

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1869 OF 2021

1. Sindhubai w/o. Ramdas Mokate
Age : 55 years, Occu : Agri,
 2. Babasaheb s/o. Sukhdeo Hapse
Age : 53 years, Occu : Agri,
 3. Balasaheb s/o. Sakahari Deshmukh,
Age : 43 years, Occu : Agri,
 4. Bapusaheb s/o. Maliba Tarde,
Age : 44 years, Occu : Agri,
 5. Savita w/o. Shrikrushna Rajdeo
Age : 38 years, Occu : Agri,
 6. Shrikrushna s/o. Raosaheb Rajdeo
Age : 37 years, Occu : Agri,
 7. Dnyaneshwar s/o. Raosaheb Rajdeo
Age : 33 years, Occu : Agri,
 8. Ram s/o. Bhausahab Rajdeo
Age : 36 years, Occu : Agri,
- All petitioners R/o. Bramhani, Tal. Rahuri,
Dist. Ahmednagar

.. Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Mantralaya, Mumbai.
2. The State of Maharashtra
Through its Secretary,
Department of Co-Operation,
Marketing and Textiles,
Mantralaya, Mumbai.
3. The State of Maharashtra
Through its Commissioner,
Commissioner of Sugar, Pune,
Maharashtra.
4. The Joint Director of Sugar,

Ahmednagar, Dist. Ahmednagar

5. The Collector, Ahmednagar.
6. Karmaveer Shankarrao Kale
Sahakari Sakhar Karkhana Ltd.,
at Gautamnagar, Post Kolpewadi,
Tal. Kopargaon, Dist. Ahmednagar. .. Respondents

...

Mr. A.B. Kale, Advocate h/f. Mr. Sambhaji B. Tarde, Advocate for the petitioners

Mrs. Vaishali N. Patil Jadhav, AGP for Respondent Nos.1 to 5

Mr. R.N. Dhorde, Senior Counsel a/w. Mr. P.S. Dighe, Advocate i/by.

Mr. V.R. Dhorde, Advocate for Respondent No.6.

...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

RESERVED ON : 22.09.2022

PRONOUNCED ON : 30.09.2022

JUDGMENT (*PER* SANDEEP V. MARNE, J.) :

. Whether a sugar factory is entitled to discriminate between its members and non-members in the matter of payment of Fair and Remunerative Price (hereinafter referred to as the 'FRP') of sugarcane is the issue raised in the present petition.

2. A sort of money claim is raised in the present petition filed by eight petitioners seeking difference of amount of Rs.254/- Per Metric Ton (hereinafter referred to as the 'PMT') for petitioner nos.1 to 4 and Rs.304/- PMT to petitioner nos.5 to 8. The claim is in respect of sugarcane supplied to the respondent factory during the crushing

season 2010-2011. They contend that the respondent factory has discriminated amongst its members and non-members by paying FRP of Rs.2104/- PMT to members while the non-members like Petitioners are paid lesser FRP of Rs.1800/- PMT. Therefore, difference of amount of Rs. 254/- is claimed by petitioner nos. 5 to 8. Since additional amount of Rs.50/- PMT came to be sanctioned and paid to Petitioner Nos. 1 to 4 vide report dated 17.03.2016, a slightly lesser difference of Rs.254/- PMT is claimed by petitioner nos.1 to 4.

3. The claim of the petitioners is premised essentially on the judgment of this Court in **Shrinath Maruti Reddy and others Vs. State of Maharashtra and others** [2011 (2) Mh.L.J. 154], wherein this Court held that same price is required to be paid to each and every sugarcane grower whose cane is crushed in the factory. Towards implementation of the said judgment, a circular came to be issued by the Sugar Commissioner, Maharashtra on 06.06.2013 directing that same FRP is required to be paid to a member and non-member.

4. The petitioners claim that the issue of payment of same FRP to non-members was raised by them from time to time and was under consideration of the authorities. In this regard, they have placed reliance on various correspondence that took place during the

years 2013 to 2016. By letter dated 29.06.2016, the Sugar Commissioner, Maharashtra gave a reply to one Shri. Nijambhai Bapubhai Shaikh stating that a report was submitted by the Regional Joint Director (Sugar), Ahmednagar on 18.04.2016 stating that the net FRP for the year 2010-2011 was only Rs.1240/- PMT, but still the respondent sugar factory paid the rate of Rs.1850/- PMT to all sugarcane growers within and outside the jurisdiction of the factory. It was further stated that an amount of Rs.254/- PMT was paid by the factory to the farmers within its jurisdiction towards service charges which is not payable to the farmers situated outside its jurisdiction. Accordingly, the complaint came to be rejected.

5. Mr. Kale, learned Counsel for the petitioners would submit that the respondent - sugar factory is mandated by law to pay same FRP to the petitioners as is paid to its members. He would submit that as per the Circular dated 06.06.2013, the respondent-sugar factory cannot discriminate between members and non-members. He would refer to various correspondence that had taken place during the years 2013 to 2016 in support of his submission that the respondent - sugar factory was time and again directed to pay same FRP to non-members as well. Referring to the letter dated 29.06.2016, Mr. Kale would contend that the respondent - sugar

factory cannot pay higher price to members under the guise of payment of service charges.

6. Mr. Kale would rely upon the following judgments :

- (i) **Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd and Others Vs. State of Maharashtra and Others 1995**
(3) SCC 475
- (ii) **Maharashtra Rajya Sahakari Sakhar Karkhana Sangh Ltd and Others Vs. State of Maharashtra and Others (1998)**
4 SCC 324.
- (iii) **Balasaheb Ganesh Palkar and Others Vs. Shri Tuljabhavani Shetkari Sahakari Sakhar Karkhana Ltd & Others** in Writ Petition No.294 of 1996 decided on 26.03.2004.

7. Per contra, Mr. Dhorde, the learned Senior advocate appearing for respondent no. 6 opposes the petition raising preliminary objections that the decision of the Sugar Commissioner dated 29.06.2016 has not been challenged by the petitioners and that the petition is barred by delay and latches. On merits, he would

contend that no discrimination has been practised between members and non-members. That the FRP for the sugar season 2010-11 was fixed by the Department of Food and Public Distribution of the Government of India by letter dated 04.05.2010 of Rs.139.12 per quintal in addition to certain other formula. He invited our attention to the order dated 25.02.2011 issued by the Ministry of Consumer Affairs, Dept of Food and Public Distribution, under which the FRP of Rs.159.58 per quintal was fixed for the respondent - sugar factory for the year 2010-11. He would further submit that after applying the applicable formula and after deducting the transport charges, net FRP of Rs.1240.40 PMT was fixed by respondent no.6 – sugar factory. He would submit that respondent no.6 was mandated not to pay below the said FRP, but still it decided to pay higher FRP of Rs.1850/- PMT. He would submit that the factory has paid FRP of Rs.1850/- to all farmers, whether member or not. The additional amount Rs.254/- PMT has been paid to the members under various heads of average sugarcane crop subsidy of Rs.173.50, late harvesting & labour expenditure of Rs.17.85 and other incentives in the form of fertilizers, drip irrigation and interest on sugar deposits of Rs.62.65. He would therefore submit that such amount of Rs.254/- PMT does not form part of FRP and therefore, the same is not payable to non-members.

8. In the backdrop of the above submissions, we are tasked upon to decide the issue that we have formulated in the opening paragraph of the judgment.

9. Before we advert to the merits of the matter, we first deal with two preliminary objection of Mr. Dhorde. The Sugar Commissioner, Maharashtra considered the grievance of the non-members by calling for a report from Regional Joint Director (Sugar), Ahmednagar and gave his decision vide letter dated 29.06.2016 rejecting the claim of non-members. This decision dated 29.06.2016 has not been challenged by the petitioners in the present petition. However, said decision is relied upon to show that the matter was under correspondence till 2016. We find that the grievance of non-payment of same. FRP to non-members was considered on merits and rejected by the Sugar Commissioner by his decision dated 29-06-2016 and therefore it was incumbent upon the Petitioners to challenge the same.

10. The other objection is in respect of delay and laches in filing the petition. In respect of their alleged entitlements pertaining to the year 2010-11, the present petition has been filed on 05.01.2021. This, according to us, can be sufficient reason not to entertain the petition. Even though Mr. Kale attempted to urge that

the matter was under continuous correspondence till the year 2016, it is trite that repeated correspondence through representations does not extend limitation. Even otherwise, the final decision was given by the Sugar Commissioner, Maharashtra on 29.06.2016 and even if latches upto 29-06-2016 were to be ignored, there is still delay of 5 long years in filing the present petition. It is required to be borne in mind that the claim raised in the petition is in the nature of money claim. Therefore, on the ground of delay and latches also we would be justified in not entertaining the petition.

11. We would have been justified in dismissing the Petition on the above two preliminary objections. However since detailed submissions were made by the counsels appearing for the parties on merits also, we proceed to examine the grievance of the Petitioner on merits as well.

12. There can be no debate that a uniform FRP is required to be paid to both, members and non-members of a sugar factory. The only issue that has cropped up in the present case is, whether some additional charges and incentives paid by respondent no.6 – sugar factory to its members can be treated as a part of FRP so as to make even non-members entitle to the same.

13. We have gone through each of the heads under which total additional charges/incentive of Rs.254/- is paid by the factory to its members. Rs.17.85 PMT was paid towards late harvesting of sugarcane. This, as per the submission of Mr. Dhorde, is on account of delay/inability of the factory to collect sugarcane of its members on account of mandatory direction of Sugar Commissioner to collect sugarcane of non-members. For such late collection of sugarcane of its members, an incentive of Rs.17.85 PMT is paid. Similarly, other incentives are in the form of entitlement of sugar at concessional rates, interest on deposits, subsidy towards drip irrigation etc. Admittedly, these benefits can be claimed only by a member. We are therefore of the view that the additional charges / incentive of Rs.254/- paid by respondent no.6 – sugar factory to its members does not form part of FRP and therefore, there is no question of the petitioners being entitled to the same.

14. As can be seen from the records, FRP of Rs.1850/- PMT was determined by the respondent - factory. The same was paid to the petitioners (except petitioner nos.5 to 8, who are paid Rs.50 PMT less). Therefore, we do not find that any discrimination was practised by the respondent – sugar factory between its members and

non-members in the matter of payment of FRP. Therefore, reliance on various judgments by Mr. Kale is completely misplaced.

15. Even though Mr. Kale made strenuous efforts to contend that payment of any additional service charges by a sugar factory to its members is prohibited by relying on the 1995 judgment in the case of **Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd and Others** (supra), we do not find this issue being decided by the Apex Court, in any manner, in the said judgment. The 1998 judgment in the case of **Maharashtra Rajya Sahakari Sakhar Karkhana Sangh Ltd and Others** (supra) also does not deal with this issue.

16. Reliance of Mr. Kale on the judgment of this Court in **Balasaheb Ganesh Palkar** (supra) is also of no avail as the issue involved therein was about payment of second installment of Rs.100/- PMT to those cane growers, who supplied cane after 1995. The issue is, thus, clearly different and distinguishable and therefore, the judgment has no application to this case.

17. Consequently, we find no reason to interfere with the decisions of the Respondents. The petition is devoid of merits. It is otherwise barred by principles of laches. It deserves to be dismissed

and is accordingly dismissed without any order as to costs.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)

GGP