

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4322 OF 1996

Marathwada Sahakari Sakhar

Karkhana Limited & another

Petitioners

Versus

Gopalrao S/o Devidas Kurtadikar & others

Respondents

Mr.V.D.Salunke, advocate for the petitioner

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 20th July, 2017.)

PER COURT :-

1 I have heard Shri V.D. Salunke, learned Advocate on behalf of the petitioners.

2 After the learned Advocate appearing on behalf of the respondents was elevated as the Honourable Judge of this Court, Court notice was issued to the respondents and they are served. However, none appears for the respondents. This matter has been adjourned time and again, though it has been pending final hearing for more than 20 years.

3 In the light of the above, I have considered the submissions of Shri V.D. Salunke, learned Advocate. With his assistance, I have gone through the 31 grounds raised by him in the memo of

petition and I have perused the impugned orders.

4 The issue is, as regards the refund of the share amount and compensation. The details about the claims of the respondents are set out in the impugned orders. Payment of compensation is also set out. The Cooperative Court had rejected the dispute No.38/88 filed by the respondents by order dated 29.3.1990 and the disputants were directed to pay Rs.500/- as compensatory costs to the petitioner factory.

5 Both the parties went in appeal before the Maharashtra State Cooperative Appellate Court by filing appeal Nos.64/90 and 94/90 respectively. By the impugned Judgment, the Appellate Court allowed the appeal filed by the respondents and granted compensation of Rs.40,000/-.

6 This Court, while admitting the petition on 30.1.1997, stayed the impugned Judgment and directed the petitioner factory to deposit Rs.25,000/-. Same has been deposited on 5.4.1997. By order dated 6.10.1997, the amount was directed to be invested in the fixed deposit in a nationalized bank. Since then, the amount remains with the nationalized bank.

7 The Cooperative Appellate Court has concluded that the

respondents were shareholders of the petitioner bank. The petitioner had questioned the claim on the ground that, each one of the share holders must file a separate dispute. The Cooperative appellate Court concluded that, it is not mandatory that a separate dispute must be raised. Considering the reasons assigned, I do not find that the said conclusion can be faulted.

8 The claim of the respondents was with regards to the amount that was deducted each year towards the enhancement of the share. It was, however, established that such deduction was done without their consent and the share capital was raised without considering their objections. The amount deducted, was towards the share and that has been established in the evidence. On this count, the appellate Court did not entertain the claim of the respondents.

9 However, the compensation of Rs.40,000/- that was granted by the State Cooperative Appellate Court was with regard to the damage to the Crop when it was ready for harvesting. The respondents harvested about 65 tons and about $\frac{3}{4}$ crop was damaged. The price per ton was Rs.240/- at the relevant time. Since the Appellate Court concluded that the crops were damaged due to the apathy of the factory, the compensation was calculated at Rs.40,000/-.

10 During pendency of this petition, the petitioner sugar factory has been sold out. Rs.25,000/- have already been deposited by the factory in this Court. The said amount has gathered interest on long term deposits over a period of 20 years. I, therefore, find it equitable and appropriate to modify the directions of the appellate Tribunal, by which the petitioner was to pay Rs.40,000/- as compensation with interest and substitute the said direction by granting liberty to the respondents to withdraw the entire amount of Rs.25,000/- with accrued interest from this Court.

11 The direction of the Appellate Court, is therefore modified in order to balance the equities, as no further amount can be recovered from the petitioner, since the petitioner sugar factory has already been sold out. Consequentially, this petition is partly allowed. The direction of the Appellate Cooperative Court, wherein Rs.40,000/- as damages with interest @ 12% was granted, stands modified with the direction that the amount of Rs.25,000/- deposited in this Court along with accrued interest would be appropriate compensation for the respondents.

12 The respondents, would, therefore be at liberty to withdraw the said amount by making an application in this Court along

with their recent photographs, their recent permanent address and election commission voters id card. Unfortunately, by passage of time, in case of demise of any respondent, their legal heirs would be entitled to receive the above said amount subject to following the due procedure of law.

13 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE , J)