

## **PATNA HIGH COURT**

The Belsand Sugar Co. Ltd

Vs

Thakur Girja Nandan Singh

(R Singh, C.J. A Ahmad, J.)

22.01.1968

### **JUDGMENT**

#### **R Singh, C.J.**

1. This appeal by the plaintiff arises out of a suit by a Sugar company, having a sugar factory, for recovery of a loan on the basis of a promissory note for Rs. 2000 executed by the defendant respondent in favour of the plaintiff on the 11th February, 1957. The defendant took two main pleas: (1) the suit did not lie on the ground that it was barred by rule 42A of the Bihar Sugar Factories Control Rules, 1938, made in pursuance of certain provisions of the Bihar Sugar Factories Control Act, 1937, and (2) the loan on the basis of the promissory note was not an independent one, inasmuch as this transaction was connected with the supply of sugarcane to the plaintiff company. Both the courts upheld the defence, but they did not record any finding on the other issues arising out of the pleadings.

2. Mr. Lalnarayan Sinha, who appeared for the appellant, has contended that Rule 42A is invalid, because the Bihar Act has been found by this court to be unconstitutional in the unreported decision in Cr. WJC Nos. II and 31 of 1966 (Pat) A. K. Jain v. Government of India decided by a Bench of this court on 4-7-1966 and rule 42A has been found to be invalid by another unreported bench decision of this court in Misc. JC No. 1344 of 1964 (Pat) Sugauli Sugar Works Pvt. Ltd. v. Co-operative Development and Cane Marketing Union disposed of on 20-7-1966.

3. Rule 42A contains the provision for arbitration by the Cane Commissioner of Bihar in respect of any dispute touching an agreement referred to in Section 18(2) or Section 19(2) of the Bihar Act, and, it excludes the jurisdiction of the civil and the revenue courts in respect of any such dispute. The relevant portion of Section 18 reads as follows:--

"18(1) A Cane grower or a cane growers' co-operative society in a reserved area may offer, in the form and by the date described, to supply to the occupier of the factory, for which the area is

reserved, cane grown by the cane-grower or by the members of such cane-growers' Co-operative Society, as the case may be, not exceeding the quantity, if any, prescribed for such grower or Cane growers' Co-operative Society.

(2) The occupier or manager of a factory for which an area is reserved shall enter into agreements, in such form, by such date and on such terms and conditions as may be prescribed, to purchase the cane offered in accordance with Sub-section (1)".

Sub-sections (1) and (2) of Section 19 enact:

"(1) The Cane Commissioner may, after consulting the advisory committee or committees (if any) of the area concerned and the occupier of the factory and after considering any objections that may be raised, issue an order declaring any area to be an assigned area for the purposes of the supply of cane to a particular factory:

Provided that in the case of a factory situated outside the State of Bihar such declaration shall only be made on receipt by the Cane Commissioner of an application in the prescribed form from the occupier of such factory requesting that an area shall be declared to be an assigned area for the purposes of the supply of cane to such factory.

(2) Subject to the provisions of sub-section (5), the occupier of a factory for which an area has been assigned, shall enter into agreements for the purchase in the assigned area, of such quantity of cane as may be fixed by the Cane Commissioner."

It is unnecessary to refer to or quote Sub-section (5) of this section, as it is not relevant nor is the proviso to Sub-section (2) relevant. The courts below acted on the assumption that Rule 42A was valid; and in support of their finding Mr. Janardan Sinha relied on the case of *Tika Ramji v. State of Uttar Pradesh*<sup>1</sup>, R and two decisions of this court, viz. *Sugauli Sugar Works v. Cane Commr*<sup>2</sup>., and *Sasamusa Sugar Works v. Cane Commr*<sup>3</sup>.,. One of the questions raised before the Supreme Court was whether the U. P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, was intra vires of the State Legislature or it was unconstitutional on account of the enactment of the Essential Commodities Act by the Parliament in 1955 in exercise of the Legislative powers conferred upon it by Entry 33 of List 3. It was held by the Supreme Court that the U. P. Act of 1953 was intra vires.

It is unnecessary to discuss the Supreme Court decision in detail, because the position regarding the Bihar Act is different from that of the U. P. Act and the question as to the constitutionality or otherwise of the Bihar Act has been discussed in detail and decided by a bench of this court in the aforesaid writ jurisdiction case disposed of on 4-7-1966. In this connection, paragraphs 38 and 39 of this decision are important. The Bihar Sugar Factories Control Act, which is Bihar Act

7 of 1937, was originally enacted to remain in force until the 30th June, 1941. Its life was extended from time to time by different amending Acts up to the 30th June, 1950. Its life was further extended up to the 30th January 1955 by Bihar Act 6 of 1950. This Act received the assent of the Governor on 6-1-1950, but it came into force on 9-1-1950, the date when the assent was first published in the Bihar Gazette Extraordinary, as it has been laid down in Section 6 of the Bihar and Orissa General Clauses Act, 1917 that a Bihar Act, when it is not expressed to come into force on a particular date, shall come into operation on the day on which the assent to the Act is first published in the official Gazette. Inasmuch as Bihar Act 6 had come into force on 9-1-1950, Bihar Act 7 of 1937 and the rules framed thereunder were existing law within the meaning of Clause (10) of Article 366 of the Constitution; and under Article 372 after the commencement of the Constitution, such a law was to continue in Bihar until altered, repealed or amended by a competent Legislature. Ultimately, by Bihar Act 7 of 1955, Section 1(3) was amended, and by that amendment certain words were removed, as a result of which Bihar Act 7 of 1937 was to remain in force for an indefinite period even beyond 30-6-55. Bihar Act 7 of 1955 received the assent of the Governor on 30-3-55, but it came into force on 20-4-55, when the assent was first published in the Bihar Gazette. However in the meantime, Central Act 10 of 1955, i. e. the Essential Commodities Act had been enacted, and on receipt of the assent of the President it came into force on 1-4-55. Section 16(1)(b) of the Central Act expressly provided that any other law in force in any other State immediately before the commencement of this Central Act in so far as such law controls and authorises the control of the production, supply and distribution of trade and commerce in, any essential commodity was repealed. In other words, Bihar Act 7 of 1937, as it stood before 1-4-55 and the rules made thereunder stood repealed and became unenforceable in view of the provisions of Article 372 of the Constitution. Further, that part of Bihar Act 7 of 1937 which related to the control of sugar industry and the rules in respect thereof came to an end on 30-6-55 as the Bihar Legislature was not competent to extend their life beyond that date by enacting Bihar Act 7 of 1955. Their Lordships, therefore, distinguished the decision of the Supreme Court in the Uttar Pradesh case, as it was not dealing with the repeal of an existing law, like the Bihar Act, as it stood prior to 1-4-55. It was further held by their lordships of this court that even the validly separate part of the Bihar Act relating to production, supply and distribution of sugarcane will fall under Entry 33 of List III, a matter within the concurrent legislative competence of both the Parliament and the State Legislature and the latter was not competent to enact Bihar Act 7 of 1955 and to extend the life of even the severable part of Bihar Act 7 of 1937, without taking recourse to the procedure prescribed in Clause (2) of Article 254 of the Constitution, but, unfortunately, Bihar Act 7 of 1955 did not receive the assent of the President, and, therefore, being repugnant to certain provisions of the Central Act, it could not have any effect, and it was void on this ground as well. Following this decision, it was held by another bench of this Court on 20-7-1966 in Misc. J. C. No. 1344 of 1964 (Pat) that Rule 42A of

the Bihar Sugar Factories Control Rules, 1938, was void. Mr. Janardan Sinha had no answer to these decisions, which are binding on us.

4. Mr. Janardan Sinha also cited two bench decisions of this court, viz., AIR 1959 Patna 398 and AIR 1959 Pat 403. But the question now raised was not discussed at all in the case of Sugauli Sugar Works, and it was assumed that the Bihar Act and the rules were valid. In the other case AIR 1959 Pat 403, there is an observation in paragraph 8 of the report that the validity and constitutionality of the Bihar Rules of 1938 have been upheld by this court in the earlier case, i. e., AIR 1959 Pat 398; but actually that question was not discussed in either of the two cases and the Bihar rules were assumed to be valid and constitutional. Mr. Lalnarayan Sinha's contention that rule 42A of these rules and the relevant sections , of the Bihar Act are void must, therefore, prevail.

5. An alternative argument of Mr. Janardan Sinha was that the promissory note, on the basis of which the plaintiff instituted the suit, was not independent of the contract entered into between the appellant and the respondent. Exhibits C and C-1 dated 2-11-55 and 4-11-55 are agreements in the prescribed form--Ext. C1 being in Form XI under Section 18(1) in respect of the offer by a cane grower in a reserved area for supply of cane to the factory and Ext. C being in Form XIII under Section 18(2) between the factory and the cane grower in a reserved area. These forms are in Appendix III to the Rules made under Sections 18(1) and 18(2), respectively, of the 1937 Act, read with rules 25 and 28 of the Rules of 1938. The respondent executed these agreements in favour of the appellant company. Ext. C1 was required to be executed by the respondent only as a canegrower. Ext. C was to be executed by the respondent as well as by the factory representative, but the signature of the latter is wanting. There is a Clause in Ext. C to the effect that any dispute between the parties regarding the quality and condition of the cane, the place of delivery, the instalments and other matters pertaining to this agreement, shall be referred to the Cane Commissioner for decision or if he so directs to arbitration in the manner provided for in the rules, and that no suit shall lie in a civil or revenue court in respect of any such dispute. In pursuance of this clause, it is alleged by the respondent, the dispute regarding the promissory note has been already referred to the Cane Commissioner; but, as was rightly contended by Mr. Lalnarayan Sinha, in view of the decision that Rule 42A, which provides for arbitration, and Section 18 of the Bihar Act became void after 1-4-55, the agreements in pursuance of that Section entered into between the parties sometime in November, 1955, are also void, and therefore, the arbitration Clause mentioned in Ext. C became inoperative. (In the portion of the judgment that followed it was held that there was nothing in the agreements or in the promissory note that one is dependent or connected with the other. Judgment then proceeds:) Mr. Janardan Sinha, however, submitted that the agreements should be interpreted as contracts between the parties independently of the Act and the rules as well. Even if that contention be accepted the

respondent has not adduced evidence in the suit for the purpose of showing that he has supplied sugarcane to cover the whole or part of the dues of the company based on the promissory note and the advance for implements and manures. We are unable to agree with Mr. Janardan Sinha that the arbitration Clause mentioned in Ext. C should also be treated as an agreement independent of the Act and the Rules. But it will be noticed that the arbitration Clause was incorporated in Ext. C because the agreement form itself was prescribed under Subsection (2) of Section 18. It is, therefore, difficult to accept the contention of Mr. Janardan Sinha that such an arbitration Clause bringing in the Cane Commissioner as arbitrator would have been incorporated by the parties in the contract independently of the form prescribed by Section 18(2) of the Act.

6. Mr. Lalnarayan Sinha submitted also that Section 34 of the Arbitration Act is a bar to the respondent's plea about the arbitration clause, because the respondent did not apply to the trial court to stay the proceedings of the suit on account of the arbitration Clause before filing his written statement. Mr. Janardan Sinha submitted that the jurisdiction of the court was questioned in paragraph 14 of the written statement where it was alleged that the jurisdiction of the civil court was ousted and the Cane Commissioner was the only proper authority to decide the dispute. But Section 34 of the 1940 Act lays down that such a plea should be taken before the written statement is filed. This contention of Mr. Lalnarayan Sinha should, therefore, prevail.

7. In view of the foregoing discussions, the judgments and decrees of the courts below are set aside and the suit is remanded to the trial court for disposal in accordance with law, after giving opportunities to the parties to adduce further evidence and also to place their arguments. The suit was instituted in 1958, and, therefore, the trial court must dispose of the same by the 30th April, 1968. Counsel for the parties, in whose presence, this judgment has been dictated, have been asked to write to their clients to appear in the trial court by the 18th March, 1968, at the latest and take necessary steps. The appeal is allowed, as indicated above. Costs will abide the result.

#### Cases Referred.

1 A.I.R 1956 SC 676

2AIR 1959 Pat 398

3 AIR 1953 Pat 403