(2015) 12 KAR CK 0157

In the Karnataka High Court

Case No : Writ Petition Nos. 113118-113122/2015 (GM-RES)

Y. Basavaraj and Others APPELLANT

Vs

The Commissioner for Cane Development & Director of Sugars in Karnataka and Others RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

Citation : (2015) 12 KAR CK 0157

Hon'ble Judges : S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : Veeresh R. Budihal, Advocate, for the Appellant; Vidyavati K., Addl. Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.N. Satyanarayana, J.—Petitioners are sugarcane growers with their field situated within the Cane Command Area of respondent No. 3. The petitioners herein approached the 2nd respondent Deputy Commissioner seeking permission to transport the cane grown in the reserved area to the neighbouring factories i.e., other than to the factory run by 3rd respondent in this proceedings.

2. The reason for petitioners herein moving the 2nd respondent Deputy Commissioner for such an order is that, since 2002-03, their dues for having supplied sugarcane is not paid by the 3rd respondent for several years viz., for the year 2002-03, 2003-04, 2006-07, 2013-14, 2014-15. It is stated that though the 3rd respondent company is required to pay Fair and Remunerative Price (FRP) fixed by the Government of India they are not following the same, instead they are trying to negotiate with the farmers to settle the sugarcane price lower than the FRP settled by the Government, they are also not clearing the dues within 14 days from the date of supply of sugarcane. Instead they are paying the same in several instalments, and the same is being followed by them for the last several years. In the bargain, it is stated that, they have committed default in payment of balance amount due for various years as stated supra.

3. In the petition which was filed by them seeking permission to transport the sugarcane beyond the Cane Command Area of respondent No. 3, the Deputy Commissioner after hearing the petitioners and as well as 3rd respondent, proceeded to pass order dated 3.11.2015, wherein the requisition made by the petitioners herein and 292 other farmers came to be rejected, thereby they were forced to supply the sugarcane grown by them to the 3rd respondent herein. Being aggrieved by the said order, the petitioners herein have come up in these Writ Petitions.

4. On service of notice, respondents 1 to 3 entered appearance in this proceedings. The contesting respondent in this proceedings is respondent No. 3. Respondent No. 3 tried to support the order of 2nd respondent by filing its statement of objection to these Writ Petitions. They tried to demonstrate that the capacity of the sugar mill run by 3rd respondent is in the range of four lakh metric tons, which is optimum utility of the mill. They state that if the entire sugarcane which is grown in the Cane Command Area is supplied to them, they will be in a position to ensure that the FRP is paid to the farmers on time bound basis i.e., at the rate of Rs. 1,500/- per metric ton as on the date of supply and another Rs. 450/- within 50 days and balance, as and when the payments are made by other factories to the suppliers of sugarcane.

5. The aforesaid proposal, given by the 3rd respondent was not accepted by the petitioners. Therefore at this stage this Court having felt that the negotiated settlement is not possible between the parties. With the available material on record at the request of the learned counsel for both the parties this Writ Petition is taken up for final disposal.

6. Admittedly the petitioners herein are some of the sugarcane growers in the Cane Command Area of 3rd respondent, who approached the 2nd respondent seeking permission to supply their produce to the sugar mill which is situated beyond the Cane Command Area of respondent No. 3. The reason cited by them in the petition which was filed before the Deputy Commissioner is that, since 2002-03 till 2014-15, for several cane crushing years the 3rd respondent sugar mill has not paid the consideration for the cane supplied to them and also that they have not entered into an agreement as required under Sugarcane Control Order, 1966. Wherein the sugar company is required to enter into an agreement with growers of sugarcane within their command area and the agreement is required to be entered into at the beginning of the sugarcane growing season i.e., at the time of plantation of seeds. The rule also requires to enter into an agreement at the beginning of the sugarcane growing season and ensure that the growers should ensure that the sugarcane which is grown in their land is supplied exclusively to the mill situated in the Cane Command Area and on such supply the sugar mill is required to pay the Fair Remunerative Price (FRP) fixed by the Government within 14 days from the date of supply of sugarcane.

7. The grievance of petitioners is that not even for a single year such procedure are adopted and followed by the 3rd respondent herein right from 2000-01. On

the contrary, for several years, there have been arrears in payment and the same is under litigation. It is further stated that for the past four years agreements are also not entered into. In spite of that the sugarcane growers have supplied sugarcane to the 3rd respondent mill and in spite of supply made, the entire payment is not made till today. In this background petitions were filed before the Deputy Commissioner, Ballari district, seeking permission to supply the sugarcane grown by the petitioners in their respective lands to a mill situated outside the Cane Command Area.

8. It is seen that in the said proceedings before the Deputy Commissioner the 3rd respondent was also heard and thereafter an order was passed as seen in Annexure-E dated 3.11.2015. On going through the order it is clearly seen that the Deputy Commissioner has discussed at length the grounds urged by the petitioners for seeking permission to supply the sugarcane outside the Cane Command Area and that was not accepted by the 2nd respondent Deputy Commissioner. However, when it comes to the passing necessary orders on the application without assigning any reason for rejecting the applications filed by the petitioners herein and other 292 farmers, the applications are rejected by cryptic order which reads as under.

''The requisitions made by the 297 farmers to issue permits to transport the cane grown in the ISR reserved area to the neighboring factories is rejected''.

9. In fact no reasons are assigned for rejecting the grounds urged by the petitioners herein and other applicants. The order impugned discloses that the reason for rejection is due to submission made on behalf of the 3rd respondent, that they would commence crushing in their mill from 15th November 2015; that they would be receiving the sugarcane grown by all the 297 farmers, who are applicants before the Deputy Commissioner in the proceedings in No. ISR/08/15-16 and others. The 2nd respondent accepting the said statement of 3rd respondent has rejected all the applications. The same is challenged by petitioners herein, who are also the applicants before the Deputy Commissioner.

10. Heard the learned Senior Counsels appearing for both the parties. It is seen that there appears to be no meeting of mind between the petitioners and the 3rd respondent. The 3rd respondent is trying to impress upon this Court that it will be difficult for the mill to pay the entire FRP within 14 days from the date of supply of sugarcane, as provided under Sugar Control Order, 1966. The learned Senior Counsel for 3rd respondent would try to impress upon this Court that, only after the sugarcane which are supplied to them are crushed, after sugar, molasses and other bye products are sold in the open market, they will be in a position to make payment to the cane growers. They would also state that though the crushing would commence from November 2015, it would take minimum of about four months i.e., up to March, to crush the entire sugarcane supplied to them, to sell the finished product namely sugar, molasses and other by products. That the sale proceeds would be received by them not earlier to May or June. It is only thereafter they would be able to pay the entire sale price

to the farmers, who are petitioners and others.

11. In the instant case, it is stated that the farmers have borrowed money from private money lenders, financial institutions, for cultivation of sugarcane in their respective lands. It is stated that they have borrowed money right from the time of purchasing seeds for cultivation of sugarcane and as well as maintaining the same for a period of 12 months, until it reaches the period of harvesting. Therefore the amount of money which is invested by them being huge and on which the interest also being accumulating, they would not be willing to wait till end of May and June for 3rd respondent to pay the entire sugarcane price, when the price for sugarcane would have to be paid within 14 days as required under Sugar Control Order, 1966. Hence, they state that they are not willing to supply sugarcane to 3rd respondent.

12. This Court find when there is force in the argument submitted by the learned Senior Counsel appearing for petitioners, for the reason that unless the entire arrears which is due to the petitioners are cleared, it may not be proper for this Court to force them to supply sugarcane to 3rd respondent, when 3rd respondent is not in a position to clear the arrears as it has stated so in its objection. In that view of the matter, when it is found that the 3rd respondent sugar mill is not in a position to clear the arrears, which is due from past four years, it may not be proper for this Court to direct the farmers to supply sugarcane to the very same sugar mill, which has failed to keep up the promise in making payments for the sugarcane purchased by them for the past four years.

13. In that view of the matter, the order passed by the 2nd respondent Deputy Commissioner in the proceedings in No. ISR/08/15-16, dated 3.11.2015 is hereby quashed, by allowing these Writ Petitions. The petitioners herein and other applicants before the 2nd respondent Deputy Commissioner, who had sought for permission to supply sugarcane to mills outside the Cane Command Area are hereby permitted to sell the same to the mills of their choice other than the respondent No. 3.

14. It is also made clear that in spite of this order, if any one of the 297 farmers before the 2nd respondent Deputy Commissioner, who are permitted now to supply sugarcane to the mill outside the Cane Command Area of 3rd respondent mill, subsequently choose to supply the same to 3rd respondent mill, they are at liberty to do so.

