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Court : Karnataka

Decided On : Oct-06-2003

Reported in : 2004(1)KarLJ133

Judge : D.V. Shylendra Kumar, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 3; Sugarcane (Control) Order, 1966; [Constitution of India](#) - Article 226

Appeal No. : Writ Petition Nos. 18622 to 18628 and 45849 of 45851 of 2002

Appellant : Maqsood and ors.

Respondent : The Commissioner for Cane Development and the Director of Sugar and ors.

Advocate for Def. : B.P. Puttasiddaiah, High Court Government Pleader for Respondents-1 and 2

Advocate for Pet/Ap. : S.S. Halalli, Adv.

Judgement :

ORDER

D.V. Shylendra Kumar, J.

1. All these writ petitions have been filed by farmers who had supplied sugarcane to the 3rd respondent-Sahakari Sakkare Karkhane at Bhusnoor, Aland Taluk, Guibarga District, with a complaint that they had supplied sugarcane several years ago and they had not been paid the full price of the sugarcane supplied by them to the factory.

2. Petitioners' request for making payment, having fallen on deaf ears and even the 1st and 2nd respondents-authorities, who could have ensured that the price of the sugarcane not paid by the factory could have been realized and paid to the farmers under the provisions of the Sugarcane (Control) Order, 1966, having not taken suitable action for the same, the petitioners have approached this Court, for issue of suitable directions to the 1st and 2nd respondents-the Commissioner for Cane Development and the Director of Sugar, and the Deputy Commissioner, Guibarga District, Guibarga, respectively for taking steps for realization of the amount from the factory and for payment of the same to the farmers.

3. This Court had earlier directed the 1st and 2nd respondents to ensure that suitable steps should be taken in this regard, as per the interim orders dated 21-7-2003 and 1-9-2003. The interim order dated 1-9-2003 reads as under.--

'Petitioners are before this Court, complaining that in respect of the sugarcane grown by them and supplied to the 3rd respondent-sugar factory even after lapse of several years, full payments have not been made and for issue of a suitable writ of mandamus to direct the 1st respondent-Commissioner for Cane Development to take action in accordance with the provisions of the Sugarcane (Control) Order, 1966 as amended from time to time.

2. Notices had been issued to the 1st respondent-Commissioner for Cane Development, 2nd respondent-Deputy Commissioner, Gulbarga District, Gulbarga and the 3rd respondent-sugar factory, represented by its Managing Director. Statement of objections was filed on behalf of the respondents on 18-6-2003, which inter alia indicated that the recovery certificate in fact had been issued by the 1st respondent-Commissioner for Cane Development and addressed to the Deputy Commissioner which had been received on 30th January, 2003 and the Deputy Commissioner in fact had forwarded the same to the Tahsildar on 6-6-

2003 for serving a demand notice on the 3rd respondent and the 3rd respondent was so served on 7-6-2003. It is indicated in the statement of objections that on the failure of the 3rd respondent to comply with the demand notice within 10 days, further action will be taken by the 2nd respondent-Deputy Commissioner as per the provisions of the Karnataka Land Revenue Act, for recovery of the amount.

3. The 2nd respondent-Deputy Commissioner was present before this Court, on that day, and also gave an undertaking to the Court, stating that such recovery will be made and payments ensured in favour of the petitioners within 30 days thereof.

4. However, certain intervening circumstances, have been pleaded as a stumbling block in the implementation of the undertaking given by the 2nd respondent-Deputy Commissioner by pointing out that though the sugar held in stock by the 3rd respondent-sugar factory was sought to be sold by public auction for realization of the amounts due to the petitioners and such auction had been fixed to be held on 18-7-2003. It could not be held due to an interim order dated 16-7-2003 granted by this Court in W.P. Nos. 31407 and 31409 of 2003.

5. It appears that District Co-operative Central Banks Limited, Bidar, who had claimed that sugar produced by the 3rd respondent-sugar factory had been hypothecated in favour of the said Bank for securing the loan amount given by the Bank in favour of the factory and that as such hypothecated stocks were sought to be held by the Deputy Commissioner for realization of certain sales tax arrears, the factory was due to the State Government and such action had been challenged in those writ petitions.

6. Accordingly, the auction sale had to be freezed in obedience to the order passed by this Court in W.P. Nos. 31407 and 31409 of 2003. Petitioners in these petitions made attempt to get themselves impleaded as parties to those two petitions for seeking modification of the interim order in those petitions. However, the applications came to be rejected by this Court on the ground that the petitioners were unable to place any material before the Court, to indicate that auction sale that had been put on hold by the Court as per the interim order dated 16th July, 2003 was referable to the recovery of the amounts due to the petitioners also. It is significant to note that the Deputy Commissioner is the 2nd respondent

in those two petitions also.

7. The net result of all those developments is that the petitioners are back to square one and continue to languish without receiving payment for the sugarcane supplied to the 3rd respondent-sugar factory, notwithstanding the undertaking given by the 2nd respondent-Deputy Commissioner before this Court, as on 16th July, 2003 and the stand taken on behalf of the respondents in these petitions being that they are taking all steps to ensure to make payments of the amount due to the petitioners from the 3rd respondent-sugar factory in respect of the sugarcane supplied by them.

8. Sri Halalli, learned Counsel for the petitioners had submitted that the challenge in W.P. Nos. 31407 and 31409 of 2003 by the District Co-operative Central Bank Limited, Bidar, was in respect of the action on the part of the Revenue Authorities in bringing to sale the sugar stocks held at the 3rd respondent-Factory, by attachment and sale of the same by public auction for realization of a sum of Rs. 1,36,87,407/-which was the amount due by the 3rd respondent-sugar factory as per the proclamation.

9. The 2nd respondent-Deputy Commissioner, has not clarified as to whether this amount is inclusive of the amount due to the petitioners from the 3rd respondent-sugar factory and as certified by the 1st respondent-Commissioner for Cane Development. If the amount of Rs. 1,36,87,407/- is inclusive of the amount due to the petitioners and in respect of which the 1st respondent-Commissioner for Cane Development had issued a certificate, it was the duty of the 2nd respondent-Deputy Commissioner to have clarified this aspect before this Court in W.P. Nos. 31407 and 31409 of 2003 and sought for suitable modification of interim order, therein, in view of the undertaking given before this Court in these writ petitions and also by pointing out the legal position. Insofar as the recovery of amounts due to the farmers, who have supplied sugarcane to sugar factory under the Sugar (Control) Order, 1966 is that the farmers shall have first priority and as interpreted by the Supreme Court in the case of State of Madhya Pradesh v. Jaora Sugar Mills Limited and Ors., : AIR 1997 SC600 particularly as in paragraph 13.--

'It would thus be clear that the Cane Commissioner having power to compel the cane growers to supply cane to the factory Khandasari unit, he has incidental power and 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 of Khandasari unit'.¹⁰. If the amount of Rs. 1,36,87,407/- for recovery of which, proceedings had been initiated by the Revenue Authorities including 2nd respondent-Deputy Commissioner did not include the amounts due to the petitioners and as certified by the 1st respondent-Cane Commissioner, then the recovery of the amounts due to the petitioners is obviously by any other independent proceedings, either such proceedings have been taken or not taken. If such proceedings had been taken then the interim order passed by this Court in W.P. Nos. 31407 and 31409 of 2003 obviously does come in the way of pursuing that action.

11. If such proceedings had not been taken, it amounts to a clear breach of the undertaking given by the 2nd respondent-Deputy Commissioner assuring this Court that amount, as certified by the recovery certificate issued by the 1st respondent in favour of the petitioners will be realized and payment made within 30 days from 16-6-2003.

12. In either view of the matter, the 2nd respondent-Deputy Commissioner is clearly in dereliction of his duty. Such conduct on the part of the 2nd respondent may also invite further serious action at the hands of this Court. However, 2nd respondent-Deputy Commissioner is given an opportunity to explain his conduct and the manner of implementation of the undertaking given before this Court, on 16-6-2003, within a period of three weeks. The 2nd respondent-Deputy Commissioner to appear in person, before this Court on 22-9-2003 and submit his explanation.

13. Registry is directed to issue a copy of this order to the learned Counsel for petitioners and the Government Pleader for the respondents 1 and 2'.

4. Steps having not been taken, the concerned Deputy Commissioner was directed to be present before the Court, and had appeared in person as on 22nd September, 2003. The Deputy Commissioner had assured this Court, that there will be no room for any further delay and that due to certain confusion in view of another writ petition having been filed by the District Co-operative Central Bank, Bidar, in whose favour sugar was hypothecated, having obtained stay orders from this Court from taking steps for sale of the sugar, by the Deputy Commissioner, the earlier directions could not be carried out and further steps were being taken and that payment was being realized and made over to the petitioners.

5. Learned Counsel for the petitioners has made a submission before the Court, that thereafter, the petitioners have in fact been paid the price of the sugarcane that was due to them for the supply of sugarcane, subsequently and as on 29th September, 2003. It is also submitted that they have fully complied with the directions of this Court, and payments has been done as per the statutory provisions.

6. In this view of the matter, object of the petitioners having been achieved and respondents having complied with the directions issued by this Court, these writ petitions can be disposed off.

7. However, it is necessary to observe that in respect of farmers who have supplied sugarcane to such factories under the compulsion of law, it is very necessary for the respondent-authorities to ensure that payments are made to them, promptly and that there is no scope for inaction in this regard. The farmers who have toiled and who have shed their sweat and blood and who have been compelled to supply their produce to the sugar factory under the statutory provisions should be paid the price of the sugarcane, which is also statutorily fixed, without any delay. It is the duty of the 1st and 2nd respondents to ensure that such complaints do not keep recurring before the Court again and again.

Writ petitions are disposed off with this observation.