

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16722 of 2022

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M/S Tirupati Sugars Limited, P.O. Naraipur- 845105, Bagaha, District West Champaran (Bihar) through its General Manager Arun Kumar (Male) aged about 59 years, son of Late R.K. Maldahiya, resident of Tirupati Sugars Limited Premises, Bagaha, P.S. Bagaha and District West Champaran
... Petitioner

Versus

1. The State of Bihar through the Secretary, Sugarcane Industry Department, Government of Bihar, Patna.
2. The Secretary, Sugarcane Industry Department, Government of Bihar, Patna.
3. The Cane Commissioner, Sugarcane Industry Department, Government of Bihar, Patna.
4. The District Magistrate, West Champaran, Bettiah.
5. The Cane Officer, West Champaran, Bettiah.
6. M/S. H.P.C.L. Biofuels Limited (Lauriya Unit), At and P.O. Lauriya District West Champaran, Bihar through its authorized signatory Shri Bhuneshwar Kumar Singh, Deputy Cane Manager.

... Respondents

with

Civil Writ Jurisdiction Case No. 1296 of 2023

- =====
1. Raj Dev Yadav Son of Late Miththu Yadav Resident of Balua Dew Ray, P. S. Jogapatti, District- West Champaran, Bihar- 845452.
 2. Mahatm Yadav Son of Nagman Yadava Resident of Balua Murat Ray, West Champarn, Bihar- 845452.
 3. Sudama Ram Son of Radhuni Ram Resident of Ward No. 6, Balua Dew Ray Jogapati, West Champarna, Bihar - 845452.
 4. Sanjay Kumar Srivastava Son of Jagdish Narayan, Resident of Balua Dew Ray Jogapati, West Champaran, Bihar- 845452.
 5. Akhileshwar Prasad Kushwaha, Son of Hiralal Prasad Kuswaha Resident of Balua Bhawani Ray West Champarna, Bihar- 845452.
 6. Dilchan Mahto Son of Jagdish Mahto Resident of Balua Dew Ray Jogapati, West Champaran, Bihar - 845452.
 7. Ravindra Prasad Srivastatava Son of Badri Prasad Resident of Balua Dew Ray Jogapati, West Champaran, Bihar - 845452.
 8. Balram Kumar Son of Khublai Yadav Resident of Balua Murat Ray Jogapati West Champaran, Bihar- 845452.
 9. Janak Yadav Son of Mangani Yadav Resident of Ward No. 5, Balua Dew Ray Jogapati, West Champaran, Bihar- 845452.
 10. Vimal Thakur Son of Yamuna Thakur, Resident of Ward No. 7, Balua Dew



Ray Jogapati, West Champaran, Bihar- 845452.

11. Budhu Mukhkiya Son of Ramdhani Mukhiya Resident of Ward No. 6, Balluana Dew Ray Jogapati, West Champaran, Bihar- 845452.
12. Chokat Yadav Son of Mithu Yadav Resident of Ward No. 5, Balua Dew Ray Jogapati, West Champaran, Bihar- 845452.
13. Manibhushan Pandey Son of Maharaj Pandey Resident of Pareagwa, Ward 4, Jogapati, West Champaran, Bihar- 845452.
14. Bhola Ram Son of Mahendra Ram Resident of Balua Dew Ray Jogapati, West Champaran, Bihar- 845452.
15. Pappu Kumar Son of Narsingh Yadav Resident of Balua Murat Ray, Ward No. No. 8, Post- Yogapati, Jogapati, West Champaran, Bihar- 845452.
16. Inal Mahto Son of Bhajan Mahto, Resident of Rampura, Yogapati, near School, Rampurwa, West Champaran, Jogapati Bihar- 845452.

... Petitioners

Versus

1. The State of Bihar through, The Principle Secretary, Sugar cane Industry Department, Government of Bihar, Patna.
2. The Secretary Sugarcane Industry Department, Govt. of Bihar, Patna.
3. The Cane Commissioner, Govt. of Bihar, Patna.
4. The Assistant Cane Commissioner, North Bihar, Muzaffarpur.
5. The District Magistrate, West Champaran Bettiah cum Chairman Zonal Development Council, West Champaran Bettiah.
6. M/s Tirupati Sugar Mills Ltd. P.O.- Naraipur Bagha, District- West Champaran.
7. M/s H.P.C.L. Biofuel Limited (Lauriya Unit) at P.O.- Lauria, District- West Champaran.

... Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 16722 of 2022)

For the Petitioner	:	Mr.Ramesh Kumar Agrawal, Adv.
For the State	:	Mr.Kinkar Kumar, SC IX with Ms Deepika Sharma, AC to SC IX
For Respondent No. 6	:	M/s Raju Giri, Vikas Ratan Bharti & Santosh Kumar Mishra, Advs.

(In Civil Writ Jurisdiction Case No. 1296 of 2023)

For the Petitioners	:	Mr.Aamir Hayat, Adv.
For the State	:	Mr.Kinkar Kumar, SC IX with Ms Deepika Sharma, AC to SC IX
For Respondent No. 6	:	M/s Raju Giri, Vikas Ratan Bharti & Santosh Kumar Mishra, Advs.

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
CAV JUDGMENT

Date : 18-10-2023

Heard the learned counsel for the parties.



2. Both the cases are common for the relief, hence, are being disposed off by this common judgment.

3. The facts set-out in C.W.J.C. No. 16722 of 2022 are reiterated for the purpose of deciding the cases.

4. The admitted facts in the present Writ Petition is that the petitioner herein aggrieved by the orders passed by the Respondent No. 2, i.e., the Secretary, Sugarcane Industry Department, Government of Bihar, Patna, who by order, dated 10.11.2022 under Memo No. 2043, dated 11.11.2022 (Annexure 9) has allowed the appeal filed by the Respondent No. 6 against the order of the 3rd Respondent, i.e., the Cane Commissioner, Sugarcane Industry Department, Government of Bihar, Patna. The Cane Commissioner vide order, dated 10.08.2022, under Memo No. 02/Regu.-2-800-15/2020 had reserved five villages in Yogapatti Block in favour of the petitioner herein. The Appellate Authority has set aside the orders passed by the Cane Commissioner which were in favour of the petitioner herein.

5. Admittedly, the five villages in Yogapatti Block, i.e., Rampurwa, Baluwa Deo Rai, Baluwa Bhawani Rai, Baluwa Murat Rai and Baluwa Newaz Rai were earlier reserved in favour of Respondent No. 6 and the Cane Commissioner vide order, dated 10.08.2022, had allotted these villages to the petitioner herein. Learned counsel for the petitioner has stated that the Appellate



Authority did not give any opportunity of personal hearing to the petitioner and in spite of making a request for adjournment of the date of hearing due to ill health of the counsel, the said request was rejected. That Appellate Authority has passed the order setting aside the order of the Cane Commissioner, dated 10.08.2022, whereby the five villages have been reserved in favour of the petitioner. Learned counsel has stated that after the orders passed by the Cane Commissioner, the petitioner had invested huge amounts by way of giving seeds, fertilizers, insecticide and pesticide, loans, advances to the farmers and for setting-up a procurement center etc. Further it is stated that the Respondent No. 6 was not operating to its full capacity and for the previous year the Respondent No. 6 has himself stated that he cannot purchase the sugarcane (Annexure 9). Learned counsel has stated that the impugned order passed by the 2nd Respondent is liable to be set aside on the sole ground that the same is in violation of the principles of natural justice and equity. Further, it is stated that the order was liable to be set aside as it has not taken into consideration the objections made by the petitioner and passed the order without giving an opportunity of personal hearing. That the petitioner has incurred huge expenditure towards procurement of seeds, fertilizers, insecticide and pesticide and giving loans and advance to the farmers and in case the order under



challenge is allowed to remain the same will cause irreparable loss to the petitioner. That the impugned order was passed in a mechanical manner without adverting to the above facts. Therefore, learned counsel for the petitioner prayed this Hon'ble Court to allow the present Writ Petition and set aside the impugned order.

6. Per contra the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition. That initially C.W.J.C. No. 16722 of 2022 has been filed by the M/s Tirupati Sugars Limited under the subject of "other miscellaneous matters", and they could not obtain any interim orders in the said CWJC. They have got the second Writ Petition, i.e., C.W.J.C. No. 1296 of 2023 filed by the villagers under the subject of "Trade and Commerce" only with a view to obtain interim orders before another Bench. Learned counsel has stated that the Writ Petition bearing C.W.J.C. No. 1296 of 2023 is liable to be dismissed on the sole ground that the petitioners by any stretch of imagination can be said to be an "aggrieved parties" as they were not before the 2nd Respondent or before the Cane Commissioner. Learned counsel has stated that the Writ Petition being C.W.J.C. No. 1296 of 2023 which is purportedly filed by the villagers is nothing but a proxy Writ Petition which has been got filed by the petitioner in C.W.J.C. No. 16722 of 2022 and, therefore, liable to be dismissed.



7. That coming to the merits of C.W.J.C. No. 16722 of 2022, the counsel for the Respondent has stated that the five villages were originally allotted to the Respondent No. 6 and the Cane Commissioner without awaiting for the report of the Zonal Development Commission has allotted the above five villages in favour of the petitioner herein contrary to the provisions of the Act. Learned counsel has stated that the Cane Commissioner without awaiting for the mandatory report of Zonal Development Commission has passed the order. That aggrieved by the order passed by the Cane Commissioner, the Respondent No. 6 has filed an appeal before the 2nd Respondent, i.e., the Secretary, Sugarcane Industry Department, Government of Bihar, Patna, who is the Appellate Authority. That the Appellate Authority has passed a well reasoned order duly taking into consideration the material on record and the provision of the Act. Further, Learned counsel has stated that the five villages were allotted to the Respondent No. 6 way back in the year 2009 and the Respondent No. 6 has already lifted the sugarcane and there is no complaint from any quarters. Further, it is stated that there was no report from the Zonal Development Commission with regard to the removal of the five villages from the allotment made to the Respondent No. 6. That the order of the Cane Commissioner allotting the five villages which were already allotted to the Respondent No. 6 way back in the year 2009 is



contrary to the provisions of the Act and is punitive in nature. That the Cane Commissioner without following the procedure contemplated under the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (hereinafter referred to as, 'the Act') has passed the order in derogation of the orders which were already passed way back in the year 2009. That the order of the Cane Commissioner is liable to be set aside on the sole ground that the said order was passed for extraneous considerations and not on the merits of the case. The Cane Commissioner without awaiting the report of the Zonal Development Commission has passed the order in a hasty manner. That the order passed by the 2nd Respondent is perfectly in consonance with the provisions of the Act and also the law laid down by this Hon'ble Court. Learned counsel appearing on behalf of the Respondent No. 6 has relied on the judgments passed by this Hon'ble Court in the case of **M/s Vishnu Sugar Mills Limited Vrs. the State of Bihar & Ors.** and analogous cases reported in **2005(2) PLJR, 495** and, therefore, prayed this Hon'ble Court to dismiss the present Writ Petition.

8. The counsel for the petitioner appearing in C.W.J.C. No. 1296 of 2023 while adopting the arguments made by the counsel appearing in C.W.J.C. No. 16722 of 2022 has further stated that the Cane Commissioner duly taking into consideration the proximity of the five villages to the purchase centers of the



petitioner factory has taken a decision to allot the five villages to the petitioner factory in C.W.J.C. No. 16722 of 2022. Further, it is stated by the counsel for the petitioner that the Respondent No. 6 is having excess sugarcane and the same is not operating to its full capacity, therefore, the decision taken by the Cane Commissioner is valid one which has been passed duly taking into consideration the entire facts and circumstances. Therefore, learned counsel has prayed this Hon'ble Court to set aside the order of the 2nd Respondent.

9. A perusal of the order passed by the Cane Commissioner reveals that the Cane Commissioner at the behest of the petitioner in C.W.J.C. No. 16722 of 2022 has allotted the five villages of Yogapatti Block, i.e., Rampurwa, Baluwa Deo Rai, Baluwa Bhawani Rai, Baluwa Murat Rai and Baluwa Newaz Rai to the petitioner. The order of the Cane Commissioner does not reveal that he has waited for the report of the Zonal Development Commission before passing the order. The admitted facts are that the Respondent No. 6 was allotted this land way back in the year 2009 the Cane Commissioner ought to have waited till the report of the Zonal Development Commission was sent. The order does not take into consideration the requirement of the Respondent No. 6 and no reasons are assigned as to why the five villages are de-reserved and allotted in favour of the petitioner.



10. Though the counsel for the petitioner has vehemently argued that the principles of natural justice and equity has been violated as no personal hearing has been given to the petitioner for advancing his arguments.

11. A perusal of the impugned order shows that the petitioner has filed his written arguments and the same were taken into consideration before passing the impugned order. The order makes it abundantly clear that due opportunities was given to all the parties to advance their arguments and only when a request has been made by the petitioner to adjourn the case on the ground that the counsel appearing on their behalf was ill, they were directed to file their written arguments which they have done.

12. A perusal of the provisions of the Act more particularly Section 31(1) of the Act provides for declaration of the reserved area by the Cane Commissioner for each sugar factory, duly taking into consideration the crushing capacity, the availability of the sugarcane, the need of production and taking into consideration the objections by the other stake holders. The Commissioner is empowered to allot, cancel or alter the extent of area to a particular sugar factory depending on their needs.

The Hon'ble Court in the case of **M/s Vishnu Sugar Mills Limited Vrs. the State of Bihar & Ors.** reported in **2005(2) PLJR 495** has held as under :

“12 : From the decision of the Supreme Court, it is



manifest and clear that the order of reservation must be a speaking order and it must assign reasons for reservations of different villages in favour of the different sugar factories. The issuance of merely a list of villages reserved for the different sugar factories can by no means be taken as an appropriate exercise of power and jurisdiction under Section 31 of the Act. To give an analogy an order of reservation under Section 31 of the Act would be like an award of the Tribunal/ Arbitrator that should consider the case of the parties (in this case, the proposals coming from the different sugar companies), give reasons for accepting or rejecting the proposals of different sugar companies either wholly or in part and the final award that is to say the final order of reservation. The whole of the order alongwith the list of villages reserved for different sugar factories must then be published in the Gazette as is the requirement of the law as it stands at present. It is well known that the Government Printing Press at Gulzarbagh is not functioning properly and it takes weeks and in some cases months for the publication of a Government notification. If it becomes impossible or very difficult to get the reservation notification published in the official Gazette in time, the Government may even consider amending the law and deleting the words "by notification in the official Gazette" from Section 31 of the Act. But as long as the law stands in its present form, in the absence of a Gazette notification, no reservation can legally take place in favour of any sugar factory.

Further at Paragraph 18 it is held as under :

18 : On hearing counsel for the parties and the State Counsel and the Cane Commissioner, the Court deems it fit and proper to issue the following directions to be strictly adhered to in future for making reservations under Section 31 of the Act:

(1) The Cane Commissioner must follow the statutory calendar strictly and must ask for and receive the reservation proposals as provided under the statutory calendar.

(2) After holding meeting(s) and after tearing the parties on their respective proposals and after



consulting the Zonal Development Council, the Cane Commissioner must pass a speaking order of reservation lacking into account the proposals of the respective sugar factories, his reasons for accepting or not accepting or partly accepting the proposals of any of the sugar lactones and finally his direction regarding reservation of villages in favour of different sugar factories.

(3) Reservation of traditional villages in favour of different sugar factories must be made atleast for five years. In case during the period of five years, any of the sugar factories is closed down, it will be open to the Cane Commissioner to pass a supplementary order for one crushing season or for the remaining period of the reservation dealing with reallocation of the traditional villages of the closed sugar factory(ies) to other sugar factories after observing the requirements of notice and hearing as provided under Section 31 of the Act.

(4) The reservation of villages other than the traditional villages shall be for a period of not less than three years. The provision for making a supplementary order incase the sugar factory closes down shall apply also in the case of these villages.

(5) The order must be sent to Gulzarbagh Printing Press well in advance so that it is duly published atleast a fortnight before the, start of the crushing operations.”

In the case of **Harinagar Sugar Mills Ltd. Vrs. the State of Bihar & Ors.** reported in **2014(2) PLJR, 656** it has been held as under :

“28 : Now, if we look to Rule 25 it clearly provides that normally order should be issued on or before 31st of July, in each year and in exceptional cases up to 30th of September. Thus, a conjoint reading of Section 31 with Rule 25 would show that no order of reservation could be issued after 30th of September. This is so because, as noticed earlier, the actual crushing starts from 1st of November and varying the



reserved area so close to beginning of crushing is not permitted because it is likely to upset the sugar mill and may be the cane growers also. Moreover, it has to be issued after notice to parties. If that be the restrictions for issuing the orders of reservation then the like restrictions would apply for its amendment. One can refer to Section 24 of the Bihar and Orissa General Clauses Act, 1917 in this regards. Thus, the jurisdiction to make amendment to reservation ceases after 30th of September.

For better appreciating the issue at hand, Section 31 of the Act is extracted below :

“31. Declarations of reserved area. - The Cane Commissioner may, having regard to the crushing capacity of the factory, the availability of sugarcane in such area and the need for production sugar and after consulting the council concerned and the occupier of the factory or the occupiers of other affected factories and after considering any objection that may be raised, issue an order, by notification in the official Gazette, declaring any area to be the reserved area for the purpose of supply of cane to the factory during a particular crushing year or year and may likewise cancel any such order or alter the extent of the area so reserved:

Provided that, in the case of a factory situated outside the state of Bihar, such declaration may be made only on receipt, by the Cane Commissioner of an application in the prescribed form from the occupier of such factory requesting that an area in Bihar may be reserved for the supply of cane to such factory and on condition that such occupier establishes a branch officer in the state of Bihar and deposits a security of ten thousand rupees with a Collector in the State of Bihar and gives an undertaking in the prescribed form to purchase cane grown in the reserved area solely through a co-operative society of such area.

(2) Any person aggrieved by an order of the Cane Commissioner under sub-section (1) may, within



thirty days of the receipt of such order or within the same period from its publication in the official Gazette, appeal to the prescribed authority.”

Section 2(h) of the Act defines “Council” and reads as under :

“2. Definitions. - *In this Act, unless the context otherwise requires,-*

(h) "Council" means a Zonal Development Council established under section7;

13. Admittedly, in this case the above five villages were already reserved in favour of the Respondent No. 6 way back in the year 2009, however, the Cane Commissioner while passing the order on 10.08.2022 did not wait for the report of the Zonal Development Commission which is mandatory. As observed above the Cane Commissioner did not take into consideration the objections filed by the Respondent No. 6, no reasons are given for allotting the said five villages in favour of the writ petitioner. The order of the Cane Commissioner is contrary to the provision of the Act and the law laid down by this Court. The Appellate Authority duly taking into consideration the above mentioned facts has passed the impugned order, this Court is of the opinion that the order passed by Appellate Authority does not suffer from any illegality or perversity which warrant any interference by this Hon’ble Court. The order passed by the Appellate Authority is a well reasoned order passed in



consonance with the provisions of the Act and, therefore, this Court does not find any merit in the present Writ Petition which warrants any interference in the impugned order.

14. The Writ Petitions bearing C.W.J.C. No. 16722 of 2022 is accordingly **dismissed**.

15. However, liberty is granted to the petitioners to take appropriate steps for recovery of the amounts, if any, spent by them for supply of seeds, pesticides, advances or loans to the farmers as the case may be.

16. That in so far as the C.W.J.C. No. 1926 of 2023 is concerned, this Court is of the opinion that the petitioners in the said case do not have any “locus standi” to file the Writ Petition as they are only the villagers of the five villages which are allotted to the Respondent No. 6. They were neither parties before the Appellate Authority nor before the Cane Commissioner nor can they be said to be aggrieved parties. Accordingly, C.W.J.C. No. 1296 of 2023 is also **dismissed**.

(A. Abhishek Reddy , J)

Shamshad/-

AFR/NAFR	NAFR
CAV DATE	05.07.2023
Uploading Date	19.10.2023
Transmission Date	NA

