefs. We do not find any error in the said order.

11. In the result, the writ appeal fails and it is accordingly dismissed. No costs.