

(2002) 04 PAT CK 0059
In the Patna High Court
Case No : C.W.J.C. No. 2181 of 1995

Uday Shankar Prasad and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 25-04-2002

Acts Referred:

Citation : (2002) 04 PAT CK 0059

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, C.J.—This writ petition is by 19 petitioners. Some are individuals, the others Co-operative Societies. The petition challenges certain amendments which have been made to the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 by the Bihar Sugarcane (Regulation of Supply and Purchase) (Amendment) Act, 1993, Bihar Act No. 11 of 1994.

2. The thrust of the complaint in the petition is on deleting the expression "Cooperative Societies" from certain Sections of the Act and consequently taking away the rights and privileges of the Co-operative Societies in respect of regulation of supply and purchase of sugar cane. This submission is made in paragraph 1 of the writ petition itself. The reference to amendments which have been incorporated is in Sections 2(g), 29, 31, 32, 33, 35, 39, 40, 41, 42, 43, 44, 46, 48, 50 and 60 of the Act. In paragraph 2 of the writ petition, it is stated in no uncertain terms that there is no reason or necessity for the amendments made deleting the rights and duties of the "Co-operative Societies" and "Co-operative Development and Cane Marketing Union Ltd." The contention is that the amendments are against the preamble of the Act which has been enacted to regulate the purchase, supply and distribution of sugarcane intended for use of sugar factories concerned and convenience of the member of the Co-operative Societies. Thus, it is contended that the amendments, so incorporated into the Act, are ultra vires. The petitioners submit in undertones in paragraph 5, that they are aggrieved because the Act has inserted the expression "Cane Growers Co-operative Society" by removing the general reference to co-operative

societies. The contention is that co-operative societies in generality have been removed from the scene and the field has been given exclusively to co-operative societies whose members, are cane growers. This aspect has been referred to in paragraph 6 of the petition.

3. From these contentions it is clear that perhaps there is a business rivalry between co-operative societies generally and co-operative societies which we specifically constituted of cane growers of the areas in context.

4. Amongst the 19 petitioners, petitioner Nos. 1, 2, 3, 4, 10, 13 and 19 are either Chairmen or Members of the Primary Agriculture Credit Society. Petitioner Nos. 15, 16, 17 and 18 are members of a society in the nature of Co-operative Development and Cane Marketing Union. Petitioner Nos. 5, 6, 7, 8, 9, 11, 12 and 14 are individuals and the petitioners have not disclosed as to who exactly they are, and connected with which co-operative society and in what capacity. Perhaps like other petitioners they are members of the co-operative societies as primary agriculture credit society or a co-operative development and cane marketing union.

5. First it needs to be understood on what exactly is the field of these co-operative societies that they are aggrieved by the amendments which have been incorporated in the Act.

6. The matter relates to the supply of sugarcane to manufacturers of crystal sugar through the vacuum pan process. A sugar factory draws on sugarcane from its hinterland, conveniently the area which surrounds the sugar factory. A sugar factory which manufactures sugar and the agriculturists who grow sugarcane, compliment and support each other. Basically, it is a matter of a co-ordination of demand and supply of sugarcane between the ideal period to ensure that a sugar factory attains optimum recovery during the crushing season and the manufacture is to the full capacity. These factors affect the cost of manufacture and the price of manufactured sugar. Then, regulation between supply and demand between different sugar factories is monitored, as the law requires it.

It is ensured that there is no overlapping of sugarcane areas should there be other sugar factories in the vicinity. It is in this regard that initially under the Essential Commodities Act, 1955 the Government of India issued the Sugarcane (Control) Order 1966. By this order the supply, and distribution of sugarcane is regulated. It is this order which provided that the Central Government could by an order notified in the official gazette reserve any area where sugarcane is grown for supply to an assigned sugar factory. While making the assignment of areas growing sugarcane, due regard is to be had to the crushing capacity of the factory, the availability of sugarcane in the reserved area and the need for production of sugarcane with a view to enabling the factory to purchase the quantity of sugarcane required by it. Other factors relating to quality, price, etc. are provided for. Other manufacturers who may have the need for sugarcane,

like manufacturers of khandsari sugar, the law regulates the supply of sugarcane, so that cane may first be available to a sugar factory and that khandsari units would not be established except in accordance with a licence issued by the Central Government. In a reserved area, preference for supply of sugarcane, was given to a sugar factory first. The theme of the Sugarcane (Control) Order, 1966 was to ensure the supply of sugarcane to a sugar factory and that also of sugarcane from its hinterland.

7. Subsequently, about 15 years later the State of Bihar enacted the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (hereinafter referred to as the Act). The objects of the Acts were :

"To regulate the production, supply and distribution of sugarcane intended for use in sugar factories and khandsari sugar manufacturing units and taxation of sugarcane and matters incidental thereto."

8. As sugarcane was necessarily to be supplied by a cane grower the expression "Cane grower" was defined thus :

"Cane-grower" means a person who grows cane in a reserved area either by himself or by members of his family or by hired labours and who is not a member of any co-operative society in the village concerned."

This definition is important because the first change by the amendment which was challenged went into this definition. From a plain reading of the definition as it stood earlier, it is clear that a cane grower is that person who grows cane in his reserved area either by himself or on behalf of the members of his family or by hired labours and that such persons are not a member of any co-operative society of the village concerned. Two things are very significant. The supply of sugarcane to a sugar factory is to be regulated under the Act and is in reference to a particular area. Secondly, the cane grower has been treated with a special status and has been protected as not being a member of any co-operative society in the village concerned.

9. Before this Court proceeds further, a reflection is needed on what a reserved area is. Whether under the Sugarcane Control Order, 1966 or under the 1981 Act, before the crushing season begins, on estimates collected, the hinterland of a factory sees the reservation of areas where sugarcane is grown so that by and large such areas are assigned for supply of sugarcane to sugar factories. Other aspects of this special legislation are that the farmers around a sugar factory are encouraged to grow sugarcane, and in this regard sugar factories join the effort. The reservation of assigned sugarcane areas depends on the harvest which is correlated to supply. Because there is proximity of the areas which grow sugarcane to a sugar, factory, the law encourages development of sugarcane in these reserved areas to ensure supply to the sugar factories. A notification is issued by the State Government prior to the crushing season and several sugarcane factories see reservation of sugarcane areas to them. Sugarcane grown in any reserved area then necessarily has to be supplied to a particular

sugar factory for which the area is reserved. Thus, there is a relationship and a nexus between the sugarcane growers and the factory which receives the sugarcane for crushing for manufacture of sugar.

10. The contention of behalf of the petitioners that the deletion of co-operative societies by the amending Act affects the petitioners is a vague submission. Firstly, it depends on who the petitioners are and secondly, there appears to be some lack of understanding that co-operative societies have been deleted by reference and context in the Act. The Court will take the second aspect first.

11. In so far as the second aspect is concerned, far from the submissions as have been made in the petition, cooperative societies continue to remain identified, by reference, in the Act. The petitioners have perhaps not noticed the references in detail. In this regard, in so far as the expression "cane growers" is concerned, there is emphasis on being specific to cane growers as a class as opposed to the general reference to cooperative societies, which has been removed. This may be seen in comparison with the old definition and amended definition :

Old definition New definition

"Cane grower" mean a person who grows cane in a reserved area either by himself or by members of his family or by hired labours and who is not a member of any co-operative society in the village concerned.

"Cane growers" means a person who grows cane either by himself or by members of his family or by hired labours."

12. Then, whereas co-operative societies as an expression was mentioned in Section 2 (g) of the Act. By the Amended Act; now, this expression will stand to represent "Cane growers Co-operative Societies" with an added emphasis that a "Cane Co-operative Union" may be an affiliated body of such a society. If the matter is to be understood in its correct perspective, the change brought by the amendment to Section 2 (g), can be seen below:

before amendment after amendment

"Co-operative society" means a society registered under the Bihar and Orissa Co-operatives Act, 1935 (B. & O. Act VI of 1935) one of the objects of which is to sell cane grown by its members and includes a union of such societies, registered under that Act, namely, a Co-operative Development and Cane Marketing Union or a Vyapar Mandal Co-operative Society

"Cane Co-operative Union" means any affiliated body of Cane growers Co-operative Society registered under the Bihar Co-operative Societies Act. 1935 (Bihar Act 6 of 1935)."

13. The amendments which have been incorporated are closer home to the context of the matter. The context of the matter clearly is sugarcane supply by a cane grower to a sugar factory. Thus, the Act removes the generality to cause

any confusion by reference to general co-operative societies and classifies them in the context of the Act to be co-operative societies of cane growers or cane co-operative marketing union. This puts the sugarcane growers as select body within the meaning of the 1981, Act. Thus, there is no impediment that sugarcane growers may make supply to a sugar factory in a reserved area and yet he may be a member of a society which is cane grower society or a cane co-operative marketing union.

14. Now the first aspect as to who the petitioners are? The petitioners directly have no nexus with sugarcane growers. Some of the petitioners who claim to be incorporated as societies, are either credit societies or societies which are co-operative development societies and cane marketing is their business. In the writ petition the petitioners do not declare as to what exactly their functions are. The petitioners do not claim that they are agriculturists and growers of sugarcane. Plainly, the petitioners are in the business providing monetary credit or in the business of purchasing sugarcane from cane growers and earn a commission as middlemen when supplying sugarcane to sugar factories. This was acknowledged in submissions. The amendments which have been brought to the 1981 Act have resulted in a direct contact between the sugar factories and the cane growers or cane growers cooperative societies or cane co-operative unions. In the circumstances, any co-operative society just cannot work in a reserved area and claim business out of supplying sugarcane to sugar factories. This field has been left simply between sugarcane growers as agriculturist or a co-operative society of they which are members as cane growers.

15. These amendments have been undertaken to ensure that sugarcane is not purchased and taken out of a reserved area to negate the purpose of assigning an area to a su''gar factory. The dominant purpose of the amendments is to ensure supply of sugarcane of a reserved area to sugar factories, first. The petitioners worked themselves to act as commission agents or intermediary businessmen by purchasing sugarcane from the growers and supply this sugarcane to sugar factories. This aspect has been eliminated in the Act which has been amended now. Now sugarcane may be supplied by co-operative societies whose members are cane growers.

16. Several Cases wee cited but subsequently only two were relied upon. These are in the matter of Sheetal Prasad Gupta and Others Vs. State of Bihar and Others, and Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra and Others Vs. State of Madhya Pradesh and Others, .

17. Neither of the cases apply to the situation and facts and circumstances of the present case. The matter of Sheetal Prasad Gupta and Others Vs. State of Bihar and Others, is an aspect of putting co-operative societies on financially sound footing. Changes in the Bihar Co-operative Societies (Amendment) Ordinances, 1988/1989 were sought to be challenged. The matter of putting cooperative societies on a financially sound footing is entirely different from identifying co-operative societies which have a special nexus and correlation by law to the

supply, manufacture and production of sugar. Cane growers of an assigned area have been given preference to act within such an area for supply of sugar cane to a sugar factory within its reserved area. The case of Sheetal Prasad Gupta and Others Vs. State of Bihar and Others, does not apply.

18. The matter of Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra and Others Vs. State of Madhya Pradesh and Others, is a case where preference was given to cooperative societies dealing with the distribution by sale on a licence, of essential commodities (ration shop commodities), under the public distribution system. In this case, the Supreme Court held that no one can claim a right to run a fair price shop as an agent of the Government, and at best he may claim to be considered as an agent. And, if the Government takes a policy decision to run fair price shops through co-operative societies, it cannot be said that there is any discrimination. This case does not aid the petitioners, and is out of context.

19. There is no arbitrariness in bringing the cane growers closer to the sugar factories notwithstanding that such cane growers may also form themselves into co-operative societies. This includes a cane cooperative union affiliated to cane growers co-operative society, for the supply of the sugarcane to a sugar factory with an assigned reserved area.

20. There is no arbitrariness in the legislation which has made amendments to the Act. In fact, the amendments are for the benefit of the cane growers and the sugarcane factories as a class.

21. The writ petition is devoid of merit and is, accordingly, dismissed with costs.

S.K. Katriar, J.

22. I agree.