IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4617 OF 2002

Dattatraya S/o Gurunath Heralekar,
Age : 52 Years, Occu. : Service, M.D.
of Purna Sahkari Sakhar Karkhana
Ltd., Basmatnagar, Tq. Basmatnagar,
Dist. Hingoli. .. Petitioner

Versus

1. The Union of India.

2. The Secretary,
Ministry of Consumer Affairs,
Food & Public Administration
Department of Food and Public
Distribution, New Delhi.

3. The Chief Director of Delhi,
Ministry of Consumer Affairs,
Food and Public Administration
Department of Food and Public
Distribution, Directorate of
Sugar, Krishi Bhavan, New Delhi-1.

4. The Superintendent
Central Excise and Custom,
Range II, Air Port Road,
At Nanded, Dist. Nanded.

5. M/s Yogi Exports,
173/B, IND-ESTATE,
Opp. Sonerja Blocks
Near Central Co-operative
Bapu Nagar, Ahmedabad.

6. M/s Ashok Exporter,
G/4, Rajlani Plaza,
Br. Hathisinghwadi,
Shalibang Road,
Ahmedabad.

7. The Commissioner of Sugar,
Maharashtra State, Central
Building, Pune.

8. S. B. Komte,
The Inquiry Officer,
Spl. Auditor Class-I,
(Sugar) Nanded.

9. The State of Maharashtra. .. Respondents

Shri V. D. Salunke, Advocate for the Petitioner.
Shri S. B. Deshpande, Asstt. Solicitor General for Respondent Nos. 1 to 4.
Shri S. G. Sangle, A.G.P. for Respondent Nos. 7 to 9.

CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.
DATE : 16TH APRIL, 2015.

<u>ORAL JUDGMENT</u> (Per S.V.GANGAPURWALA, J.) :

. Heard.

2. The petitioner assails the order appointing Respondent No. 8 as an Inquiry Officer for holding an inquiry U/Sec 83 of the Maharashtra Co-operative Societies Act (for short "M.C.S. Act").

3. During the pendency of the present petition, the Inquiry U/sec 83 of M.C.S. Act was proceeded. However, this Court vide

order dated 30.10.2002 granted stay to the impugned order dated 08.10.2002. 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.

4. Mr. Salunke, learned counsel for the petitioner states that notice is issued to the petitioner for conducting an inquiry U/sec 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 20.08.2001 and 30.10.2001, release orders were issued in favour of Respondent Nos. 5 and 6, allowing them to purchase 5000 M.T. each of sugar from the petitioner/Karkhana. It is only upon receipt of the release orders and the agreement being executed, the sugar was released and sold to Respondent Nos. 5 and 6. After the release of the sugar to the dealers, the petitioner would not be concerned with the manner in which they conduct their activity. According to the learned counsel, the Respondent Nos. 5 and 6 due to the circumstances prevailing then could not export the said sugar to Nigeria and thereafter sold it in the open market at Amritsar. 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 orders, the sugar was given to the dealers. Total amount of the sugar which was lifted by the Respondent Nos. 5 and 6 from the petitioner is received by the petitioner/Karkhana. The petitioner/Karkhana filed a dispute before the Cooperative Court for recovery. The said dispute is partly allowed. According to the learned counsel, no ground exist for proceeding U/sec 83 of the M. C. S. Act. No illegality has been committed by the petitioner Karkhana.

5. Mr. Sangle, learned Assistant Government Pleader states that the petitioner Karkhana did not verify the genuineness of the Respondent Nos. 5 and 6 and entered into the agreement. In the open market Respondent Nos. 5 and 6 sold sugar at the higher rate. However, the petitioner Karkhana received amount at the rate of Rs. 1,045.25 and Rs. 1,105/- respectively per quintal. It is clear case of loss being caused to the Karkhana, as such proceedings U/sec 83 of the M.C.S. Act, are validly initiated. The petitioner did not file on record with the authority conducting the inquiry U/sec 83 of the M.C.S. Act, all the documents filed in the present petition. Further steps U/sec 88 of the M.C.S. Act can be taken.

6. We have also heard Mr. S. B. Deshpande, learned Assistant Solicitor General for Respondent Nos. 1 to 4.

7. Inquiry U/sec 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/sec 83 of the M.C.S. Act, against the petitioner is that there is a monetary loss caused to the Karkhana.

8. 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 orders for exporting the sugar in question are placed on record. The orders dated 20.08.2001 and 30.10.2001 directs the petitioner Karkhana to deliver and dispatch from its factory 5000 M.T. each of sugar out of the production of the year 2000-2001 for the purpose of export to Respondent Nos. 5 and 6. In view of the said release orders for the purpose of export, the petitioner Karkhana could not deny its sale to the Respondent Nos. 5 and 6. Pursuant to the agreement dated 26.08.2001 and 03.11.2001, the price was also fixed i. e. Rs. 1,045.25 ps. (Rupees One Thousand Forty Five and P.S. Twenty Five only) and Rs. 1,105/- (Rs. One thousand One hundred Five only) per bag i.e. 100 Kgs. It is also not a matter of dispute that the Respondent Nos. 5 and 6 had sought permission for sale of the sugar to Nigeria. However, the same did not materialize. The petitioner has also filed suit against the respondent Nos. 5 and 6 for recovery of amount. A suit filed against the respondent No. 6 is decreed, however, suit filed against the respondent No. 5 is dismissed.

9. 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, inter alia provisions of Section 83 of the M.C.S. Act, would not be attracted.

10. 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 impugned order also becomes redundant. No costs.

Sd/-
[A. I. S. CHEEMA, J.]

Sd/-
[S. V. GANGAPURWALA, J.]

bsb/April 15