

S. K. G. Sugar Ltd.

Vs

State of Bihar and Others

Civil Appeals Nos. 488-89 of 1985

(K. Ramaswamy, S. Saghir Ahmed, G. B. Pattanaik JJ)

15.01.1997

ORDER

1. These two appeals arise from the judgment of the Division Bench of the Patna High Court, made on 13-11-1984 in Order No. 11 and review order arising thereunder in CWJC No. 2370 of 1984.

2. The admitted position is that the appellant factory had a "reserved area" under Section 31 of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981(37 of 1982) (for short "the Supply Act") and had the sugarcane supplied by the growers. The Central Government, exercising the power under clause 3 of the Sugarcane (Control) Order, 1966 (for short "the Order") determined the minimum price for sugarcane at Rs. 13.92 per quintal. The State Government announced on 31-3-1983 the price of sugarcane at Rs. 20.50 per quintal. The cane growers supplied the sugarcane to the appellant, but the appellant admittedly had paid the minimum price determined under the Order but the difference between the price fixed under the Order and the price announced by the State Government was not paid. As a consequence, the Collector gave a certificate of dues for realisation under the Revenue Recovery Act. Calling those proceedings in question, the writ petition came to be filed. The contention raised in the High Court as well as in this Court is that the Central Government having determined the price of the sugarcane at Rs. 13.92 per quintal, the State Government was devoid of power to fix the price at Rs. 20.50 per quintal and, therefore, the Collector has no power to issue the certificate of arrears; since what is due is the price fixed under the Order which has already been paid and, therefore there is nothing due in accordance with law.

3. Shri Y. V. Giri, learned counsel for the appellant, has contended that Section 42 of the Supply Act prescribes only the power for fixation of the price in respect of the units, namely, Khandsari unit or any unit manufacturing sugar under open pan process. Under the proviso, the Government have no power to fix higher price of sugarcane supplied to a sugar factory than that fixed for the Khandsari units. The fixation of the price at Rs. 20.50 per quintal is without any authority of law or jurisdiction. For issuance of a certificate what is required to be done is that the amount should be in accordance with law but not in accordance with any order passed by the State Government. The dues in accordance with the price fixed under clause 3 of the Order having been paid, the appellant is not due of any sugarcane price payable to the cane growers and, therefore, the view taken by the High Court is not correct in law. Even if there are dues, the same could be recovered in a suit by the growers. We find no force in the contentions.

4. Sub-clause (1) of clause 3 of the Order provides thus :

"The Central Government may, after consultation with such authorities, bodies of associations as it may deem fit, by notification in the Official Gazette, from time to

time, fix the minimum price of sugarcane to be paid by producers of sugar or their agents for the sugarcane purchased by them, having regard to Provided that the Central Government or, with the approval of the Central Government, the State Government, may, in such circumstances and subject to such conditions as it may specify, allow a suitable rebate in the price so fixed."

It is seen that what is postulated under clause 3 of the Order is the fixation of the minimum price payable to the cane growers for the sugarcane supplied by them and purchased by a sugar factory or its agents. Equally, clause 5-A prescribes payment of additional price consistent with the returns had by the factory. Clause 3-A equally provides rebate that can be given in respect of the price for sugarcane. A reading of these relevant clauses in the Order does not show that there is any prohibition on the factory or the association of the factories entering into an agreement to pay higher price than the minimum price prescribed under the Order. The object of the Order is to ensure that the cane growers should not be compelled to sell their sugarcane at a price lower than the minimum price prescribed by the Central Government under clause 3 of the Order. In *State of M. P. v. Jaora Sugar Mills Ltd.* ((1997) 9 SCC 207) decided by a Bench of two Judges, to which two of us (K. Ramaswamy and G. B. Pattanaik, JJ.) were members, considered the similar question and held thus : (SCC pp. 210-11, paras 6-9)

"6. Clause 3(3) determines

'where a producer of sugar purchases any sugarcane from a grower of sugarcane or from a sugarcane growers' cooperative society, the producer shall, unless there is an agreement in writing to the contrary between the parties, pay within fourteen days from the date of delivery of the sugarcane to the seller or tender to him the price of the cane sold at the rate agreed to between the producer and the sugarcane grower or sugarcane growers' cooperative society or that fixed under sub-clause (1), as the case may be, either at the gate of the factory or at the cane collection centre or transfer or deposit the necessary amount in the Bank Account of the seller or the cooperative society, as the case may be.'

7. Sub-clause (3-A) to clause 3 was introduced by way of an amendment made in GSR 62(E), dated 2-2-1978. For payment of the price within 15 days with interest on the delayed payment at the rate of 15% per annum for the period of such delay beyond 14 days has been introduced. Earlier, it was covered by the Act. Clause 3(1) fixes the minimum price of sugar payable by the purchaser of the sugarcane as fixed by the Central Government in the manner indicated therein. Clause 3(2) is relevant for the purpose of this case which shows that "no person shall sell or agree to sell sugarcane to a producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane, at price lower than that fixed under sub-clause (1)'. Section 23(3) of the Act, also couched in similar language, enables to novate by contract the minimum price fixed by the Central Government in respect of cess payable to Government.

8. This would clearly indicate that despite the fixation of minimum price under clause 3(1), by agreement between the sugarcane grower and the purchaser of the sugarcane, they would be at liberty to agree to sell or purchase the sugarcane at a higher price than that fixed by the Central Government under clause 3(1). Only for postponement of payment beyond 14 days, there should be an agreement in writing

between the parties obviously with the concurrence of the Central Government or authorised authority in that behalf. Thus, there is no statutory prohibition in that behalf to pay higher price. That would be further clear by clause 3(2) which speaks of the contract between the parties for payment of higher price of sugarcane fixed under sub- clause (1) of clause 3 pursuant to the agreement or pursuant to the minimum price fixed by the Central Government under clause 3(1) of the Order.

9. [U]nder clause 3(1) and additional price fixed under clause 5-A, it was within the domain of the contract between the sugarcane growers and the factories who could agree to pay price higher than the minimum price fixed under the Order. What sub-clause (2) of clause 3 prohibits is the purchase or sale or agreement in that behalf, for bargain to pay price lesser than the minimum price fixed by the Central Government. In other words, the sugarcane growers should not be compelled to sell the Sugarcane at a price lesser than what was prescribed by the Order. Thus, we hold that there was no statutory prohibition at the relevant time to agree to pay higher price than was fixed under the Order."

5. There is, thus, no prohibition on payment of higher price. It is seen and it is not disputed that there was an agreement by the Sugar Factory Owners' Association with growers of sugarcane entered in January 1983 wherein the price for the sugarcane at Rs. 20.50 per quintal was agreed to be paid. It is stated in the judgment of the High Court that this was fixed after the agreement between the Millers' Association and the farmers at a meeting convened by the State Government and the agreement was notified by the State Government. The High Court has also stated that the appellant had played prominent part in the fixation of the price and it acted upon it till 31-3-1983. What was contended in the High Court was that though the agreement was there, since the company is an independent entity in the eye of law, it is not bound by such an agreement and, therefore, the appellant is entitled to resile from the agreement with the farmers at that meeting convened by the State Government. In Jaora case ((1997) 9 SCC 207) this Court had held thus : (SCC pp. 212-14, paras 10, 13, 16)

"10. The question then is whether such a higher price has been agreed to be paid to the sugarcane growers, when contract has come into existence between the respondents and the cane growers with the aegis of the appellants ? As a fact, except Kaluram, all representatives of other factories were present at the time of the agreement dated 21-3-1976. As far as Kaluram is concerned, on the first occasion he was present, but on the second occasion when the meeting was adjourned, he was not present. It has been averred in the counter-affidavit that the Secretary of the Sugarcane Factories Owners' Association had contacted him when he was in the hospital and thereafter, the agreement was entered into. Though, subsequently, an attempt was made by the Secretary to wriggle out from it, the Government have stated that and the sugarcane growers have also agreed for the same, we are of the considered view that he was a consenting party and there was consensus ad idem to pay higher price of sugarcane than the minimum price fixed by the Central Government and they acted upon it. There was no prohibition for oral agreement between growers and owners through the service of the Cane Commissioner, a statutory authority to effect such agreement.

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13. It would thus be clear that the Cane Commissioner having power to compel the cane growers to supply cane to the factory khandsari unit, he has incidental power and is duty-bound to ensure payment of the price of the sugarcane supplied by the sugarcane grower. The price fixed or agreed is a statutory price and bears the stamp of statutory first charge on the sugar and assets of the factory over any other contracted liabilities to recover the price of the sugarcane supplied to the factory or khandsari unit.

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16. Thus, it would be seen that the Act regulates the recovery as arrears of land revenue. Accordingly, demand has been made for payment of the amount in a sum of Rs. 6,34,166 in CA No. 1813 of 1980, Rs. 13,40,700 in CA No. 1814 of 1980 and Rs. 2,71,000 in CA No. 1812 of 1980. Thus, the demands issued against the respondents are in accordance with the provisions of the Act and they are liable to pay the same.

6. It is not in dispute that under Section 31 of the Supply Act, the State Government has power to fix the reserved area, in other words, zone was 'carved out for the appellant for the supply of sugarcane to the factory. All the farmers who are cultivating sugarcane within that zone are bound by the State action to supply sugarcane to the factories within that reserved area. Consequently, the factory also is bound by the actions of the State Government. Obviously, pursuant to the obligation had by the State under the Supply Act, the meeting was convened by the State Government whereat the Factory Owners' Association and farmers participated and agreed to fix the price at Rs. 20.50 per quintal of sugarcane. As a consequence, both the cane growers as well as the owners of the factory are bound by the decision. This having been agreed upon, the price fixed by the State Government in excess of the minimum price fixed by the Central Government under clause 3 of the Order would be the price fixed for supply of sugarcane and the Government would be entitled to enforce the liability. As a consequence, the Collector was empowered and duty-bound to issue a certificate of the dues as arrears of land revenue for recovery under the Revenue Recovery Act. The certificate obviously relates to the difference between the minimum price fixed by the Central Government, i.e., Rs. 13.92 per quintal and the price of Rs. 20.50 determined by the agreement between the parties. Under the circumstances, there need not be any separate agreement to be entered into between the cane growers in the reserved area and the appellant's factory to be enforceable. We hold that the certificate issued by the Collector is valid in law. As held earlier, the State Government acted in their statutory capacity to fix the increased price of the sugarcane. There is no need for the growers to file separate suit to recover the difference of the price. The recovery proceedings are the appropriate course of action rightly adopted by the State Government.

7. Shri Giri next sought to contend that the appellant factory was notified to be taken over and denotified for divestment and in the, interregnum sales and purchases have taken place and the consequence thereof requires to be considered. The appellant had crushed the sugarcane through vacuum pan process in producing sugar in the relevant period. So it alone is liable to pay the cane price. We find that the question in this case of sharing the liability by the State Government does not arise. Therefore, it is unnecessary for us to go into the question in these appeals. By order dated 29-2-1996 passed by this Court, the State Government was directed to work out the amount due and payable to the cane growers in terms of the undertaking given to this Court at the time of passing the interim order. Pursuant thereto, it appears and it is not in dispute that the Government has worked out the dues at Rs. 62,90,398.72 and made a demand on 22-3-1996 and in furtherance

thereof, the appellant has deposited the amount on 3-4-1996. In view of the above, if there is any demand other than what was a directed, the respondents are at liberty to proceed in accordance with law and if there is no demand and the demand has already been satisfied, then it is needless to mention that the respondents may not take any further steps in that behalf.

8. The appeals are accordingly dismissed with the above observations. No costs.