

SUPREME COURT OF INDIA

Anand Agro Chem India Ltd.

Vs.

Suresh Chandra

C.A.No.897 of 2014

(T.S. Thakur and C. Nagappan JJ.)

24.01.2014

JUDGMENT

C. NAGAPPAN, J.

1. Leave granted.

2. This appeal is directed against the interim Order dated 31.7.2013 passed by the High Court of Judicature at Allahabad in Writ Petition no.14936 of 2013 whereby the Division Bench rejected the prayer of the appellant to stay the arrest of the Directors and occupiers of the appellant company.

3. The facts in nutshell are as follows. Respondents 1 to 3 supplied sugarcane to the sugar mill of the appellant in the year 2007-08, for which the appellant has not paid the price in spite of several representations made by the respondents 1 to 3 herein. This led to the filing of Writ Petition in Writ-C no.14936 of 2013 by respondents 1 to 3 seeking for issuance of the Writ of Mandamus directing the appellant herein to release the sugarcane price to them. The Division Bench of the High Court after hearing both sides directed the District Magistrate, Hathras to take immediate action against the Directors and occupiers of the appellant-sugar mill against whom several orders have been passed under the U.P. Sugarcane (Regulation and Supply) Act, 1913 and it further observed in the order that the District Magistrate may in exercise of his powers cause arrest of the Directors and occupiers of the sugar mill to recover the dues and in the event of such arrest, they will not be released until they have paid the entire amount due against them. The appellant-sugar mill aggrieved by the said order preferred a Special Leave Petition

in SLP(C) no.16633 of 2013 and this Court by order dated 1.5.2013 dismissed the petition by observing thus :

“We have heard Shri Sanjay Parikh, learned counsel for the appellant and perused the record.

A reading of the order under challenge shows that the appellant has not paid Rs.16.12 crores to the farmers for the crushing year 2005-06 to 2009-10, which includes the price of sugarcane, the cane development commission and the interest. It is also borne out from the record that vide letter dated 24.11.2012, the Director of the appellant had assured the Cane Commissioner that the company will pay Rs.160 lacs as the price of the cane within two weeks and an amount of Rs.700 lacs in installments, the first of which will be paid on 15.01.2013, but the company did not fulfill its assurance.

In the above backdrop, it is not possible to find any fault with the direction given by the Division Bench of the High Court and there is absolutely no justification for this Court’s interference with the impugned order.

The special leave petition is accordingly dismissed.....”

Thereafter the appellant-sugar mill filed an application in the pending Writ Petition in the High Court of Judicature at Allahabad seeking for stay of arrest of the Directors pursuant to the order dated 26.4.2013 and the Division Bench of the High Court after hearing both sides and after referring to the earlier orders held that no modification/vacation of the order dated 26.4.2013 is required and, accordingly, rejected the prayer of stay of arrest. Challenging the said order the appellant-sugar mill has preferred the present appeal.

4. We have heard Mr. Ram Jethmalani and Dr. Rajeev Dhawan, Senior Advocates appearing on behalf of the appellant, Ms. Shobha Dixit, Senior Advocate appearing on behalf of the respondents and Mr. Prabodh Kumar, Advocate appearing on behalf of the intervenor.

5. The contention of Mr. Ram Jethmalani, Senior Advocate is that the property of the sugar mill has already been attached to recover the dues and the sale notice has been issued and unless there is proof of the minimal fairness of willful failure to

pay in spite of sufficient means, the arrest cannot be ordered and it would be violative of Article 21 of the Constitution of India and placed reliance on the decision of this Court in *Jolly George Varghese and Another vs. The Bank of Cochin* (1980) 2 SCC 360. He further contended that in any event the Director, whom he representing, is a senior citizen above 65 years of age and hence he cannot be arrested as a defaulter in payment of arrear of land revenue as stipulated in Section 171 of the Uttar Pradesh Revenue Code, 2006.

6. When the matter was listed before this Court on 7.10.2013, Dr. Rajeev Dhawan, learned Senior Advocate appearing for the appellant said that the Directors of the mill undertake to pay Rs.4.55 crores representing fifty per cent of the total amount to the concerned authority within a period of six weeks and this Court stayed the arrest subject to fulfillment of the condition. Again the matter was listed on 19.11.2013 and Dr. Rajeev Dhawan, learned senior counsel said that by mistake he made a statement about the total amount payable by the writ petitioner but the amount is far less than that and requested for time to file additional affidavit on behalf of the appellant. In the next two hearings the matter was adjourned on the request made by the appellant and thereafter the matter was heard.

7. Section 17 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 stipulates that the occupier of the sugar factory shall make speedy payment of cane price and in the event of default, sub-Section (4) stipulates that the Cane Commissioner shall forward to the Collector a certificate specifying the amount of arrears of the cane price due from the occupier and the Collector shall proceed to recover the said amount from such occupier as if it were an arrear of land revenue. Section 170 of the Uttar Pradesh Revenue Code, 2006 prescribes the process for recovery of arrears of land revenue, wherein it is mentioned that it may be recovered by anyone or more of the processes mentioned therein which includes by arrest and detention of the defaulter and attachment and sale of his movable property.

8. The Division Bench of the Allahabad High Court in its order dated 26.4.2013 has directed the District Magistrate, Hathras, namely, the Collector to take immediate action against the Directors and occupiers of the appellant-sugar mill against whom several orders have been passed under the U.P. Sugarcane (Regulation and Supply) Act, 1913 and this Court has confirmed the said order. The Division Bench in the present application considered the plea of the appellant for the stay of arrest and after hearing both sides rejected the said plea by the impugned order and we find no error in it.

9. We say so firstly because order dated 26th April, 2013 passed by the Division Bench of the Allahabad High Court directing the District Magistrate to take immediate action against the Directors of the sugar mill has already been affirmed by this Court in appeal. The question whether or not one of the Directors who is said to be 65 years old could be arrested as a defaulter and committed to prison under Section 171 of the Uttar Pradesh Revenue Code, 2006, could and indeed ought to have been raised by the appellants either before the High Court or before this Court in appeal preferred against the order passed by the High Court. No such contention was, however, urged at that stage.

10. Secondly, because the company and its Directors have not made their promises good by paying even the amounts which they had offered to pay. A plain reading of order dated 1st May, 2013 passed by this Court in SLP (C) No.16633 of 2013 extracted above would show that the company and its Directors had assured the Commissioner that they would pay Rs.160 lacs towards price of sugarcane within two weeks besides an amount of Rs.700 lacs to be paid in installments, the first of which installment was to be paid on 15th May, 2013. No such payment was, however, made by the company and its Directors. That apart, the statement made at the bar on 7th October, 2013 by Dr. Rajeev Dhawan, learned senior counsel, for the appellant that the Directors would pay Rs.4.55 crores is also sought to be withdrawn on the ground that the same was made under a mistake. It is evident that the company and its Directors have been despite promises made on their behalf committing breach of such assurances on one pretext or the other.

11. Thirdly, because there is nothing before us to suggest that the company and its Directors are incapable of raising funds for liquidating the outstanding liability towards dues payable to the farmers. Simply because the sugar factory has been attached, is no reason for us to assume that the company or its Directors are in any financial distress thereby disabling them from making the payments recoverable from them. The fact situation in the present case is, therefore, completely different from that in Jolly George Varghese case (supra) relied upon by Mr. Ram Jethmalani.

12. In the light of the above, we see no compelling reason for us to interfere with the order passed by the High Court in exercise of our extraordinary jurisdiction. We regret to say that the amounts due to the farmers towards price of the sugarcane and incidentals remains to be paid to them for several years in the past thereby

accumulating huge liability against the company. That is not a happy situation nor can repeated invocation of the process of law by the appellant be a remedy for it.

13. The appeal is devoid of merit and is accordingly dismissed.