IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4436 OF 2002

Hutatma Jaiwantrao Patil
Sahkari Sakhar Karkhana Ltd.,
Suryanagar, Tq. Hadgaon,
District Nanded through its
Managing Director Shri Dattatray
Bhausaheb Shinde, age 48 years,
Occ. Service, resident of factory
site - Suryanagar, Tq. Hadgaon,
District Nanded. .. Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
Cooperation Department,
Mantralaya, Mumbai.

2. The Commissioner (Sugar)
Maharashtra, Pune.

3. The Enquiry Officer,
shri Shivaji Shinde,
Chartered Accountant,
75, Mangalwar Peth,
Pune.

4. Ashok Exporter
G/4, Rajlaxmi Plaza,
Near Hajipura Garden,
Shahibaug Road,
Ahmedabad - 4,
through its Proprietor
Shri Ashok R. Gupta. .. Respondents

Shri P. D. Bachate, Advocate h/f Shri R. B. Raghuwanshi, Advocate for the Petitioner.
Shri S. A. Ambad, A.G.P. for Respondent Nos. 1 to 3.

CORAM : S. V. GANGAPURWALA AND A. I. S. CHEEMA, JJ.
DATE : 23RD APRIL, 2015.

ORAL JUDGMENT (***Per S. V. Gangapurwala, J.***) **:-**

. Heard.

2. The petitioner assails the inquiry U/s 83 of the Maharashtra Co-operative Societies Act (hereinafter referred as to the "M.C.S. Act" for the sake of brevity).

3. During the pendency of the present petition, the Inquiry U/s 83 of M.C.S. Act was proceeded. However, this Court vide order dated 18.10.2002 granted stay to the impugned order dated 07.8.2002. Thereafter vide order dated 22.11.2002 vacated the said order and directed inquiry to be completed. However, directed that any further action to be taken on such report shall be subject to the orders of this Court. Pursuant to the aforesaid order the inquiry report was not submitted for all these years. However, subsequently the inquiry report is submitted in March 2014.

4. Mr. Bachate, learned counsel for the petitioner states that notice is issued to the petitioners for conducting an inquiry U/s 83(1) of the M.C.S. Act on the count that the exporter to whom the petitioner had sold the sugar, pursuant to the release order

did not export the said sugar, sold it in the open market at a higher rate. The authorities on the said count observed that the Karkhana has suffered loss. The learned counsel states that on 30.10.2001, release order was issued in favour of the Respondent No. 4, allowing him to purchase 5000 M.T. of sugar from the petitioner Karkhana. It is only upon receipt of the release order and the agreement being executed, the sugar was released upto 22696 quintals and sold to Respondent No. 4. After the release of the sugar to the dealer, the petitioner would not be concerned with the manner in which they conduct their activity. The petitioner did not release further sugar on finding that the respondent No. 4 sold it domestic market. According to the learned counsel, the Respondent No. 4 due to the circumstances prevailing then could not export the said sugar to Nigeria and thereafter sold it in the open market between November 2001 to December 2001. Considering the situation existing i. e. excess sugar lying with the petitioner and the policy prevailing then the decision was taken to export the said sugar. After verifying the export license, the agreement was executed, so also after verifying the release order, the sugar was given to the dealer. Total amount of the sugar which was lifted by the Respondent No. 4 from the petitioner is received by the petitioner Karkhana. According to the learned counsel, no ground exist for proceeding U/s 83 of the M.C.S. Act. No illegality has been committed by the petitioner Karkhana.

5. The learned Assistant Government Pleader states that the

petitioner Karkhana did not verify the genuineness of the Respondent No. 4 and entered into the agreement. In the open market Respondent No. 4 sold sugar at the rate of Rs. 1300/- (Rupees One Thousand Three Hundred only) per quintal. However, the petitioner Karkhana received amount at the rate of Rs. 1,100/- (Rupees One Thousand One hundred only) per quintal. It is clear case of loss being caused to the Karkhana, as such proceedings U/s 83 of the M.C.S. Act, are validly initiated. The petitioner did not file on record with the authority conducting the inquiry U/s 83 of the M.C.S. Act, all the documents filed in the present petition. Further steps U/s 88 of the M.C.S. Act can be taken.

6. Inquiry U/s 83 of the M.C.S. Act, can be initiated on the basis of the grounds enumerated in the said provision. The reason given for initiation of an inquiry U/s 83 of the M.C.S. Act, against the petitioner is that there is a loss caused to the Karkhana at the rate of Rs. 200/- (Rupees Two Hundred only) per quintal.

7. Nothing is brought on record by the Respondents about the export rates prevailing at that time. The sugar was to be exported. Relevant orders are placed on record. Even release order for exporting the sugar in question is placed on record. The order dated 30.10.2001 directs the petitioner Karkhana to deliver and despatch from its factory 5000 M.T. of sugar out of the production of the year 2000-2001 for the purpose of export to

Respondent No. 4. In view of the said release order for the purpose of export, the petitioner Karkhana could not deny its sale to the Respondent No. 4. Pursuant to the agreement dated 10.11.2001, the price was also fixed i. e. Rs. 1,100/- (Rupees One Thousand One hundred only) per bag i. e. 100 Kgs. It is also not a matter of dispute that the Respondent No. 4 had sought permission for sale of the sugar to Nigeria. However, the same did not materialise. It is also not a matter of dispute that the Respondent No. 4 sold some bags in the open market.

8. In light of the above undisputed facts, it can not be said that the petitioner is responsible for any act of omission. It would not be a case of any malfeasance or misfeasance, interalia provisions of Section 83 of the M.C.S. Act, would not be attracted.

9. In light of the above, the Writ Petition deserves to be allowed. Rule is made absolute in terms of prayer clause (B). Needless to state in view of Writ Petition being allowed in terms of prayer clause (B), all proceedings pursuant to the notice also becomes redundant. No costs.

Sd/- **Sd/-**

[A. I. S. CHEEMA, J.] **[S. V. GANGAPURWALA, J.]**

bsb/April 15