IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11746 of 2015

==

Ameya Primary Agricultural Cooperative Societies through its Chairman, Vikash Tiwary, Son of Sri Rameshwar Tiwary, resident of village- Ameya, Post - Mahuwa, Police Station - Kateya, District - Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food & Consumer Protection Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Cooperative Department, Govt. of Bihar, Patna.
3. The Managing Director, Bihar State Food & Civil Supplies Corporation Limited, Bihar, Patna.
4. The District Magistrate, Gopalganj.
5. The District Cooperative Officer, Gopalganj.
6. The Circle Officer, Kateya, District - Gopalganj.
7. The Ministry of Consumer Affairs, Food & Civil Supply, Govt. of India, through the Secretary.

.... Respondent/s

With

==

Civil Writ Jurisdiction Case No. 11861 of 2015

==

Ahirauli Dubhauli Primary Agricultural Cooperative Societies through its Chairman Markandey Rai Sharma, Son of Late Pahwari Sharma, resident of village- Ahirauli Dubhauli, Post - Narahwa Sukul, Police Station - Gopalpur, District - Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food & Consumer Protection Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Cooperative Department, Govt. of Bihar, Patna.
3. The Managing Director, Bihar State Food & Civil Supplies Corporation Limited, Bihar, Patna.
4. The District Magistrate, Gopalganj.
5. The District Cooperative Officer, Gopalganj.
6. The Block Development Officer, Kuchaicoat, District - Gopalganj.

.... Respondent/s

With

==

Civil Writ Jurisdiction Case No. 11865 of 2015

==

Gaura Primary Agricultural Cooperative Societies though its Chairman Murlidhar Patel, Son of Late Mahendra Prasad, Resident of Village - Gaura, Post- Gaura, P.S.- Kateya, District – Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food & Consumer Protection Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Cooperative Department, Govt. of Bihar, Patna.
3. The Managing Director, Bihar State Food & Civil Supplies Corporation

Limited, Bihar, Patna.
4. The District Magistrate, Gopalganj.
5. The District Cooperative Officer, Gopalganj.
6. The Circle Officer, Kateya, District – Gopalganj.

.... Respondent/s

With

==

Civil Writ Jurisdiction Case No. 11869 of 2015

==

Mahuwa Primary Agricultural Cooperative Societies through its Chairman Markandey Tiwari, Son of Uma Pati Sharam, resident of Village- Sabeya, Post- Gaura, Police Station- Kateya, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food & Consumer Protection Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Cooperative Department, Govt. of Bihar, Patna.
3. The Managing Director, Bihar State Food & Civil Supplies Corporation Limited, Bihar Patna.
4. The District Magistrate, Gopalganj.
5. The District Cooperative Officer, Gopalganj.
6. The District Minority Welfare Officer, District Gopalganj.

.... Respondent/s

==

Appearance :

(In CWJC No. 11746 of 2015)

For the Petitioner/s	:	Mr. Chakrapani Mr. Sanjay Kumar Singh
For the Respondent-State	:	Mr. Kinkar Kumar, SC-27
For the Respondent-Union	:	Mr. S.D. Sanjay, Addl. S.G.
For the Respondent-SFC	:	Mr. Anjani Kumar, Sr. Advocate with Mr. Shailendra Kumar Singh

(In CWJC No. 11861 of 2015)

For the Petitioner/s	:	Mr.Chakrapani Mr. Dipak Kumar
For the Respondent-State	:	Mr. S.S. Prasad, SC-10
For the Respondent-Union	:	Mr. S.D. Sanjay, Addl. S.G.
For the Respondent-SFC	:	Mr. Anjani Kumar, Sr. Advocate with Mr. Shailendra Kumar Singh

(In CWJC No. 11865 of 2015)

For the Petitioner/s	:	Mr. Chakrapani Mr. Dipak Kumar
For the Respondent-State	:	Mr. P.K. Singh, SC-12
For the Respondent-Union	:	Mr. S.D. Sanjay, Addl. S.G.
For the Respondent-SFC	:	Mr. Anjani Kumar, Sr. Advocate with Mr. Shailendra Kumar Singh

(In CWJC No. 11869 of 2015)

For the Petitioner/s	:	Mr. Chakrapani Mr. Sanjay Kumar Singh
For the Respondent/s	:	Mr. Amresh, AC to SC-11
For the Respondent-Union	:	Mr. S.D. Sanjay, Addl. S.G.
For the Respondent-SFC	:	Mr. Anjani Kumar, Sr. Advocate with

Mr. Shailendra Kumar Singh

==

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V. JUDGMENT

Date: 14-10-2015

In each of these four writ petitions the petitioners who are Primary Agriculture Credit Cooperative Societies operating within the district of Gopalganj have questioned the letter no.745 dated 19.5.2015 of the District Magistrate, Gopalganj, whereby the balance paddy available with the petitioner-Societies for the Kharif Season 2014-15 as on 31.3.2015 has been marked 'NIL'. The respective petitioners also pray for issuance of appropriate writ in the nature of mandamus for commanding the authorities of the Bihar State Food and Civil Supplies Corporation Limited, Bihar, Patna (hereinafter referred to as 'the Corporation') to lift the balance paddy/Custom Milled Rice lying with the petitioner-Societies and pay the price thereof.

Since the issues raised and the relief claimed in each of the writ petitions is the same, hence all these writ petitions have been heard together with a view to their final disposal at this stage itself with the consent of the parties.

It is under the orders of this Court that a comprehensive counter affidavit has been filed in CWJC No.11746 of 2015 which would cover the other writ petitions as well and thus I would be referring to the pleadings and the Annexures as occurring in CWJC No.11746 of 2015 for the sake of convenience unless clarified with specific reference to the other writ petitions.

The individual details of the paddy stock which remains with the petitioner-Societies and which are subject-matter of these batch of writ petitions are as follows:

(a) CWJC No.11746 of 2015:- 5078 quintals i.e. 507.8 M.T.

(b) CWJC No.11861 of 2015:- 819 quintals i.e.81.9 M.T.

(c) CWJC No.11865 of 2015:- 1106 quintals i.e. 110.6 M.T.

(d) CWJC No.11869 of 2015:-2667.6 quintals i.e. 266.76 M.T.

Whereas it is the case of the writ petitioners that the purchase is valid, supported with documents as well as payment details albeit not in entirety and that the balance remains due to refusal by ‘the Corporation’ to accept its delivery but such argument is being contested primarily on grounds that the purchase is not free from suspicion and that if the stock was so available with the writ petitioners they should have supplied the same within the period prescribed under the guidelines.

Since the dispute related to the implementation of the policy decision of the Government of India in its Ministry of Consumer Affairs in the Department of Food and Public Distribution but the authorities of the State with the Nodal Agency being the Bihar State Food and Civil Supplies Corporation hence this Court deemed it proper to hear the Union of India as well on the issue and the concerned department, thus was added as party respondent to the proceedings.

The Government of India has appeared through the Additional Solicitor General, Mr. S.D. Sanjay who has also filed an affidavit on their behalf.

It would be pertinent to mention here that since a large number of writ petitions have been filed on the issue hence 'the Corporation' have filed a comprehensive counter affidavit in CWJC No.10728 of 2015 clarifying their opinion on the issue and which affidavit according to learned counsel for the Corporation would equally govern the present matters as well. In a similar manner the Union of India has filed its affidavit in CWJC No.10728 of 2015 clarifying its stand and it is the contention of Mr. Sanjay that the stand so taken in the said writ petition would govern all the writ petitions on the issue. The affidavits so filed on behalf of the Corporation as well as the Union of India in CWJC No.10728 of 2015 which was heard alongside, thus would be reflecting the stand in the present batch of writ petitions as well.

Before proceeding further, I would like to place on record that it is in consideration of the objections so raised by the counsel appearing for the Corporation in raising doubts on the balance so claimed by the writ petitioners and to submit that the balance so claimed by these societies is not a correct reflection of the factual position that this Court thought it proper to get a physical verification of the stock done afresh under the supervision of the District Magistrates concerned and when the following orders was passed on 28.8.2015 in the present batch of cases:

> "Let these matters come up under the same heading on 07.09.2015 before which date the District Magistrate, Gopalganj would carry out a fresh inspection/physical verification of the entire Primary Agriculture Cooperative Credit Societies (hereinafter referred to as 'the PACS') operational within the district of Gopalganj including their godowns or the premises where the stocks are maintained, through a team of officials under the leadership of an officer not below the rank of the Additional Collector. The team would furnish its reports on the following issues.
>
> (a) The procurement target of paddy fixed for the respective society by the Cooperative Department for the Kharif Season 2014-15.
>
> (b) The total purchase of paddy made by the respective PACS from its members as on 31.3.2015 and the papers to support such purchase.
>
> (c) The number and date of enforcement certificate supporting the purchase made by the respective PACS issued by the Circle Officer concerned, if available.
>
> (d) The quantum of paddy delivered by the respective PACS to the Bihar State Food and Civil Supplies Corporation Ltd.
>
> (e) The quantum of paddy sent to the rice mill for converting it to custom milled rice for the paddy

season 2014-15; and

(f) The stock of paddy/custom milled rice presently available with the respective PACS.

The report so prepared by the team should be countersigned by the Chairman of the society concerned or any member of the Managing Committee of the PACS concerned, duly authorized by the Chairman.

Since the respective Primary Agriculture Credit Cooperative Society in the District of Gopalganj are represented through their respective counsels hence it is due notice to the societies concerned, to be available/present with the relevant records supporting their purchase as and when the inspecting team visits their respective office/premises/godowns and no objection regarding absence of notice would be entertained on behalf of any of the society.

List these cases on 7.9.2015 under the same heading and if the desired report is not submitted on or before 4.9.2015 then the District Magistrate, Gopalganj should be present in Court on 07.09.2015 at 10.30 A.M. with a suitable explanation.

Let a copy of this order be handed over to Mr. Kinkar Kumar, learned S.C. 27 as well as Mr. Shailendra Kumar Singh, learned counsel for the Corporation."

Mr. Anjani Kumar, learned senior counsel appearing for the Corporation has vehemently opposed the claim advanced by these societies to submit that these societies through their respective Chairman have not approached this Court with clean hands. According to Mr. Anjani Kumar, whatsoever have been the valid purchase by the societies, has been lifted by 'the Corporation' and the balance so shown in the stocks of these societies, is not the paddy belonging to the member-farmers rather it is the design of the Chairman of the Societies to draw undue advantage in the garb of implementation of the policy decision. Mr. Anjani Kumar with reference to the various clauses of the policy decision in question which finds mention in the letter of the Chief Secretary dated 19.11.2014 addressed to all the Divisional Commissioners and all the District Magistrates submits that specific responsibilities have been cast on the Societies, the District Magistrates and the Corporation which needs to be performed. It was submitted that the policy was a welfare measure to facilitate the farmers in disposing of their paddy and to avoid businessman, middleman and the millers. According to Mr. Kumar, the procurement of paddy was to be made in between 25.11.2014 to 15.4.2015 and the Custom Milled Rice (hereinafter referred to as 'the CMR' for the sake of brevity) was to be received in between 25.11.2014 to 30.6.2015. It is submitted that the said date was subsequently extended up to 31.8.2015 by the Government of India. It is stated that although 'the Corporation' was appointed as the nodal agency for the purpose of procurement from the cooperative societies but it is only to be done after ensuring that the paddy/CMR so being supplied by the society concerned is purchased from the member-farmers. It is contended that the societies concerned were under an obligation to make payment of the paddy purchased to the farmers immediately through R.T.G.S./N.E.F.T. or through Account Payee Cheque for achieving the object of the Scheme. It is the stand of 'the Corporation' that the documents relating to purchase and payment was to be sent to the Cooperative Bank concerned and who on being satisfied would recommend its payment which would be made within 7 days thereafter.

It is argued by Mr. Kumar that the entire procedure so prescribed was with a purpose to forestall any nefarious attempt by any society to claim wrongful benefits.

With reference to a supplementary affidavit filed in CWJC No.10728 of 2015 it is contended that the entire procedure provided in the scheme has been discussed in paragraphs 4 to 7 of the affidavit and thus until such time that the society concerned is in a position to confirm that it has followed the prescribed procedure, it cannot pray for any relief. It is the contention of Mr. Anjani Kumar that such checks and balances have been provided to prevent any misuse of public money in view of the unpleasant past experience. It is the contention of Mr. Kumar that the entire valid purchase has been supplied to 'the Corporation' and the balance which is remaining with the societies is not a purchase from the farmers rather in view of the added advantage of the bonus over the procurement of price that the Chairman of the Societies have tried to secure advantage by purchasing the paddy from open market in the garb of purchase from member-farmers. It is with reference to the report submitted by the District Magistrate, Gopalganj that it is submitted that the very fact that the District Magistrate had reported 'NIL' balance confirms that the balance so claimed by these petitioners are an outside purchase.

Another limb of argument of Mr. Kumar has been that since the funding agency is the Union of India in its Ministry of Consumer Affairs, in the Department of Food and Public Distribution hence whatsoever the purchase is being made by 'the Corporation' is on their behalf. It is contended that since the cut-off date i.e. 31.8.2015 has lapsed hence it would now be difficult for 'the Corporation' to take any further delivery or to make payment after the cut-off date until such time that Union of India agrees to take its delivery and pay the price. It is the concern shown by Mr. Kumar that in case the prayer made by the writ petitioners would find favour and 'the Corporation' is asked to take the delivery then a corresponding duty be also cast on the Union of India to release the funds and accept the delivery.

Mr. S.D. Sanjay, learned Additional Solicitor General appearing for the Union of India with reference to the affidavit filed on behalf of the Ministry of Consumer Affairs in the Department of Food and Public Distribution submits that the policy provided for a cut-off date and within which period the supply has to be effected. He submits that although the cut-off date was earlier extended from 30.6.2015 to 31.8.2015 on the request made by the State Government but since thereafter, there has not been any request for any kind of extension. He thus submits that whatsoever delivery that had to be made should have been made by 31.8.2015. It is also the contention of Mr. Sanjay that in most of the cases the balance remaining with the societies is in paddy form. He thus submits that under the scheme, the supply of paddy was to be made only up to 15.4.2015 and whereafter it is 'the CMR' which is to be supplied. According to Mr. Sanjay, since it is an admitted position of these societies that the balance stock remains in paddy form hence it sufficiently demonstrates that it is an after purchase and if it has not taken the shape of 'CMR' until 31.8.2015 then the societies in question are not even entitled to any relief.

I have heard learned counsel for the parties and I have perused the records.

Pursuant to the order passed by this Court that a report has been submitted by the District Magistrate, Gopalganj in respect of the cooperative societies operating in his district including the petitioner-societies. The report is restricted to the informations so desired by this Court in the order passed on 28.8.2015 and nothing further. Although the State Government is the implementing agency of the policy announced by the Government of India in its Ministry of Consumer Affairs but neither any counter affidavit has been filed on their behalf nor any affidavit has been filed on behalf of the Cooperative Department either accepting or contesting the reliefs. Even when the relief claimed by these petitioners are sought to be denied inter alia on grounds that the cut-off date has passed on 31.8.2015 and even when the policy that we are discussing is about the betterment of the farmers in this State who have not been able to dispose of their stock altogether but no attempt has been made by the State to seek any extension in the cut-off date.

In so far as the present batch of writ petitions are concerned the cut-off date is not a relevant factor since all these petitioners have moved this Court within the cut-off date. The issue which falls for consideration is whether the stock of these petitioners against which disposal is claimed is supported with valid document and if the answer is in affirmative then whether they should be granted the reliefs prayed, notwithstanding that the date has lapsed. The detailed report in so far as the district of Gopalganj is concerned has been placed on record by way of an affidavit in CWJC No.11746 of 2015. It is thus to be seen whether the claim advanced by these petitioners stands supported by the report. Since the report is based upon the enforcement certificates issued by the Enforcement Officer duly appointed by the District Magistrate hence I would be basing my decision exclusively on the report which also bears the signatures of the Chairman of the societies or his representative. In fact this fact-finding report cannot be contested either by the petitioners or 'the Corporation' inasmuch as it rests on enforcement certificates.

In the backdrop of the discussions made above, it is now to be seen what does the report filed in CWJC No.11746 of 2015 say about the factual stock position of these petitioners:

(a) CWJC No.11746 of 2015: The name Ameya PACS appears at running page no. 171 of the pleadings and shows that 815.48 metric tons of paddy was purchased by the society as until 31.3.2015 and which is supported by the enforcement certificates referred to in column 6. Out of the said stock 307.6 metric tons of paddy has been supplied to 'the Corporation' leaving a balance of 507.88 metric tons of paddy. Although some doubts are being raised in the remarks column but considering that the stock purchased by the society after its delivery to 'the Corporation' matches the stock presently held by the society the remarks are uncalled for and not worthy of acceptance.

(b) CWJC No.11861 of 2015: The name of Ahirauli Dubhauli PACS appears at running page 110 of the pleadings in CWJC No.11746 of 2015 and shows that 3114.80 quintals of paddy was purchased by the society until 31.3.2015 which is supported by the enforcement certificates mentioned in column 5. Out of the said purchase 2295.20 quintals of paddy has been supplied to 'the Corporation' leaving the balance of 819.60 quintals which is shown in the present society.

(c) CWJC No.11865 of 2015: the name of Gaura PACS appears as running page 169 of the pleadings in CWJC No.11746 of 2015 and shows a purchase of 149.64 metric tons of paddy as until 31.3.2015 and which is supported by the enforcement certificates mentioned in column 6. Out of the said purchase 39.04 metric tons of paddy has been supplied to the Corporation leaving a balance of 110.6 metric tons which lies in the stock of the society.

(d) CWJC No.11869 of 2015: The name of Mahuwa PACS appears at running page 136 of the pleadings in CWJC No.11746 of 2015 and supports a purchase of 266.76 metric tons of paddy until 31.3.2015 which is supported by enforcement certificates mentioned in column no.6. The entire stock of 266.76 metric tons has been sent to the rice mill for converting it to 'CMR' as is apparent from clause 8 and thus there is no further stock.

The individual details given above are conclusive of the factual stock position held by the petitioners and except for the petitioner in CWJC No.11869 of 2015 whose paddy stock has been sent to the rice mill for conversion to 'CMR', the rest of the societies have their stock in paddy form. The stocks are supported by the enforcement certificates and thus are valid stocks.

Although Mr. Anjani Kumar has raised certain doubts on the stock available but considering that these stocks matches the enforcement certificate I am not persuaded to uphold the objection. The issue regarding payment though significant but once the stocks are supported by the enforcement certificate then even though the policy would require that the society concerned should make the payment of the price to the farmers immediately but considering that these societies are largely dependant on the bank and for the funds, I do not attach too much importance to such objection nor can this be an obstruction to the relief claimed by the petitioners under the policy decision.

The various clauses of the circular dated 19.11.2014 issued by the Chief Secretary casts individual responsibilities on the authorities of 'the Corporation, the Cooperative Department, the District Magistrate and the societies and considering the various stipulation so present in the circular, it was for the State in its Cooperative Department, the District Magistrate as well as 'the Corporation' to take expedient steps to ensure the disposal of the paddy purchased by these societies. The policy decision so implemented was a benevolent measure to facilitate the farmers in disposing of their stocks. The societies having come forward in purchasing the stocks of the farmers cannot be left gasping midway. There is no dispute that the stock of paddy/CMR had to be disposed of within the prescribed date but then the onus entirely does not fall upon the society rather it is the State in its Food and Consumer Protection Department, the Cooperative Department, the District Magistrates concerned and the authorities of 'the Corporation' who had to collectively take steps to ensure that at least such of the paddy purchased by the society which finds support from the enforcement certificate is disposed of either in paddy form or in 'CMR' form and to that extent they are equally responsible for the grievance so raised in these writ petitions.

Although the claim put forth by the society is now sought to scuttled on the grounds that the cut-off date so fixed by the Union of India i.e. 31.8.2015 has since lapsed but in my opinion once the records supports that the paddy was purchased within the cut-off date fixed for the Kharif Marketing Seasons 2014-15 i.e. 31.3.2015 and the petitioners have approached this Court within the cut-off date so fixed under the Government of India policy i.e. 31.8.2015 then a mere pendency of these matters before this Court would not act prejudicial to their rights and interests. Once the purchase is supported by the enforcement certificate then the stock so remaining with the society whether in paddy form or in 'CMR' has to be accepted by the Corporation and its delivery taken and correspondingly the Union of India in its Ministry of Consumer Affairs cannot shirk from its responsibility to provide funds for such purchase. The only rider to such conclusion is that the society concerned should have approached this Court within a reasonable time and before the cut-off date i.e. 31.8.2015.

The petitioners herein have admittedly filed the writ petitions much before the cut-off date and thus are entitled to the reliefs prayed. The stock figures available with the petitioners are supported with the enforcement certificates and thus the delivery thereof has to be accepted by 'the Corporation' and for which funds have to be provided by the Union of India in its Ministry of Consumer Affairs.

In result, the State Food Corporation and the Union of India in its Ministry of Consumer Affairs are directed to accept the paddy/CMR so available in the stock of the writ petitioners the details of which have been given above and ensure payment of its price as found admissible. The 'CMR' would be delivered by the petitioner-societies without any delay and in so far as the balance stock of paddy is concerned, the writ petitioner in CWJC No.11746 of 2015, CWJC No.11861 of 2015 and CWJC No.11865 of 2015 would get it milled and make the proportionate supply of the 'CMR' produced therefrom within a fortnight from today.

These writ petitions are accordingly allowed.

(Jyoti Saran, J)

SKPathak/-

U			

NAFR