IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

LETTERS PATENT APPEAL NO. 260 OF 2005
IN
WRIT PETITION NO. 3934 OF 2004

Kisanveer Sahakari Sakhar Karkhana Ltd. .. Appellant
Vs.
Shri Arvind Dhondiram Kadam & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL NO. 275 OF 2005
IN
WRIT PETITION NO. 3933 OF 2004

Kisanveer Sahakari Sakhar Karkhana Ltd. .. Appellant
Vs.
Shri Laxmanrao P. Jadhav-Patil & Ors. .. Respondents

Mr. Sharad Bhosale i/b Mr. Dilip Bodake for the Appellant in LPA 260/05.
Mr. Kaustubh K. Kandpile i/b Mr. Ajit Kenjale for the Appellant in LPA 275/05
Mr. M. M. Pabale, AGP for the Respondent-State.
Mr. Vijay D. Patil for Respondent Nos.1 to 4, 6, 7 & 9 in LPA 260/05 and Respondent Nos.1, 2, 10 & 11 in LPA 275/05.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 8th NOVEMBER, 2019.

P. C. :

1. Heard learned Counsel for the parties.

2. The Appellant is a co-operative society having a sugar mill. For

the year 2000-01 the Food and Civil Supply Department of the Central Government issued a release order to the Appellant for export of 39,376 MT sugar. The Appellant handed over the sugar to exporters and the exporters were able to export 29,522.10 MT sugar. The proceeds were duly credited to the account of the Appellant. Remaining quantity of sugar could not be exported in spite of same being handed over to the exporters. The reason was that due to inclement weather the sugar became unfit for export. When exporters brought the said fact to the notice of the Central Government, a three member Committee was constituted by the Central Government which took a decision that unexported sugar could be sold in local market. The price realized by sale in the local market was less than the price which would have been realized if the sugar was exported. At an enquiry held by the authorized officer under Section 88 of the Maharashtra Co-operative Societies Act, 1960, loss in sum of ₹ 71.35 Lakhs was determined and liability was fastened on the directors of the Appellant who filed two separate Appeals before the Appellate Authority, Pune i.e. the Chief Minister of the State of Maharashtra which were allowed by the Hon'ble Chief Minister vide order which was impugned before the learned Single Judge.

3. Noting aforesaid facts, the Hon'ble Chief Minister came to the conclusion that in view of material it could not be said that the directors of the Appellant were responsible for the sugar not being exported and thus the price realized by sale in the local market pursuant to the decision taken by the three member Committee was justified. The Appeals have been allowed.

4. The impugned order passed by the learned Single Judge reads as under:

> *"1. Both these petitions arise out of an order passed under section 88 of the Maharashtra Co-operative Societies Act. Initially by order dated 21.02.2004 passed by the Enquiry Officer, the respondents Nos. 1 to 13 in Writ Petition No. 3933/2004 were held responsible for causing loss to the extent of about Rs.71.35/- lacs on the ground that there was a dereliction of an obligation in as much as they failed to export the sugar which was meant for export.*
>
> *2. In writ petition No. 3934/2004 the Enquiry Officer, held the respondents Nos. 1 to 9 responsible for causing the aforesaid loss jointly with the aforesaid respondents in the first mentioned writ petition.*
>
> *3. The respondents filed an appeal under section 152 of the Co-operative Societies Act, which has been decided by the Appellate Authority i.e. the Chief Minister and Minister for Co-operation on 24.03.2004. It is this order passed in the appeal has been challenged by the petitioner which is a specified Co-operative Society under section 73(g) of the Maharashtra Co-operative Societies Act, 1960. 4. Having heard the matter for some time, it is clear that the learned Chief Minister has reversed the order of the Enquiry Officer on the basis of the report of the three member committee, which has observed, after inspecting the said sugar, that the sugar is not fit for export and therefore, it was sold in the open*

> *market and therefore, there was no question of exporting the same and producing proof of the export of the same. The appellate authority has further observed that the Karkhana has received a sum of Rs. 1035/- per quintal. In addition, according to the decision of the three member committee the Karkhana had received a sum of Rs.8/- lacs at the rate of Rs.20/- per quintals as compensation and therefore, it cannot be said that the Karkhana had suffered a loss. The learned Chief Minister has reversed the order of the authorised officer since the authorised officer failed to take into account this fact.*
>
> *5. Mr. Sawant, the learned counsel for the petitioner fairly accepted the position that this is basically a question of fact i.e. whether the sugar was fit for export or not.*
>
> *6. In the circumstances, having regard to the fact that the order is based on the report of the three member committee that the loss is not attributable to the aforesaid respondents but due to the fact that the sugar was not fit for export, I see no reason to interfere with the impugned order. The order does not suffer from any error of law apparent on its face and therefore, both the petitions are dismissed with no order as to costs."*

5. Suffice it to highlight that as recorded in paragraph 5 of the impugned order, learned Counsel for the Appellant fairly accepted the position that the dispute centered on a question of fact: Whether the sugar was fit for export or not? Now, once the sugar, due to inclement

weather became unfit for export, the directors of the Appellant could not held responsible for the inclement weather. They could also not be held liable for not ensuring the sugar not to be exposed to the vagaries of nature for reason admittedly the sugar was handed over to the exporters for export and became unfit for export at the dock.

6. The Appeals are, accordingly, dismissed.

[SMT. BHARATI DANGRE, J.] [CHIEF JUSTICE]

Arjun M. Kadam

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