IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

7 WRIT PETITION NO. 4146 OF 2013

SHRI RAMESHWAR SAHAKARI SAKHAR KARKHANA LTD., JALNA
VERSUS
THE UNION OF INDIA AND ANOTHER
...
Advocate for Petitioner : Mr. Hon Ashwin V.
AGP for Respondents State: Mr. S. Y. Mahajan
Advocate for Respondent No.2 :Mr. S.B. Deshpande

CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.

DATE : 4th October, 2016

ORDER:

1. Heard Mr. Hon, the learned counsel for the petitioner, learned ASG so also learned AGP.

2. The petitioner assails the communication dated 07.05.2013 so also seeks declaration that the levy quota for the season 2011-12 i.e. 2400 MT for Chhatisgad State and 12.5 MT for Bihar State be declared as free sale sugar and the petitioner Karkhana be permitted to sale the sugar bags as free sale sugar in the open market.

3. Mr. Hon, the learned counsel for the petitioner states that the petitioner at no point of time ever declined to supply the levy sugar. The petitioner was initially directed to supply the levy sugar to various

States. The petitioner had supplied the sugar to various states, however the state of Chhatisgad and Bihar did not lift the quota of levy sugar. According to the learned counsel, the petitioner is not at fault. Thereafter, the petitioner was directed to supply levy sugar to different districts in the State of Maharashtra. The petitioner, as such had supplied. However, 4 districts did not lift levy sugar. According to the learned counsel, the petitioner is not at all at fault. The petitioner, at all material time, was ready and willing to supply the levy sugar. The learned counsel submits that the penal action sought to be taken is arbitrary. It has not committed any default, still it is being sought to be prosecuted.

4. The learned counsel submits that after 2011-12, the concept of levy sugar has come to an end. The said sugar is lying in the premises of the petitioner Karkhana. It is under the interim orders of the court, the said sugar has been sold subject to decision of the present writ petition. According to the learned counsel, the petitioner is entitled for the amount of the levy sugar.

5. Mr. Desphande, the learned ASG states that the

levy sugar, under no circumstances, can be sold in open market. The learned counsel relies on the judgment of the Apex Court in a case of Union of India & Ors. Vs. M/s Vishnu Sugar Mills Ltd. & Ors.(Spl. Leave to Appeal (Civil)--2010, CC 3253/2010.

6. We have gone through the pleadings. The petitioner was directed to supply levy sugar to various states. It is not disputed that some of the States did not lift the levy sugar. It is an admitted position that out of 24000 quintals levy sugar, the petitioner has supplied 19000 quintals as levy sugar. Only 5000 quintals levy sugar is remained to be supplied. The reason for the same is that the districts to which the levy sugar was directed to be supplied did not lift the said levy sugar. We had called for the details about the same. The District Supply Officer, Jalna has given the details which shows that the Districts of Ratnagiri, Jalna, Dhule, Nasik and Yawatmal did not lift the levy sugar. It can be seen that the petitioner is not at fault. For one or the other reasons, the said districts did not lift the levy sugar and the said bags of the sugar were lying with the petitioner Karkhana. As the petitioner Karkhana was not at fault, it is certainly improper on the part of the

respondents to direct initiations of criminal prosecution against the Managing Director, Unit Head and the Board of Directors. Such an action certainly can be said to be arbitrary and not in consonance with the facts on record.

7. It is also a fact that levy sugar cannot be allowed to be sold in open market. After 2011-12, the concept of levy sugar has come to an end. However as the said sugar with the petitioner was part of the levy sugar and the same having been sold as per orders of the court, we would adjust the equity by allowing the petitioner Karkhana to retain the amount at the rate at which the said levy sugar at the relevant time was sold.

8. Mr. Deshpande, the learned ASG on instructions states that at the relevant time, the levy sugar was sold at Rs. 1904 per quintal. Under the orders of the Court, the levy sugar has been sold at Rs.2035/- per quintal. The petitioner as such will be liable to pay to the respondents at the rate of Rs.131/- per quintal for said 5000 quintal levy sugar.

9. Considering the above, we pass the following order.

i. The impugned letter dated 7th May, 2013 (Exhibit- N) directing the filing of FIR is quashed and set aside.

ii. The petitioner shall pay Rs.6,55,000/- to the respondent No.1 within a period of four weeks from today.

iii. On payment of the said amount, it is declared that the petitioner Karkhana will have no liability in respect of levy sugar for the year 2011-2012.

10. Writ petition is accordingly disposed of. No costs.

(K. L. WADANE, J.) **(S. V. GANGAPURWALA, J.)**

JPC