
(1968) 01 AHC CK 0028
In the Allahabad High Court
Case No : Civil Misc. Writ No. 3841 of 1967

The Purtabpore Co. Ltd.

APPELLANT

Vs

Cane Commissioner, Bihar, New Secretariat, Patna in the
State of Bihar and Others

RESPONDENT

Date of Decision : 01-01-1968

Acts Referred:

Constitution of India, 1950 — Article 226(1A)

Citation : AIR 1969 All 105

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : Vinod Swarup, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—The Purtabpore Company Limited, the petitioner, prays for a certiorari to quash the orders passed by the Cane Commissioner, Bihar, on 14th November, 1967, modifying his earlier order dated 30th December, 1966, in relation to the reservation of certain villages in Bihar for the petitioner Company. In my opinion this Court has no jurisdiction to entertain this petition. It fails on that preliminary ground.

2. In exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955, the Central Government on 16th July, 1966, passed the Sugarcane (Control) Order, 1966. Clause 6(1) (a) of this Order entitled the Central Government to make an order reserving any area where sugarcane is grown for a factory. Under Clause 11 the Central Government could delegate all or any of the powers conferred upon it on, inter alia, the State Government or any officer or authority of the State Government. The same day, that is 16th July, 1966, the Central Government delegated the powers conferred on it by Clauses 6, 7, 8 and 9 of the Order on, inter alia, the State Governments of Bihar and Uttar Pradesh as well as on the Cane Commissioners of Bihar and Uttar Pradesh. Utilising this

delegated power, the Cane Commissioner, Bihar, on 30th. December, 1966, made an order (No. 3088) directing that the villages named in the list shall constitute the reserved area of Purtabpore Sugar Factory Limited, Mairwa, for the purposes of sugarcane during the seasons 1966-67 and 1967-68. The list included 208 villages. All these villages were situate in the district of Saran in the State of Bihar. Feeling aggrieved the Standard Refinery and Distillery Limited, respondent No. 9, questioned the validity of this reservation order by instituting a writ petition under Article 226 of the Constitution before the High Court at Patna C. W. J. C. No. 63 of 1967. The petitioner contested it During its pendency, respondent No. 9 made representations to various authorities for re-opening the question of reservation of 208 villages in favour of the petitioner. Coming to know of these moves, the petitioner Company made representations to the Government of Bihar and the Cane Commissioner and further prayed that the said 208 villages should continue to be reserved in favour of the petitioner on a long term basis. The Cane Commissioner, Bihar, passed two orders on 14th November, 1967. By one order (No. 2332) the Cane Commissioner superseded his earlier order No. 3088 dated 30th December, 1966, and further directed that the villages named in the list below shall constitute the reserved area for the petitioner factory for purchase of sugarcane during the season 1967-68. The list mentioned only 109 out of the 208 villages. A copy of this order was forwarded to M/s. Purtabpore Sugar Factory Limited, Mairwa, the petitioner. This order had the effect of cancelling the earlier reservation order of 208 villages completely for the year 1968-69. It confined the reservation for the year 1967-68 to only 109 villages. By another order the Cane Commissioner directed that the remaining 99 villages shall constitute the reserved area of respondent No. 9 for purposes of sugar-cane during the season 1967-68. This order was forwarded to respondent No. 9. The petitioner wants both these orders to be quashed.

3. The same day, that is on 14th November, 1967, respondent No. 9 applied for withdrawal of the writ petition filed by it before the High Court at Patna. The petitioner Company contested that application but the prayer was granted. The same day the present writ petition was instituted in this Court.

4. At the hearing Mr. Khare, appearing for respondent No. 9, as well as Mr. Gopi Nath, appearing for the Cane Commissioner, Bihar, raised a preliminary objection to the competence of the writ petition. They urged that no part of the cause of action had accrued within the territorial jurisdiction of this High Court and so this Court had no jurisdiction to entertain this writ petition. Under Clause (1-A) of Article 226 of the Constitution, the power conferred by Clause (1) to issue certain writs to any Government, authority or person, may be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such a Government or authority or the residence of such person is not within those territories. The petitioner desires that the orders of the Cane Commissioner, Bihar, be quashed and consequential mandamus be issued to him and the State Government of Bihar not to act in virtue of or in pursuance of the

orders passed by the Cane Commissioner, Bihar, on 14th November, 1967. The seat of the Government of Bihar as well as the residence of the Cane Commissioner of Bihar are in the State of Bihar, that is outside the territories of the State of Uttar Pradesh to which alone the jurisdiction of this Court extends. The petitioner can invoke the jurisdiction of this Court only if it establishes that the cause of action for the claimed relief arose wholly or in part within the territories of Uttar Pradesh.

5. The person making the impugned order as well as the subject-matter of the order, namely the 208 villages, are both situate outside Uttar Pradesh. The order was passed at Patna in the State of Bihar. Any part of the cause of action based on these facts would arise outside the territories of Uttar Pradesh. For the petitioner Mr. Ray relied on a composition of facts for establishing that the cause of action did arise within the territories of Uttar Pradesh. The learned counsel stated that the petitioner Company's factory is situate within the territories of Uttar Pradesh. The order of the Cane Commissioner superseding his earlier order of the 30th December, 1966, was forwarded to the petitioner Company and was received by it at its factory, that is within Uttar Pradesh. The communication of the order constituted a relevant and material fact to be proved in order to gain relief. On that basis a part of the cause of action would arise within Uttar Pradesh. Mr. Ray also relied upon the circumstances that after the initial reservation order dated 30th December, 1966, the petitioner Company had entered into contracts with the Mairwa Cane Development and Cane Marketing Union Limited respondent No. 10, and the Sirisia Cane Development and Cane Marketing Union Limited, respondent No. 11, for the purchase of sugar-cane from 208 villages reserved for the petitioner. The contract with these cooperative societies provided that the sugarcane would be supplied to the petitioner at the weigh-bridge situate at the factory gate. The impugned order has the effect of frustrating this contract. The cause of action for preventing or restraining the frustration of the contract would arise inter alia, at the place where delivery of the goods was agreed upon. That place being within Uttar Pradesh, a part of the cause of action for such relief would arise within Uttar Pradesh. The present writ petition was designed to that end and would be cognizable by this Court. It was at the end urged that the initial reservation order dated 30th December, 1966 was passed in pursuance of the decision taken by The Joint Sugar-cane Board for Uttar Pradesh and Bihar at Lucknow. The impugned order contravenes that decision. The cause of action for enforcing the decision of the Joint Board would arise at Lucknow within Uttar Pradesh.

6. The first part of the learned counsel's submission relating to the communication of the order raises many difficulties. One order by which the earlier order dated 30th December, 1966, was expressly superseded and which reduced the number of villages constituting the petitioner's reserved area to 109 alone, was forwarded to the petitioner company. The other order passed in favour of respondent No. 9 was not communicated to the petitioner Company. On this basis no cause of action in relation to the order passed in favour of

respondent No. 9 could arise within Uttar Pradesh. Even if the order superseding the earlier one is set aside the other order in favour of respondent No. 9 would remain in operation. That by itself would constitute modification of the earlier order passed on 30th December, 1966. Without setting aside the order passed in favour of respondent No. 9, no effective relief could be granted to the petitioner.

7. Mr. Ray urged that in view of the decision of the Supreme Court in *Bachhittar Singh Vs. The State of Punjab*, before an opinion of a statutory authority can amount to an order, it must be communicated to the person affected by that order. Then alone that person can be bound by the order; because till its communication it would be open to the authority to consider the matter again. Hence, till its communication the order cannot be regarded as anything more than provisional in character. Thus the order of the Cane Commissioner became binding on the petitioner only when it was communicated to it. The communication was at its factory within the State of Uttar Pradesh. If the law provides for the method of communication of an order made under it, the order would acquire legal force and operation only when it is communicated in that manner. Clause 6 of the Sugarcane (Control) Order, 1966, provides that the Central Government (which includes its delegates) may by an order notified in the gazette reserve any area for a factory. This clause provides for the manner of communication namely by notification in the official gazette. An order passed under Clause 6 would have the force of law only when it is notified in the official gazette. Till then it will be merely an opinion of the relevant authority. The decision of the Cane Commissioner, Bihar, would not become an order under Clause 6 (a) merely by its being forwarded and received by the petitioner Company. So the receipt of the order by the petitioner Company would be immaterial. The Cane Commissioner's, Bihar, order would have had to be notified in the official gazette of the State of Bihar. That fact would give rise to a part of the cause of action, if any, within the State of Bihar. The legally recognizable mode of communication of an order of the Cane Commissioner, Bihar, under Clause 6 (a), would not create a cause of action, within Uttar Pradesh.

8. The second point related to the place of delivery. In this connection Mr. Khare, learned counsel for the respondent, urged that an order of reservation by itself does not oblige any sugarcane grower or a co-operative society to supply or agree to supply sugarcane to the factory in whose favour the reservation order has been passed. That obligation arises under paragraph (2) of Clause 6 when an order has been made under paragraph (c) of Sub-clause (1), so a mere modification of the order of reservation would not impinge on the enforceability of the petitioner's contract with the sugarcane suppliers. Mr. Ray on the other hand contended that the order of reservation created and conferred a right on the petitioner factory to purchase sugarcane from the reserved villages. To resolve these rival contentions the relevant and material portions of Clause 6 may be read:

"6. Power to regulate distribution and movement of sugarcane.

1. The Central Government may, by order notified in the official Gazette,--

(a) reserve any area where sugarcane is grown (hereinafter in this clause referred to as "reserved area") for a factory having regard to the crushing capacity of the factory, the availability of sugar-cane in the reserved area and the need for production of sugar, with a view to enabling the factory to purchase the quantity of sugarcane required by it;

(b)

(c) fix, with respect to any specified sugarcane grower or sugarcane growers generally in his reserved area the quantity or percentage of sugarcane grown by such grower or growers, as the case may be, which each such grower by himself or, if he is a member of a co-operative society of sugarcane growers operating in the reserved area, through such society, shall supply to the factory concerned;

(d) direct a sugarcane grower or a sugarcane growers" co-operative society, supplying sugarcane to a factory, and the factory concerned to enter into an agreement to supply or purchase, as the case may be, the quantity of sugarcane fixed under paragraph (c);

(e)

(f)

2. Every sugarcane grower, sugarcane growers" co-operative society and factory, to whom or to which an order made under paragraph (c) of Sub-clause (1) applies, shall be bound to supply or purchase, as the case may be, that quantity of sugarcane covered by the agreement entered into under the paragraph and any willful failure on the part of the sugarcane grower, sugarcane growers" cooperative society or the factory to do so, shall constitute a breach of the provisions of this order;

A reservation order under paragraph (a) is passed with a view to enable the factory to purchase the quantity of sugarcane required by it. It at the most confers a sort of privilege to enter the reserved areas with a view to purchase sugarcane; it confers no rights. The order of reservation does not have the effect of making any sugarcane grower liable to sell sugarcane only to the factory in whose favour the area has been reserved. That liability arises when an order under paragraph (c) or (d) has been passed. So, a mere reservation order would not reserve any area exclusively for that particular factory nor would oblige the sugarcane growers in that area to sell their sugarcane only to that factory. Till now no orders under paragraph (c) or (d) have been passed. The agreements which the petitioner Company alleges it entered into with the co-operative societies on 27th September, 1967, were not as a result of any right or liability flowing from the order of reservation. Similarly the impugned order modifying the reservation order would not affect, much less frustrate, that contract. The

parties to that contract would still be free to perform their respective promises. The rights and liabilities of the parties under that contract could possibly be affected by an order under paragraph (c) or (d), but no such order has yet been passed. It was urged that the contract envisaged that the sugarcane would be supplied at the factory gate in such quantities and on such dates as may be specified in the instructions issued by the Cane Commissioner, Bihar. Such instructions would, if at all, fall within the purview of paragraph (c) or (d). A reservation order under paragraph (a) could not be the instructions in relation to the quantities or the dates of supply of the sugarcane. It cannot hence be said that the impugned order frustrates the petitioner's contracts with the co-operative societies. The impugned orders do not afford any cause of action to the petitioner on that ground.

9. Learned counsel for the petitioner relying on *Damomal Kausomal Raisinghani Vs. Union of India and Others*, urged that a part of the cause of action would arise where the consequence of an order occurs. In view of the finding that the impugned order does not frustrate the petitioner's contract, no such consequence would arise within Uttar Pradesh.

10. The last submission for the petitioner related to the infringement of the decision of the Joint Sugarcane Board. No statutory provision recognises such a Joint Board. The Sugarcane (Control) Order envisages the State Governments or the Cane Commissioners of the respective States of Uttar Pradesh and Bihar as the relevant authorities entitled to make orders thereunder. Under other laws prevailing in the States of Uttar Pradesh and Bihar like the Bihar Sugar Factories Control Act, 1937 and the U. P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 contemplated the creation of a Sugarcane Board for their respective States. In view of the territorial affinity of the two States, each State included representatives of the other State in its own Sugarcane Board. Such Sugarcane Boards used to hold meetings together, to discuss and deliberate on matters of mutual interest, and to formulate common policies. The petitioner's allegation is that at one such meeting on 3rd February, 1964, at Lucknow it was decided that 208 villages would be kept reserved for the petitioner factory. The minutes of such a meeting filed by the petitioner do not show that any such decision was recorded. Further, any such decision would not have the force of law. It will not be enforceable in a court of law. An order passed in exercise of the statutory authority flowing from the Sugarcane (Control) Order, 1966, could not be held invalid on the ground that it infringes the informal decision of the Joint Sugarcane Board. No cause of action for the setting aside of these orders or for passing consequential mandamus would arise on this basis.

11. In the result, no part of the cause of action for the reliefs claimed in the present petition arose within the territories of Uttar Pradesh. The present petition is hence not cognizable by this Court. It is accordingly dismissed on that preliminary ground. The petitioner will pay one set of costs to respondents nos. 1 and 2 and another set of costs to respondent No. 9. The other parties will bear

their own costs.