IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.32794 OF 2015

Sangola Sahakari Sakhar Karkhana Ltd.,
Sangola ... Petitioner
v/s
Union of India and others ... Respondents

Mr Sarang Satish Aradhye for Petitioner.
Mrs N.V. Masurkar with Mr A.R. Varma, Mr Y.R. Mishra, Mr H.V. Mehta and Mr Upendra Lokegaonkar for Union of India.
Mr Manish Pable, AGP for Respondent – State.

CORAM: A.S. OKA AND A.A. SAYED JJ.

DATE : 3RD OCTOBER 2016.

P.C. :-

1. Heard learned counsel appearing for the Petitioner. The challenge in this Petition under Article 226 of the Constitution of India is to the order dated 5th May 2015 passed by the Chief Director (Sugar). By the said order, the Petitioner – Sugar Factory was directed to deliver total quantity of 1622.9 MT of levy sugar to the Government of Maharashtra out of the total stock available with the

Petitioner as on the date of the notified levy price of the sugar for the year 2011-12. Under the said order, it was held that the Petitioner – Sugar Factory is bound to deliver levy sugar against its pending levy obligation upto 2011-12 sugar season and update the lifting position on-line in Levy Monitoring Module to complete their pending levy obligation of 2011-12 sugar season. It was further held that if the stock of 2011-12 has been disposed of or is not available, then necessary replenishment shall be made from 2012-13 sugar season and onwards at the notified price for the said sugar season to which levy obligation pertains.

2. We must note here that the Petitioner filed another Writ Petition bearing No.9498 of 2013 for challenging the orders dated 22nd July 2013, 31st July 2013 / 2nd August 2013 as well as consequential order dated 10th July 2013 issued by the District Collector or Tahasildar, Solapur. In the said Petition, there was also a challenge to the orders passed by the Government of India on 28th November 2012 and 18th December 2012 directing that FIR shall be registered against the Petitioner. The said Petition was based on

non-compliance made by the Petitioner with its obligation of delivering levy sugar.

3. Several such orders were passed against various sugar factories. The said orders were challenged by filing various Writ Petitions in this Court. Writ Petition No.687 of 2012 and other connected Petitions came up before this Court on 12th January 2015. In the said Petitions, this Court directed that the Chief Director (Sugar) to grant reasonable opportunity to all the Petitioners to produce relevant documents and to pass a fresh order after giving an opportunity of being heard to them.

4. In the present case, hearing was fixed before the Chief Director (Sugar) on 3rd March 2015. There is no dispute raised in the Petition that the Petitioner was aware of the date of hearing and that none appeared on behalf of the Petitioner.

5. We have perused the impugned order passed by the Chief Director (Sugar). It takes a note of the challenge in the

companion Writ Petition No.9498 of 2013. The Petitioner did not avail of an opportunity of appearing before the Chief Director (Sugar). The impugned order states that though the Government has dispensed with imposition of levy obligation from sugar year 2011-12, it does not absolve any sugar factory, including the Petitioner – Sugar Factory in any manner from fulfilling its past pending levy liabilities upto 2011-12 sugar season.

6. The submission of the learned counsel appearing for Petitioner was that one more opportunity may be granted to the Petitioner to contest the matter before the Chief Director (Sugar) by passing an order of remand.

7. On the earlier dates, we informed the learned counsel for Petitioner that no case is made out for issuing leniency. If the Petitioner is to be shown leniency by passing an order of remand, in some manner, the Petitioner will have to adequately secure the claim in respect of sugar of 1622.9 MT as no such stock is available with the Petitioner. After taking instructions, the learned counsel

appearing for the Petitioner states that the Petitioner is not in a position to secure the claim.

8. The impugned order has been passed after giving an opportunity of being heard to the Petitioner. The Petitioner failed to remain present at the time of hearing. There is no justification mentioned for not attending the hearing.

9. If the Petitioner wants discretionary order of remand to be made by this Court, the Petitioner ought to have secured the claim. However, the Petitioner did not do so. Therefore, this is not a fit case to exercise the powers under Article 226 of the Constitution of India. Petition is dismissed.

(A.A. SAYED J.) **(A.S. OKA J.)**