IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3918 of 2020

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Magadh Sugar and Energy Ltd. Unit Bharat Sugar Mills having its local Office at and P.O. Sidhwalia, District-Gopalganj through its Executive Vice President namely Ashish Khanna, aged about 61Years (Male), Son of Late Dr. R.N. Khanna, resident of Bharat Sugar Mill, P.O. and P.S.-Sidhwalia, District-Gopalganj.

... ... Petitioner/s

Versus

1. The State of Bihar thorugh Principal Secretary, Sugarcane Department, Government of Bihar Patna.
2. The Principal Secretary, Sugarcane Department, Government of Bihar, Patna.
3. The Cane Commissioner, Government of BIhar, Patna
4. The Cane Officer, Gopalganj.
5. The Department of Plant Breeding and Genetics Sugarcane Research Institute, Dr. Rajendra Prasad Central Agricultural University, PUSA Samastipur through Head of Department Plant Breeding and Genetics Sri PUSA.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Ashish Giri Sumit Kumar Jha Riya Giri, Advocates
For the Respondent/s	:	Mr. Shankar Kumar, AC to AAG 7

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 12-11-2024

1. The petitioner has filed the Writ petition for:

> *(a). Quashing the order of the Cane Commissioner, Bihar dated 07.01.2020 by which the petitioner has been directed to make payment to the cane growers of sugarcane variety BO-150 at the specified rate of general category.*

(b). Quashing the decision issued under the signature of the Cane Commissioner, Bihar vide Letter No. 1594 dated 23.10.2019, pursuant to the meeting held on 20.09.2019 wherein the sugarcane variety BO-150 was held to be treated as Samanya (general) category for the season 2019-20.

(c). Declaring the sugarcane variety BO-150 cannot be treated as general (Samanya) and the petitioner is not liable to pay at any specified rate of general category for the season 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and also for the season 2019-20.

(d). Quashing of the decision dated 03.06.2013 issued under the signature of the Cane Commissioner, Bihar, Patna by which the sugar variety BO-150 has been treated as Samanya for the season 2013-14 and all the subsequent decision treating the sugarcane variety BO-150 as general.

2. At the outset, the Learned counsel for the petitioner draw attention of this Court towards the order dated 04.08.2022 passed by this Court by which the order dated 07.01.2020 passed by the Cane Commissioner (Respondent No. 3), contained in Annexure 8 has been stayed.

3. The brief facts culled out of the Writ petition is that the petitioner is a Company, registered under the provisions of Companies Act, 2013 and has a Sugar Mill situated at Sidhwalia, Gopalganj, which is engaged in production of sugar through vacuum pan process. The Sugar Mill is governed in terms of various provisions of law including Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (hereinafter referred to as ‘the Act, 1981') and also the rules framed under Bihar Sugarcane (Regulation of Supply and Purchase) Rules, 1978 (hereinafter referred to as the Rules, 1978). The facts of the Writ petition disclose that the Cane Commissioner has treated the sugarcane variety BO-150 as *Samanya* (general) category and as such the payment against the same was fixed at rate of *Samanya* category.

4. In order to prove the illegality committed by the Cane Commissioner, the Learned counsel for the petitioner relied on Section 2(a), Section 3(d), Section 4(c) and Section 36 of the Act, 1981,

(i) Section 2 of the Act, 1981 deals with the definitions and Section 2(a) defines the word 'Board'. 'Board' means the Sugarcane Board established under Section 3.

(ii)Section 3 of the Act, 1981 deals with the Establishment of Sugarcane Board and sub-Section 2(c) specifies that seventeen members are to be appointed by the State Government in the following proportion to represent:

(i) factories 4

(ii) units 1

(iii) cane-grower and co-operative societies ... 5

(iv) persons possessing technical knowledge in sugarcane or otherwise interested in development of sugarcane and its products.

... ... 5

(v) labour 1

(vi) Khadi and Village Industries Commission.

(iii). Section 3(d) of the Act, 1981 envisages that the *Director of Agriculture, Bihar, Director of Sugarcane Research Institute, Chief Engineer of Electricity, Road Construction, Irrigation, Minor Irrigation, Chairman of the Bihar State Co-operative Marketing Union and the Cane Commissioner shall be ex-officio members.*

(iv).Section 4 states the ***Functions of the Board*** and Sub-section (c) of the Section 4 deals with *the varieties of the sugarcane, tested by the Sugarcane Research Institution in the State, which are suitable or unsuitable for use in a factory.*

(v).Section 36 of the Act, 1981 deals with the ***Power to declare varieties of sugarcane to be unsuitable for use in factories*** *- The State Government may, after consulting the Board by notification in the Official Gazette, declare that:*

(a) sugarcane of any variety grown in any

area specified in such notification is unsuitable for use in all or any factory situated in the said area; and

(b) sugarcane-seed of any variety is unsuitable for distribution to cultivators in any area specified in any such notification.

5. It is the specific contention of the Learned counsel for the petitioner that without following the law, laid down under the Act, 1981, the Cane Commissioner declared Sugarcane variety i.e. BO-150 as *Samanya* (general) category, which is illegal and arbitrary in nature. It is further contended that the provision under Section 36 of the said Act was not followed while declaring the BO-150 sugarcane variety as *Samanya* category and further the Cane Commissioner is not the competent authority to declare BO-150 as *Samanya*. It is also contended that the power is vested with the Board to take decision to declare any variety as *Samanya/Nimnya* or *Uttam* grade and further, the State Government, after consulting the Board, is empowered to issue notification in any Official Gazette, for declaring any variety of sugarcane under any category and the said procedure was not followed in the present case, therefore, the orders of the Cane Commissioner for fixing the rate of the sugarcane from Season 2013-15 till Season 2019-20 are liable to be quashed. It is also contended by the Learned counsel for the petitioner that the Director, Sugarcane Research Institute has a role in testing the sugarcane, while declaring them as *Samanya* category and in the present case, there is no such opinion or report of the Director of the Sugarcane Research Institute to consider BO-150 as *Samanya* Category, therefore, prayed to allow the Writ petition.

6. On behalf of the State, four counter affidavits were brought on record. However, all the four counter affidavits are on the same lines. None of the counter affidavit disclose that the Cane Commissioner is the competent authority to declare the sugarcane variety i.e. BO-150 as *Samanya* (general) category.

7. The Learned counsel representing the State contended that the Additional Chief Secretary of the Sugarcane Department held a meeting on 20.09.2019 and pursuant to the minutes of the meeting, the Cane Commissioner, Bihar, *vide* letter No. 1594 dated 23.10.2019 declared the sugarcane variety BO-150 as *Samanya* (general) category and, therefore, there is no error or irregularity in the order passed by the Cane Commissioner, Bihar.

8. In paragraph No. 12 of the 1st counter affidavit, it is specifically mentioned that the orders were passed by the competent authority in exercise of powers so conferred under the Act, 1981 and that the order passed by the respondents are well explained, reasoned and speaking orders and, therefore, the Writ petition is liable to be dismissed.

9. In the second counter affidavit of paragraph No. 12 also reiterates that directions were issued under the signature of the Cane Commissioner, Bihar, *vide* letter No. 1594 dated 23.10.2019, pursuant to the meeting held on 20.09.2019 in exercise of powers conferred under Sections 4 and 36 of the Act, 1981 declaring sugarcane variety BO-150 as *Samanya*.

10. In the third counter affidavit at paragraph No. 6, it is specifically stated that “however to reply the specific question about the sugarcane Board and its consultation before passing the order under challenge, in this specific matter, the Sugarcane Industries Department has to take legal opinion from the Law Department, Government of Bihar. Since in the process of Legal Opinion from the Law Department and to examine the same and to comply the opinion given by the Law Department, it may take some procedural time. In view of the aforesaid facts, four weeks time may be given for the respondent for filing supplementary affidavit in the interest of justice.

11. The fourth counter affidavit filed by the State Government it is specifically stated at paragraph No. 8 that “the Writ petition has been filed only with a view to mislead the Hon’ble Court and to divert the real matter in controversy. That the order dated 07.01.2020 issued *vide* letter No. 42 dated 13.01.2020 which is under challenge has been passed by the Cane Commissioner, Bihar, Patna, only on the basis of a Written complaint submitted by one Satyanarayan Prasad, Cane grower against the Writ petitioner dated 22.07.2019. Upon the said complaint given by the Cane Grower, the Cane Commissioner, Bihar, *vide* letter No. 1165 dated 25.07.2019 directed the Cane Officer, Gopalganj to conduct inquiry against the allegation levelled by the Cane Grower against the Writ petitioner and to submit its report".

12. In paragraph No. 10 of the said counter it is mentioned that "in compliance of the said direction the Cane Officer, Gopalganj conducted inquiry in the matter and submitted his report to the Cane Commissioner, Bihar, Patna *vide* letter dated 02.08.2019".

13. It is further contended in the counter that considering the gravity of the matter, the Cane Commissioner, Bihar, summoned both the parties for personal hearing in exercise of power, conferred under

Section 58 of the Act, 1981, and came to a conclusion that the petitioner has committed wrong, and thus, the Cane Commissioner, Bihar, passed a reasoned speaking order *vide* Letter No. 42 dated 13.01.2020 directing the petitioner to make payment to the cane growers for sugarcane variety BO-150 at a specific rate of general category strictly in accordance with the letter issued by the Cane Commissioner *vide* Letter No. 1090 dated 03.06.2013 and Letter No. 1594 dated 23.09.2019 and, therefore, contended that the Writ petition is not maintainable and it is fit to be dismissed. Again, paragraph 12 of the counter affidavit, it is reiterated that the Cane Commissioner is the competent authority to pass orders under Sections 4 and 36 of the Act, 1981 wherein the sugarcane variety BO-150 was treated as *Samanya,* as stated in the other counter affidavits.

14. In order to support his contention, the Learned counsel for the petitioner relied on the following citations of the Hon'ble Apex Court:

(i) In the case of ***State of Andhra Pradesh***

(Now State of Telangana) Vs. A.P. State Wakf Board and others reported in ***2022 SCC OnLine SC 159*** wherein their Lordships have held at paragraph Nos. 143, 146 and 147 as follows:-

> ***"143.*** *Therefore, the Wakf Board has power to determine the nature of the property as wakf under Section 32(2)(n) but after complying with the procedure prescribed as contained in Section 40. Such procedure categorically prescribes an inquiry to be conducted. The conduct of inquiry pre-supposes compliance of the principles of natural justice so as to give opportunity of hearing to the affected parties. The proceedings produced by the Wakf Board do not show any inquiry conducted or any notice issued to either of the affected parties. Primarily, two factors had led the Wakf Board to issue the Errata notification, that is, order of the Nazim Atiyat and the second survey report. Both may be considered as material available with the Wakf Board but in*

the absence of an inquiry conducted, it cannot be said to be in accordance with the procedure prescribed under Section 40 of the 1995 Act.

146. *The argument in support of the Errata notification dated 13.03.2006 is that it is traceable to the powers conferred on the Wakf Board under Section 5 of the 1995 Act. The exercise of the publication of notification is the power conferred on the Wakf Board. Therefore, the fact that second survey report was not submitted to the State Government was inconsequential as it was only a ministerial action. Once the Board had the power to publish notification after perusing the various documents, the same could not be said to be illegal only for the reason that the report was not submitted to the State Government as contemplated by sub-section (1) of Section 5 of the 1995 Act. The argument raised by Mr. Ahmadi that the notification is in terms of Section 5 of 1995 Act is not tenable. It is an admitted case that the second* *survey report was not submitted to the State Government and such report has not even been forwarded by the Government to the Wakf Board. The Wakf Board may have a right to requisition of any document in terms of power conferred under Section 105 of the 1995 Act, but if a procedure is prescribed for issuance of a notification, it could be issued only in the manner prescribed and not in any other manner. Reference be made to judgment of this Court reported as Babu Verghese v. Bar Council of Kerala wherein this Court held as under:—*

'31. It is the basic principle of law long settled that if the manner of going a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor, [L.R.] 1 Ch.D. 426 which was followed by Lord Roche in Nazir Ahmad v. King Emperor, (1935-36) 63 IA 372 who stated as under:

'Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all'.

'32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, 1954 SCR 1098 and again in Deep Chand v. State of Rajasthan, (1962) 1 SCR 662. These cases were considered by a Three Judge Bench of this Court in State of Uttar Pradesh v. Singhara Singh, AIR 1964 SC 358 and the rule laid down in Nazir Ahmad's case (supra) was again upheld. The rule has since been applied to the exercise of jurisdiction by Courts and has also been recognised as a salutary principle of administrative law.'

***147.** A Constitution Bench in a judgment reported as CIT v. Anjum M.H. Ghaswala reiterated that when a statute vests certain power in an authority to be exercised in a particular manner, then the said authority has to exercise the same only* *in the manner prescribed by the statute itself. It was held as under:—*

'27. Then it is to be seen that the Act requires the Board to exercise the power under Section 119 in a particular manner i.e. by way of issuance of orders, instructions and directions. These orders, instructions and directions are meant to be issued to other income-tax authorities for proper administration of the Act, the Commission while exercising its quasi-judicial power of arriving at a settlement under Section 245D cannot have the administrative power of issuing directions to other income-tax authorities. It is normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it

cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119.”

(ii) In the case of ***Krishna Rai (dead) through Legal representatives and others Vs. Banaras Hindu University through Registrar and others*** reported in ***(2022) 8 Supreme Court Cases 713 : 2022 SCC OnLine SC 750***, wherein their Lordships have held at paragraph No. 32 as follows:

“32. *Further in Tata Chemicals Ltd. v. Commr. of Customs [Tata Chemicals Ltd. v. Commr. of Customs, (2015) 11 SCC 628] , it has been laid down that there can be no estoppel against law. If the law requires something to be done in a particular manner, then it must be done in that manner, and if it is not done in that manner, then it would have no existence in the eye of the law. Para 18 of the said judgment is reproduced below:*

‘18. The Tribunal's

judgment [Commr. of Customs v. Tata Chemicals Ltd., 2004 SCC OnLine Cestat 270] has proceeded on the basis that even though the samples were drawn contrary to law, the appellants would be estopped because their representative was present when the samples were drawn and they did not object immediately. This is a completely perverse finding both on fact and law. On fact, it has been more than amply proved that no representative of the appellant was, in fact, present at the time the Customs Inspector took the samples. Shri K.M. Jani who was allegedly present not only stated that he did not represent the clearing agent of the appellants in that he was not their employee but also stated that he was not present when the samples were taken. In fact, therefore, there was no representative of the appellants when the samples were taken. In law equally the Tribunal ought to have realised that there can be no estoppel against law. If the law *requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of the law at all. The Customs Authorities are not absolved from following the law depending upon the acts of a particular assessee. Something that is illegal cannot convert itself into something legal by the act of a third person.”*

(iii) In the case of ***Dr. Premachandran Keezhoth and another Vs. Chancellor Kannur University and others*** reported in ***2023 SCC OnLine SC 1592***, wherein their Lordships have held at paragraph Nos. 72, 73 and 76 as follows:

“72. It has been stated by Wade and Forsyth in *Administrative Law*, 7th Edn. at pp. 358-59 under the heading “*Surrender, Abdication, Dictation*” and sub-heading “*Power in the wrong hands*” as below:

‘Closely akin to delegation, and scarcely distinguishable from it in some

cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them….

Ministers and their departments have several times fallen foul of the same rule, no doubt equally to their surprise….'

(Emphasis supplied)

***73.** It is a well settled (and indeed, bedrock) principle of administrative law that if a statute expressly confers a statutory power on a particular body or* *authority or imposes a statutory duty on the same, then such power must be exercised or duty performed (as the case may) by that very body or authority itself and none other. If the body or authority exercises the statutory power or performs the statutory duty acting at the behest, or on the dictate, of any other body or person, then this is regarded as an abdication of the statutory mandate and any decision taken on such basis is contrary to law and liable to be quashed. It is important to keep in mind that, in law, it matters not that the extraneous element is introduced (i.e., the advice, recommendation, approval, etc. of the person not empowered by the statute is obtained or given) in good faith or for the advancement of any goal or objection howsoever laudable or desirable. The rule of law requires that a statutory power vests in the body or authority where the statute so provides, and likewise, the discharge of the statutory duty is the responsibility of the body or authority to which it is entrusted. That* *body or authority cannot merely rubberstamp an action taken elsewhere or simply endorse or ratify the decision of someone else.*

76. *Similar are the principles laid down in Joint Action Committee of Air Line Pilots' Association of India (ALPAI) v. Director General of Civil Aviation, (2011) 5 SCC 435, where it has been held that:*

'26. ... It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the statutory authority. In a democratic set-up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision-making authority and be prepared to give way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no

statutory role to play, the same would be patently illegal. (Vide Purtabpore Co. Ltd. v. Cane Commr. of Bihar [(1969) 1 SCC 308 : AIR 1970 SC 1896], Chandrika Jha v. State of Bihar [(1984) 2 SCC 41 : AIR 1984 SC 322], Tarlochan Dev Sharma v. State of Punjab [(2001) 6 SCC 260 : AIR 2001 SC 2524] and Manohar Lal v. Ugrasen [(2010) 11 SCC 557 : (2010) 4 SCC (Civ) 524 : AIR 2010 SC 2210].

27. Similar view has been reiterated by this Court in Commr. of Police v. Gordhandas Bhanji (1951 SCC 1088 : AIR 1952 SC 16), Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia [(2004) 2 SCC 65 : AIR 2004 SC 1159] and Pancham Chand v. State of H.P. [(2008) 7 SCC 117 : AIR 2008 SC 1888] observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly

> *unwarranted in law. It violates the constitutional scheme.*
>
> *28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.”*
>
> *(Emphasis supplied)*

15. Heard the Learned counsel for the petitioner as well as the Learned counsel for the respondents. Perused the records.

16. On perusal of the record, it is evident that the Cane Commissioner, Bihar is not a competent authority to declare the sugarcane variety i.e. BO-150 as *Samanya* (general) category. As per Section 4(c) of the Act, 1981, the Board shall advise the State Government for testing the varieties of sugarcane by the Sugarcane Research Institution in the State, which are suitable or unsuitable for use in a factory.

17. In the present case, there is no record to show that BO-150 was referred to Sugarcane Research Institution in the State even by the Cane Commissioner to declare the variety of sugarcane as *Samanya* (general). Further, the Cane Commissioner was one of the *Ex-officio* member of the Board and the Cane Commissioner alone cannot constitute the Board. As per Section 3(2)(c) of the Act, 1981, 17 members are to be appointed to constitute the Board, therefore, the Cane Commissioner cannot unilaterally declare any sugarcane variety as *Samanya* (general) or any other category. Section 36 of the Act, 1981 further disclose that if at all any variety of sugarcane has to be declared under any category, the power is conferred to the State Government in consultation with the Board to issue notification in any Official Gazette at the time of declaring any category. All the four counter affidavits disclose that the Cane Commissioner is the competent authority under Sections 4 and 36 of the Act, 1981 and thus competent to pass such order. This Court is of the considerable view that the Board is the competent authority and the Cane Commissioner alone cannot pass any such order. Sections 4 and 36 of the Act, 1981 only empowers the Board and the Government to declare the variety as suitable or unsuitable. Further, the Counter affidavit disclose that basing on the meeting held by the Additional Chief Secretary of the Sugarcane Department, the Cane Commissioner has passed the orders which is under challenge.

18. The judgments relied by the Learned counsel for the petitioner squarely applicable to the facts of the case. As per the said judgments, if the law requires the something to be done in a particular manner, it must be done in that manner and if not done in that manner, it has no existence in the eye of law. In the present case also, the law declares that the Board shall give its opinion to the State Government and further in consultation with the Board, the State Government is alone to competent declare any variety of sugarcane under any category. Therefore, Cane Commissioner cannot declare the sugarcane varieties under any category, therefore, the orders which are under challenge are liable to be quashed.

19. In result, the Writ petition is allowed and the order dated 07.01.2020 passed by the Cane Commissioner (Annexure-8), the order issued under Letter No. 1594 dated 23.10.2019 (Annexure-5) and order dated 03.06.2013 (Annexure-2) issued under the signature of Cane Commissioner, Bihar are hereby quashed and set aside.

20. Interlocutory application, if any, shall stands disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.12.2024
Transmission Date	NA