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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10981 OF 2016

Athani Sugars Ltd.

... Petitioner

Versus

The State of Maharashtra and ors.

... Respondents

Mr. G.S. Godbole, Sr. Advocate a/w Mr. Bhushan Walimbe for the petitioner.

Mr. Vikas Mali, AGP for the respondent State.

**CORAM : SHANTANU KEMKAR &
MAKARAND KARNIK, JJ.
DATED : OCTOBER 25, 2016.**

P.C.

Parties through their counsel.

2. Challenging the order dated 17.08.2016 (Exhibit. F) passed by respondent no. 2 Commissioner of Sugar, by which the petitioner's application for grant of sugar cane crushing licence has been rejected, the petitioner has filed this petition under Article 226 of the Constitution of India.

3. The grievance of the petitioner is that before passing the impugned order, respondent no. 2 has not complied with the provisions of Sub Clause 5 of Clause 4 of the Maharashtra Sugar Factories (Reservation of Areas and Regulation of Crushing and

Sugarcane Supply) Order, 1984 (for short “said Order”).

4. Having gone through the said sub clause we find that if the authority wants to refuse the licence, the authority shall not refuse the same unless the applicant has been given opportunity to show cause against such refusal. Thus, there is clear non compliance of sub clause 5 of clause 4 of the said Order.

5. In so far as the reason is concerned, we are of the view that since the lease was executed on the basis of the order passed under provisions contained in sub section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “Act of 2002”), it would be having overriding effect over other laws as provided in section 35 of the Act of 2002. Therefore, the permission as stated by the respondent no.2 in the impugned order will not be necessary.

6. In the circumstances, keeping in view the fact that before refusing to grant licence, the petitioner has not been given opportunity of hearing as contemplated under sub clause 4 of clause 4 of the said Order, we set aside the impugned order and remand the matter back to respondent no.2 for passing a fresh order in accordance with law after giving due opportunity of hearing to the petitioner. While passing the fresh order, respondent

no.2 shall not be influenced by its earlier order as also the stand taken in return filed in this petition. Respondent no.2 shall examine all contentions which may be raised by the petitioner and a reasoned order be passed within ten days from the date of appearance of the petitioner before respondent no.2.

7. Petitioner to appear before respondent no.2 on 26.10.2016 at 3.00 p.m. Petitioner may submit written arguments also. We also record the statement made by the learned counsel for the petitioner that the stand taken by respondent in their reply affidavit that the petitioner had not submitted the application in requisite form is incorrect as the petitioner has submitted the application for grant of licence in prescribed form on 20.9.2016. Let this aspect of the matter also be considered by respondent no.2 while taking the fresh decision.

8. Petition is disposed of.

(MAKARAND KARNIK, J.)

(SHANTANU KEMKAR, J.)