

(2010) 08 PAT CK 0021
In the Patna High Court
Case No : LPA No. 882 of 2005

The State of Bihar and Others	Vs	APPELLANT
Vishnu Sugar Mills Limited and Another		RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 — Section 2(i), 31, 32, 32A
Constitution of India, 1950 — Article 14, 21, 31

Citation : (2013) 1 PLJR 339

Hon'ble Judges : S.K. Katriar, J; Birendra Prasad Verma, J

Bench : Division Bench

Advocate : Mr. Purnendu Singh, for the Appellant; Y.V. Giri, Vikas Ratan Bharti and Mrigender Singh, for the Respondent

Judgement

S.K. Katriar, J.—The State of Bihar has preferred these four appeals under clause 10 of the Letters Patent of the High Court of Judicature at Patna, and are, aggrieved by a common judgment dated 28.2.2005, passed by a learned single Judge of this Court, whereby the following writ petitions have been disposed of with certain directions to the Cane Commissioner, Bihar, Patna:-

- (i) CWJC No. 15586 of 2004*, giving rise to LPA No. 882 of 2005
- (ii) CWJC No. 174 of 2005, giving rise to LPA No. 874 of 2005
- (iii) CWJC No. 16311 of 2004, giving rise to LPA No. 873 of 2005; and
- (iv) CWJC No. 343 of 2005, giving rise to LPA No. 875 of 2005

1.1. The learned single Judge has issued the following directions:-

On hearing counsel for the parties and the State Counsel and the Cane Commissioner, the Court deems it fit and proper to issue the following directions to be strictly adhered to in future for making reservations u/s 31 of the Act:

- (1) The Cane Commissioner must follow the statutory calendar strictly and must

ask for and receive the reservation proposals as provided under the statutory calendar.

(2) After holding meeting(s) and after hearing the parties on their respective proposals and after consulting the Zonal Development Council, the Cane Commissioner must pass a speaking order of reservation taking into account the proposals of the respective sugar factories, his reasons for accepting or not accepting or partly accepting the proposals of any of the sugar factories and finally his direction regarding reservation of villages in favour of different sugar factories.

(3) Reservation of traditional villages in favour of different sugar factories must be made at least for five years. In case during the period of five years, any of the sugar factories is closed down, it will be open to the Cane Commissioner to pass a supplementary order for one crushing season or for the remaining period of the reservation dealing with reallocation of the traditional villages of the closed sugar factories to other sugar factories after observing the requirements of notice and hearing as provided u/s 31 of the Act.

(4) The reservation of villages other than the traditional villages shall be for a period of not less than three years. The provision for making a supplementary order in case the sugar factory closes down shall apply also in the case of these villages.

(5) The order must be sent to Gulzarbagh Printing Press well in advance so that it is duly published at least a fortnight before the start of the crushing operations.

The facts are substantially common and may be briefly indicated. The four writ petitioners are Companies incorporated under the Companies Act and are, inter alia, engaged in the manufacture and sale of sugar. Vishnu Sugar Mills preferred CWJC No. 15586 of 2004, challenging the communication dated 30.9.2004, enclosing thereto a copy of the order of the Cane Commissioner of 28.9.2004, whereby 23 villages (a list of which is appended to the order), of East Champaran district, were reserved in favour of Sasamusa Sugar Works Limited (for the crushing season 2004-05).

1.2. According to the petitioner, for the purpose of reservation of villages in terms of Section 31 of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (hereinafter referred to as "the Act"), a meeting was convened by the Cane Commissioner on 24.9.2004, in which the representatives of the concerned sugar mills took part and in which the proposals submitted by the different sugar mills for reservation of villages in their favour were considered. It was alleged by the petitioner that neither in the proposal made by Sasamusa Sugar, nor in course of the meeting held on 24.9.2004, there was any suggestion to reserve 23 villages in question in favour of Sasamusa Sugar. It was further the case of the petitioner that after the meeting was over, a supplementary proposal (for which there is no provision in the Act) was submitted on behalf of Sasamusa Sugar for reservation of 36 additional villages of East Champaran in their favour.

On the supplementary proposal, the Cane Commissioner asked for a report from the Cane Officer, Motihari. From the record, it appears that the report was submitted on 29.9.2004, but the impugned order showed that the reservation of the disputed 23 villages was made in favour of Sasamusa Sugar a day earlier, without waiting for the report from the Cane Officer though the order purports to refer to the report by the Cane Officer.

1.3. It was a brief crushing season which was coming to a close, and may have rendered the writ petition infructuous. However, the learned single Judge dealt with the matter in detail because larger issues came up for consideration and had to be spelt out clearly. The learned single Judge noted the grievances of the writ petitioners that the Cane Commissioner was not considering the materials placed before him by different sugar factories to reserve the cane growing areas in favour of one or the other. Secondly, the reservation of cane growing areas was being done on yearly basis and that too not punctually, the calendar as per the prescribed procedure was not followed, as a result of which sugar factories as well as the cane growers learnt of allotment of the areas belatedly, causing problems to all concerned. It was also contended on behalf of the petitioners that the notifications allotting cane growing areas were not being published in the Official Gazette in spite of the statutory requirement, causing great inconvenience to all concerned. In that view of the matter, the learned single Judge proceeded to record the requisite directions which in substance and effect enforce the statutory provisions of law.

2. Learned counsel for the appellants raises a grievance that the directions amount to interference with the discretion vested in the Cane Commissioner and impermissible in law. He relies on the judgment of the Supreme Court in U.P. State Road Transport Corporation and another Vs. Mohd. Ismail and others, . He also submits that the learned writ court has erred in issuing the direction that allocation of traditional cane-growing areas would be for five years, and non-traditional areas would be for three years.

3. Learned counsel for the writ petitioners (respondents herein) has supported the impugned order.

4. We have perused the materials on record and considered the submissions of learned counsel for the parties. A perusal of the materials on record including the order of the learned single Judge creates very poor impression about the working in the office of the Cane Commissioner, shows not only ignorance of the provisions of laws governing the issues, but also arbitrariness. In fact, in view of the nature of the order of the learned single Judge, we do not see any justification for these appeals at the instance of the Cane Commissioner. We shall deal with the directions one by one.

5. Before we proceed further, we would like to notice that the learned single Judge observed that the crushing season for the period 2004-05 was very brief and was coming to an end. However, he chose to consider the larger issues and

clarified the law governing exercise of powers by the Cane Commissioner. Law is well settled that issues involving fixed tenures, for example grant of yearly licence, should in public interest be examined and decided by the court even if no relief can be granted to the petitioner, provided the issues are likely to recur. One of us (S.K. Katriar, J.) had the occasion to recapitulate the law in the judgment disposing of *Sri Madhuban Virat Pashu Mela Akorhi Vs. State of Bihar and Others*. The law in this behalf has been enunciated in the Constitutional Law of India by H.M. Seervai (4th Edition), Volume 2, the relevant portion of which occurring at page 1117 is set out hereinbelow for the facility of quick reference:-

Petitions challenging the grant of Govt. contracts for 1 year, and the grant of licences and permits for one year or less are not dismissed as infructuous if they are heard after the period of one year. If important questions of law or principle are involved, those questions are decided even if no relief can be granted to the petitioner¹. This is all the more so in public interest litigation. As a standard text book puts in:-

But in exceptional circumstances, the Courts taking a large view of public interest, have ordered the performance of a public duty when the time for performance had expired. In such cases, they have either treated the statutory time-limit as a merely directory provision² or regarded the application for mandamus as an appropriate occasion for making a public declaration of legal rights ^{3 & 4}.

Chandrachud, C.J. observed that the Union Govt. had promulgated about 200 Ordinances between 1960 and 1980 of which 19 had been passed in 1980. Having regard to the frequent use by the executive of a power to make a law of limited duration, it is submitted that for a court to allow a large section of our people's rights to be affected by what may turn out to be illegal executive action without redress can only be described as an unjustified abdication of judicial power, and all the more so because the Ordinance before the Court affected the liberty of the subject under a law of preventive detention.

8. The following exposition of law occurs at page 1678 of the same volume:-

It is submitted that a writ petition should not be dismissed as futile in respect of an order passed from time to time (which has expired when the petition is heard) when the power to pass that kind of order is challenged. Thus, if the Police Commr. bans a procession each year during a particular religious festival, and the persons aggrieved dispute his right in law to do so, by a petition promptly filed, the court ought to determine the right on the merits, even if the order imposing the ban has expired when the petition is heard, for to dismiss the petition would be to deprive citizens of their fundamental rights under circumstances where they would have no other remedy at all⁵ and to give a charter to a public authority to violate fundamental rights with impunity. In *Ghaio Mal & Sons vs. Delhi*⁶ the Sup. Ct. held that in view of the undisputed practice that a licence once granted by the Chief Commr. was almost automatically

renewed by the Collector from year to year, it could not be said that the writ application and the appeal had become infructuous on the expiry of the period of the licence in dispute, and it was only proper that the appeal should be heard on its merits, Again in *Sudhir Kumar vs. S.T.A.* 7 where the validity of a temporary permit was challenged, the court went into the question even though on the day when the petition was heard the permit had expired and no mandamus could be granted. But the court held that the temporary permit granted in the case was not legal. It is submitted that the course adopted by the Sup. Ct. and the High Court was correct. However, it has been held that a petition challenging an order of reversion is not futile because the petitioner retired before the petition was heard, for if the reversion order was quashed, he would be entitled to relief in respect of arrears of pay and pension as though he had never been reverted.⁸

6. We are, therefore, of the view that the learned single Judge was perfectly justified in dealing with the issues including those of larger public interest governing the powers, duties and functions of the Cane Commissioner, the interest of the cane growers, as well as the sugar factories. Even though the crushing season may be over, the Court would in appropriate cases be entitled to deal with the matter and expound the law in larger public interest if the issues are likely to recur in the following years. The present batch of cases is undoubtedly one such.

7. We shall now deal with the directions of the learned single Judge one by one. The issues are governed by the Act, read with the Bihar Sugarcane (Regulation of Supply and Purchase) Rules, 1978 (hereinafter referred to as "the Rules"). The first direction is that-

(1) The Cane Commissioner must follow the statutory calendar strictly and must ask for and receive the reservation proposals as provided under the statutory calendar.

Rule 25 provides as follows:-

25. Reservation of areas to factories and procedure for purchasing cane grown in such areas.--The order of the Cane Commissioner, reserving any area to any extent or internal factory shall normally be issued on or before the 31st day of July in each crushing year for which the area is proposed to be reserved. Provided that, in exceptional circumstances to be recorded in writing such order may be issued any time between the 31st July and the 30th September next following.

(2) The occupier of an external factory shall make an application, in Form XI, for an area within the State to be reserved for the purposes of his factory and shall give an undertaking, in Form XII, to purchase cane solely through the co-operative society specified in the undertaking.

(3) The offer for supply of cane envisaged in sub-section (3) of Section 32 shall be made, in Form XIII, on or before the 31st day of August in the relevant

crushing year or within fifteen days of the date of the Cane Commissioner's order of reservation whichever is later. The offer made by a cane grower shall be deemed to be an offer made by the co-operative society concerned if such cane grower becomes a member of co-operative society any time before the date of agreement specified in sub-rule (4), or he is required to supply cane through a cooperative society in pursuance of an order of the Cane Commissioner referred to in clause (iii) of the provision of sub-section (4) of Section 32. Acknowledgement of receipt of any offer made under this rule shall be made by the occupier or manager of the factory, in Form XIII-A immediately after receipt of such offer.

(4) The agreement for purchase of cane by occupier of any factory, envisaged in sub-section (4) of Section 32, shall be entered into in Form XIV in respect of supplies by cane growers and in Form XV in respect of supplies by co-operative societies. Such agreement shall be entered into or before the 31st day of October in every crushing year or within six weeks after the date of Cane Commissioner's order of reservation whichever is later.

(5) Any dispute arising out of the agreement signed under sub-rule (4) shall be referred to the Cane Officer concerned by either of the parties, who after giving both the parties a reasonable opportunity of being heard, shall give his decision.

(6) An appeal against the decision of the Cane Officer shall lie with the Collector within fifteen days and the decision of the Collector shall be final.

(7) The order of the Cane Commissioner for purchaser of cane grown in any village in a reserved area solely through the co-operative society of the village shall be issued on or before the 15th day of September in the crushing year or within three weeks of Cane Commissioner's order for the reservation, whichever is later.

(8) The Cane Commissioner shall issue the order referred to in sub-rule (5) after consulting the occupier of the factory and the co-operative society concerned and taking into consideration any objection that may be raised by any of them.

(9) Copies of every order of reservation and every order referred to in sub-rule (5) shall be sent to the occupier of the factory and the co-operative society concerned.

"Crushing year" is defined in Section 2(i) of the Act, which means the year commencing on the 1st day of July in any year and ending on the 30th June in the year next following. It is common knowledge that sugarcane is actually crushed in a sugar factory from November to March with some variations. It is, therefore, imperative that the time table indicated in Rule 25 must be followed, otherwise it will not be possible for the cane growers to supply sugarcane, and equally would not be possible for the factory to purchase sugarcane. It is evident from a perusal of the order of the learned writ court that the learned Cane Commissioner does not very often follow the calendar causing great hardships to

the cane growers and the sugar factories. The Supreme Court had the occasion to deal with the question and the importance of following the prescribed procedure in the case of *Ranjit Thakur Vs. Union of India (UOI) and Others*, , the relevant portion of which is reproduced hereinbelow for the facility of quick reference:-

The procedural safeguards contemplated in the Act must be considered in the context of and corresponding to the plenitude of the summary jurisdiction of the Court-Martial and the severity of the consequences that visit the person subject to that jurisdiction. The procedural safeguards should be commensurate with the sweep of the powers. The wider the power, the greater the need for the restraint in its exercise and correspondingly, more liberal the construction of the procedural safeguards envisaged by the Statute. The oft quoted words of Frankfurter, J. in *Viteralli v. Saton*, 359 US 535; are again worth recalling:-

...if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed...

This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.

"The history of liberty" said the same learned Judge "has largely been the history of observance of procedural safeguards." (1942) 318 US 332.

We, therefore, fail to understand as to how and why the Cane Commissioner can have a grievance with this direction which is only to ensure that the time table as per Rule 25 must be followed. The grievance is rejected.

8. The second direction issued by the learned single Judge is as follows:-

(2) After holding meeting(s) and after hearing the parties on their respective proposals and after consulting the Zonal Development Council, the Cane Commissioner must pass a speaking order of reservation taking into account the proposals of the respective sugar factories, his reasons for accepting or not accepting or partly accepting the proposals of any of the sugar factories and finally his direction regarding reservation of villages in favour of different sugar factories.

Section 31 of the Act reads as follows:-

31. Declaration of reserved area -

(1) The Cane Commissioner may, having regard to the crushing capacity of the factory, the availability of sugarcane in such area and the need for production of sugar and after consulting the council concerned and the occupier of the factory or the occupiers of other affected factories and after considering any objection that may be raised, issue an order, by notification in the official gazette, declaring any area to be the reserved area for the purpose of supply of cane to

the factory during a particular crushing year or years and may likewise cancel any such order or alter the extent of the area so reserved:

Provided that, in the case of a factory situated outside the State of Bihar, such declaration may be made only on receipt, by the Cane Commissioner, of an application in the prescribed form from the occupier of such factory requesting that an area in Bihar may be reserved for the supply of cane to such factory and on condition that such occupier establishes a branch office in the State of Bihar and deposits a security of five thousand rupees with a Collector in the State of Bihar and gives an undertaking in the prescribed form to purchase cane grown in the reserved area solely through a co-operative society of such area.

(2) Any person aggrieved by an order of the Cane Commissioner under subsection (1) may, within thirty days of the receipt of such order or within the same period from its publication in the official gazette, appeal to the prescribed authority.

Section 31 clearly provides that, while reserving cane growing areas for one or the other sugar factory, the Cane Commissioner shall take into account the crushing capacity of the factory, availability of sugarcane in such area, the need for production of sugar, and after consulting the council concerned and the occupier of the factory or the occupier of the other affected factories. The direction of the learned writ court is entirely consistent with the provisions of Section 31 of the Act. There is an obligation on the Cane Commissioner to consider the aspects of the matter mentioned therein and then pass a speaking order. The appellate authority or this Court or anyone else may not ever come to know the reasons for the number of villages being vastly different in favour of different sugar mills or a particular cluster of villages in one district falling in favour of one sugar mill and not to the other. Differences in the crushing capacity and the installed capacity of the different sugar factories, the area of cane-growing potential of different villages, proximity of one or the factory with the village, the policy of the State Government to protect its own industries, or the question whether or not the interest of the cane growers would be better served by assigning them to the sugar factory in the adjoining State(s), may be relevant considerations and must be reflected in the order. The learned Cane Commissioner will have to keep in mind that the Act and the Rules interfere with the fundamental right to carry on occupation, trade or business. The cane-grower is obliged to sell, and the factory is obliged to purchase, as per the order of the learned Cane Commissioner. He is, therefore, all the more obliged to hear the parties, take into account all the relevant circumstances, must exclude all the irrelevant circumstances, and assign reasons in support of his order so that correctness of the same can be adjudged by the superior court. Failure to assign reasons is tantamount to confronting the Court with its bare conclusions which will erode the power of judicial review conferred on this Court by the Constitution of India, and cannot be permitted.

9. The Supreme Court has observed in its judgment in *The Purtabpore Co., Ltd.*

Vs. Cane Commissioner of Bihar and Others, that the power exercisable by the Cane Commissioner u/s 31 of the Act is quasi-judicial in nature. Paragraphs 20 and 21 of the judgment are relevant and reproduced hereinbelow for the facility of quick reference:-

20. On applying the various tests enunciated in the above decisions, there is hardly any doubt that the proceeding before the Cane Commissioner was a quasi-judicial proceeding. In this connection reference may be usefully made to the decision of the Court of Appeal of New Zealand in *New Zealand Dairy Board vs. Okitu Cooperative Dairy Co. Ltd.*, 1953 NZLR 366. We are referring to that decision because the facts of that case bear a close resemblance to the facts of the present case. Therein as a result of a Zoning Order made by the Executive Commissioner of Agriculture in May 1937, the respondent dairy company, carrying on business in Gisborne and the surrounding district, and the *Kia Ora Cooperative Dairy Co. Ltd.*, became entitled to operate exclusively in a defined area in the Gisborne district. They were excluded from operating outside that area. The zoning conditions so established continued to exist until 1950, when the appellant Board issued the zoning orders which were impugned in that case. It may be noted that the zoning orders were made in the exercise of the statutory power conferred on the appellant Board. Before 1942, the respondent company was approached by the Health Department with a request that it undertakes the treatment and supply of pasteurized milk to the public companies had declined the proposal. The company complied with the request, after overcoming the difficulties of finance. The scheme was put into operation. In 1942 the respondent company put up a treatment plant and expanded its business. This expansion resulted in an annual turnover in the company's milk department going up to about 90,000 pounds as against 43,000 pounds in its butter department. In March 1950, the *Kia Ora Company*, by letter, expressed its desire that the appellant Board (which had been substituted by regulation for the Executive Commissioner) should examine the question of cream and milk supplies in the Gisborne and surrounding districts. This letter was, in substance, an application to the Board to review the whole question of zoning and to require the respondent company to cease the manufacture of butter. Moreover, the letter set out the circumstances in a manner prejudicial to the respondent company. After various meetings and negotiations between the appellant Board, companies concerned, and interested parties, at none of which were the contents of the *Kia Ora Company's* letter to the Board disclosed to the respondent company, no agreement was reached. The result of discussions with the *Kia Ora Company* and detailed replied to complaints were given to the Board by the respondent company, and its letter ended with a statement to the effect that it would appreciate the privilege of appearing before the full Board with the object of stating its case more fully or of answering any questions. The Board ignored this specific request. At a full meeting of the Board held on May 31, 1950, Board decided that only one butter factory should operate in the Gisborne district. On August 3, the Board by resolution, decided to give notice of its intention of

issuing a zonal order to operate as from October 1, 1950 assigning to the Kia Ora Company the cream collection area over which the two companies then operated. On August 29, the respondent company wrote to the Board protesting and for an opportunity of being heard. On September 2, 1950, the appellant Board in exercise of the power conferred upon it by Resolution 16 of the Dairy Factory Supply Regulations, 1936 and in terms of its resolution of August 3, 1950, made Zoning Order No. 120 which was the subject of the proceedings before the Supreme Court of New Zealand. That order was to come into force on October 1, 1950. Its effect was to assign exclusively to the Kia Ora Company the area defined in Zoning Order (No. 30) of 1937 as that in which the two companies could jointly collect cream produced in that area, and to prohibit the respondent dairy company after October 1, 1950, from collecting or receiving any cream so produced for the purposes of manufacture into cream or butter.

21. The respondent company and others presented a petition to the Parliament praying for relief and remedy by way of legislation either in the direction of reversing and setting aside the Board's decision in the matter of the zoning order or setting aside such decision and rehearing of the matter by an independent tribunal. The petitioner was heard by a Select Committee of House of the Representatives, which decided to make no recommendation on the petition. On August 4, the Board made an amended Zoning Order (No. 120A) postponing until June 1, 1951, the date of the coming into operation of Zoning Order No. 120 already made, but otherwise confirming that order. The respondent company commenced an action against the Board claiming (a) a declaration that Zoning Orders Nos. 120 and 120A issued by the Board were invalidly passed and were of no legal effect; (b) an order of certiorari to remove into the Supreme Court and quash the Zoning Orders; and (c) an injunction restraining the Board from carrying out its intention of promulgating the Zoning Orders or from proceeding further or exercising any jurisdiction in accordance with the same. The action was heard by Mr. Justice Hay, who found that, in the conduct of the inquiry instituted by the Board, following the application made to it by the Kia Ora Company, there was, in the various respects mentioned in the judgment, a departure from those principles of natural justice which were incumbent on the Board; and in particular, the plaintiff company was denied a hearing on the crucial issue as to whether or not Zoning Order should be made. The learned Judge held that the plaintiff company was entitled to succeed in the action in respect of all the reliefs it claimed and he gave the judgment in its favour with costs against the Board. The Court of Appeal affirmed by majority the judgment of the learned trial Judge. The Court held that the New Zealand Dairy Board in making its Zoning Order No. 120 on September 1, 1950 was determining a question affecting the rights of the respondent company and further that the order of the Board was that of a body that was, at least primarily, an administrative body and the question whether such a body was under a duty to act judicially in the course of arriving at an administrative decision was to be determined on the true construction of the authorizing

legislative provisions and the conditions and circumstances under which, and in which, the jurisdiction fell to be exercised. It held that on the facts and circumstances of the case the power exercised by the Board vitiated as the Board had failed to conform to the principles of natural justice in making the Zoning Order in question and hence the same is unsustainable. The decision of the Privy Council in *James Edwards Jeffs vs. New Zealand Dairy Production and Marketing Board*, 1967 1 AC 551, proceeded on the basis that the aforementioned decision of the Court of Appeal is correct.

10. The Cane Commissioner is, therefore, obliged in law to follow the principles of natural justice which inheres in itself the right to be heard, and reasons have to be recorded in support of the order by the authority in whom the power is vested. The Supreme Court has held in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, that order of every quasi-judicial authority must be supported by reasons and has been so held by a long line of decisions of the Supreme Court. Reference may also be made to the judgment of the Supreme Court in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, wherein it has been observed that assigning reasons is a fundamental of good administration and there is nothing like unfettered discretion immune from judicial reviewability. Paragraph 24 of the judgment is relevant and reproduced herebelow for the facility of quick reference:-

24... "The giving of reasons", as Lord Denning put it in *Breen vs. Amalgamated Engineering Union*, (1971) 1 All E.R. 1148 "is one of the fundamentals of good administration" and, to recall the words of this Court in *Khudiram Das Vs. The State of West Bengal and Others*, in a Government of laws "there is nothing like unfettered discretion immune from judicial reviewability." The executive, no less than the judiciary, is under a general duty to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomized in Arts. 14 and 16(1).

We entirely agree with the second direction of the learned single Judge.

11. The third and the fourth directions of the learned single Judge are as follows:-

(3) Reservation of traditional villages in favour of different sugar factories must be made at least for five years. In case during the period of five years, any of the sugar factories is closed down, it will be open to the Cane Commissioner to pass a supplementary order for one crushing season or for the remaining period of the reservation dealing with reallocation of the traditional villages of the closed sugar factory(ies) to other sugar factories after observing the requirements of notice and hearing as provided u/s 31 of the Act.

(4) The reservation of villages other than the traditional villages shall be for a period of not less than three years. The provision for making a supplementary order in case the sugar factory closes down shall apply also in the case of these villages.

This has to be seen in the background of the general and the longstanding grievance raised by the petitioners that the statutory calendar is not followed. Apart from the failure to follow the calendar, i.e. the statutory time schedule indicated in Rule 25, the added burden on the sugar factories, zonal councils, and sugar factories to produce representations/returns/objections, year after year, the obligation on the Cane Commissioner to pass reasoned orders every year, and also the unhappy tendency to pass summary orders only indicating the allotment of cane growing areas to one or the other, completely bereft of reasons, showing non-application of the mind to the facts and circumstances placed before him. It will also take care of the grievances of sugar factories that yearly allotment prevents them from making investments and developing cane-growing areas reserved in their favour, and also makes them run to the Secretariat every year involving not only harassment but also encourages undesirable practices. It will also save the Cane Commissioner from writing award/report every year.

12. We further note the expression "....a particular crushing year or years" occurring in Section 31 of the Act which indeed provides the requisite leeway to the Cane Commissioner to allot cane-growing areas for more than one year. In view of the grievance of the writ petitioners and the experience over the years, we are in no doubt that the learned single Judge passed a most appropriate direction that the traditional areas shall be allotted for five years, and non-traditional areas for a period of three years, so as to ensure certainty in the state of affairs and also reducing the burden on the sugar factories, the cane growers, the zonal councils, as well as the Cane Commissioner. We also note with emphasis the observations of the learned single Judge that allotment of areas for a tenure covering more than one year will enable the sugar factories to invest for development of the cane-growing areas which would be allotted to them with definiteness. Indeed we are of the view that the non-traditional areas may also be allocated for a period of five years. We, however, leave it at that and shall consider it in an appropriate proceeding in future.

13. The Supreme Court has held as follows in *Clariant International Ltd. and Another Vs. Securities and Exchange Board of India*, :-

26. The Board, further, having a discretionary jurisdiction must exercise the same strictly in accordance with law and judiciously. Such discretion must be a sound exercise in law. The discretionary jurisdiction, it is well known, although may be of wide amplitude as the expression "as it deems fit" has been used but in view of the fact that civil consequences would ensue by reason thereof, the same must be exercised fairly and bona fide. The discretion so exercised is subject to appeal as also judicial review, and, thus, must also answer the test of reasonableness.

27. In *Kruger vs. Commonwealth of Australia* [(1997) 146 Aus LR 126] it is stated:-

Moreover, when a discretionary power is statutorily conferred on a repository, the power must be exercised reasonably, for the legislature is taken to intend that the discretion be so exercised. Reasonableness can be determined only by reference to the community standards at the time of the exercise of the discretion and that must be taken to be the legislative intention...

28. The discretionary jurisdiction has to be exercised keeping in view the purpose for which it is conferred, the object sought to be achieved and the reasons for granting such wide discretion. (See *Narendra Singh Vs. Chhotey Singh and Another*,).

29. A discretionary jurisdiction, furthermore, must be exercised within the four corners of the statute [See *Dr. Akshaibar Lal and Others Vs. The Vice-chancellor, Banaras Hindu University and Others*, . and also para 9-022 of *de Smith, Woolf and Jowell: Judicial Review of Administrative Action*, 5th Edn., p. 445]

14. The learned single Judge has lastly issued the following direction:-

(5) The order must be sent to Gulzarbagh Printing Press well in advance so that it is duly published at least a fortnight before the start of the crushing operations.

Section 31 itself provides that the allotment of cane growing areas have to be published in the official gazette. The value and importance of a gazette notification in terms of a governmental action in discharge of statutory duties and functions is well known. Any attempt towards refusal to follow it is impermissible in law. It is only after publication of the gazette notification in terms of Section 31 of the Act that the concerned parties come to know of their rights and liabilities, which cane grower has to supply to which sugar factory, or which sugar factory has to purchase sugarcane from which village.

15. We must in this connection notice the provisions of Section 32A of the Act which has been inserted in the Act by the Bihar Sugarcane (Regulations of Supply and Purchase) (Amendment) Act, 1993 [Bihar Act II, 1994], and reads as follows:-

32-A. Payment of compensation.--If cane remains undisposed in reserved area, the order for payment of compensation to the cane growers concerned shall be made after due enquiry by the Cane Commissioner after giving an opportunity of being heard to both the parties concerned.

In other words, refusal or failure on the part of the sugar factory to purchase sugarcane from the areas allotted to it will make it liable for compensation. It is, therefore, imperative that the parties should be aware of their rights and liabilities in terms of Section 31 of the Act read with other relevant provisions of law so that sugar factory does not become liable for compensation, which is possible only if the prescribed procedure in terms of Section 31 read with Rule 25 is followed, and the notification is timely published in the official gazette.

16. The materials on record create an impression in our mind that the learned

Cane Commissioner has been acting without following the laws governing the issue, and has been acting in an arbitrary manner which cannot be permitted in a polity governed by the rule of law. Article 14 of the Constitution strikes at the root of arbitrary action. The two are indeed sworn enemies. Mr. Justice William O. Douglas of the U.S. Supreme Court has observed as follows in the decision of the U.S. Supreme Court in the case of *United States vs. Wunderlick* (342 US 98, 96 Led 113, 72 S Ct 154):-

Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler, some civil or military official, some bureaucrat. Where discretion is absolute, man has always suffered. At times it has been his property that has been invaded; at times, his privacy; at times, his liberty of movement; at times, his freedom of thought; at times, his life. Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions.

The same has been followed by the Indian Courts repeatedly. The Supreme Court quoted the same with approval in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, , at page 767. The relevant portion of paragraph 331 of the judgment is reproduced hereinbelow:-

331... If an individual action is taken as per the procedure on its own facts its legality may be tested. But it would be no justification to confer power with wide discretion on any authority without any procedure which would not meet the test of justness, fairness and reasonableness envisaged under Articles 14 and 21 of the Constitution. Said this Court in *S.G. Jaisinghani Vs. Union of India (UOI) and Others*,

In this context it is important to emphasise that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey: *Law of the Constitution*, 10th edn., Introduction ex.) "Law has reached its finest moments", stated Douglas J. in *United States vs. Wunderlick* 342 US 98 : 96 Led 113 (1951) "when it has freed man from the unlimited discretion of some ruler. Where discretion is absolute, man has always suffered." It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes* (1770) 4 Burr 2528, 2539 "means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague and fanciful.

The Supreme Court once again quoted the observations of Mr. Justice Douglas in

Shiv Sagar Tiwari Vs. Union of India and others, , at page 446. The relevant portion is reproduced hereinbelow for the facility of quick reference:-

The administrative law has of late seen vast increase in discretionary powers. But then, the discretion conferred has to be exercised to advance the purpose to subserve which the power exists. Even the Minister, if he/she be the repository of discretionary power, cannot claim that either there is no discretion in the matter or unfettered discretion. This proposition was rejected emphatically by the House of Lords in the landmark decision of *Padfield* 1. This apart, as pointed out in *United States vs. Wunderlick* 342 US 98: 96: Led 113 (1951)

Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler, some... Official, some bureaucrat.... Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions.

17. We fail to understand any objection to the directions. We are indeed very sorry that the issues so clearly discussed, and directions wholly consistent with the provisions of the Act and the Rules have been made by the learned single Judge, notwithstanding which the State of Bihar and the Cane Commissioner have chosen to prefer these appeals which are absolutely frivolous and indeed have to be dismissed. A writ of Mandamus can always be issued for enforcement of statutory duties and functions.

18. In the result, we entirely agree with the order of the learned single Judge. The appeals are dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

Birendra Prasad Verma, J.

I agree.

*Ed. -Reported in 2005(2) PLJR 495.

1. [See for example, *Ghaio Mal & Sons vs. Delhi*, (1959) SCR 1424, (59) A.SC. 65; *Sudhir Kumar vs. S.T.A.* (63) A.ASS. 1; *Rashbihari vs. Orissa* (69) A.SC. 1081, (1969) SCR 374.]

2. (*R vs. Norwich (Mayor)*, (1830)1 B & Ad. 310; *Rochester (Mayor) vs. R.* (1858) E.B. & E. 1024; *R vs. Hanley Revising Barrister*, (1912)3 K.B. 518; *R vs. Woodbury Licencing JJ. Ex p. Rouse*, (1960)1 W.L.R. 461 (Mandamus to convene licensing meeting refused after expiry of a statutory date, justices had refused licence after inadvertently fixing the date for holding the meeting too late)

3 & 4. [(*Vice Restaurant inc. vs. Montreal*, (1959) SCR 58 (Canada) (See de Smith, *Judicial Review of Administrative Action*, 4th ed. P. 560.))]

5. (No action for damages would lie against the Police Commr., nor would it be the desire of the Court that people should defy the order and invite a criminal

prosecution in order to dispute the power of the Police Commr.)

6. [(1959) SCR 1424; (59) A.SC. 65; Ratilal Bhogilal vs. Gujarat (1956) Guj. 571, (66) A. Guj. 244, 248 (Where an order suspending and cancelling a licence for arms was without jurisdiction and void a writ quashing the order would not be infructuous because "Firstly, there is ignominy of the charge that the petitioner is guilty of something which is prejudicial to the security of public peace, and secondly, his chances of procuring a fresh licence are greatly prejudiced if the cancellation of his licence is allowed to remain")]

7. [(63) A. ASS. 1, Ratilal Bhogilal vs. Gujarat, (1956) Guj. 571]

8. [Ram Chandra vs. West Bengal (64) A. Cal. 265]

9. Padfield vs. Minister of Agriculture, Fisheries and Food 1968 AC 997: (1968) All E.R. 694: (1968) 2 WLR 924, HL