

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 15TH DAY OF MARCH, 2019

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

WRIT PETITION NO.81673/2013 (GM-RES)

M/ S VENKATESHWARA POWER PROJECT LTD (SUGAR FACTORY) AT PO BEDKIHAL

v/s.

THE CHIEF DIRECTOR (SUGAR) MINISTRY OF CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION DIRECTORATE OF SUGAR, KIRISH BHAVAN, NEW DELHI-110001

ORDER

Heard the petitioner's counsel and also respondents ' counsel.

2. The petitioner by invoking Articles 226 and 227 of the Constitution of India read with Section 482 of Cr.P.C. sought for an order to issue a writ in the nature of certiorari or any other appropriate writ or direction by quashing the order dated 10.04.2013 in No.4-12 (1)/2000/SC II/219, insofar relating to penal action is concerned against the petitioner as per Annexure- K passed by respondent No.1 herein and further sought for an order to issue a writ in the nature of certiorari or any other appropriate writ or order or direction by quashing the complaint dated 3.5.2013 as per Annexure- L given by respondent No.5 herein and the FIR in PS Crime No. 112/2013 dated 3.5.2013 as per Annexure- M and sought for an order to issue a writ in the nature of mandamus or any other appropriate order or direction by directing respondents No.1 and 2 to reconsider the matter as per representation made by the petitioner by the the letter letter dated dated 14.05.2013 as per Annexure- J and the letter dated 5.5.2013 as per Annexure- N and also issue a writ in the nature of mandamus or any other appropriate order or direction by directing respondents No.3 to 5 to intimate the direction issued by respondents No.1 and 2 regarding keeping in abeyance of the penal action as against the petitioner Sugar Factory and consider the representation dated 13.08.2013 as per Annexure- R.

3. The factual matrix of the case is that the petitioner is a company incorporated under the Companies Act, 1956 and has established a Sugar Factory at Bedkihal village of Chikkodi Taluka, District Belagavi.The sugar plant is named as M/s. Venkateshwara Power Project Limited (Sugar Factory).Respondent Nos. 1 and 2 herein are the Authorities who are empowered under Section 3 of the Essential Commodities Act, 1955 (hereinafter will be referred to as ' the Act ') to give direction in respect of the production, regulation, supply, distribution etc. in respect of any of the Essential Commodities.In pursuance of Section 3 of the Act, the Central Government has issued the Sugar (Control) Order, 1966 and the Levy Sugar Supply (Control) Order, 1979 (herein afterwards will be referred to as " Control Order " and " Levy Order " respectively).

4. As per the Levy Sugar Supply (control) Order, 1979 (herein afterwards will be referred to as ' Levy Order '), 10% of production is to be reserved for levy sugar and 90% of the remaining sugar stock is free sale sugar from this sugar season onwards, as earlier it was 20% of the production.The copy of the levy order making it has 10% for the season 2011-12 is produced and marked as Annexure- A. That for the Sugar Season 2012-13, the Central Government has dispensed the Levy Obligation on the Sugar Mills.The Government of India has issued a notification through respondent No. 1 regarding dispensing the imposition of the Levy Obligation and the

same has been intimated to the concerned Sugar Mills Association. The copy of the said intimation dated 17.04.2013 is produced and marked as Annexure- B so also Gazette Notification dated 2.5.2013 as Annexure- C. Further contended that the petitioner Sugar Factory was discharging the levy obligation quota to the consignee as assigned by respondents No.1 and 2 and in this regard, a copy of the letter dated 26.02.2013 is annexed as Annexure- D. The petitioner has informed to the consignee through the letter dated 18.4.2013 regarding availability of the levy quantity to the extent stated in the letter. Thus, the petitioner informed the consignee-Andhra Pradesh Government regarding the availability of the Levy quantity for the production year 2011-12 to the extent of 10,500 quintals. 10% levy obligation is being lifted by the other consignee and the petitioner has informed the said consignee herein through telephonically regarding the availability of this quantity. The copy of the said letter dated 18.4.2013 is produced and marked as Annexure- E. However, Government of Andhra Pradesh intimated regarding non-availability of the Levy quota allotted to them, stating that the sugar mills have not confirmed the allotted levy quota to them in which the petitioner sugar factory name was also mentioned in respect of the entire quantity of the allotted quota. The copy of the said intimation dated 26.03.2013 is produced and marked as Annexure- F. The said consignee has already lifted the Levy Sugar quota from the month of April 2013 onwards and the same was delivered by the petitioner as per Annexure- G vide order dated 13.05.2013.

5. It is contended that as the levy obligation is already lifted by the consignee and a copy of the same is produced as Annexure- H, Respondents No.1 and 2 on request of the Government of Andhra Pradesh has modified the levy obligation for the production season 2011-12 to the year 2012-13 as the availability quantity of levy is not available for the year 2011-12. Respondent Nos. 1 and 2 have modified the order of Levy stock, and the same was not at all intimated to the petitioner by them and on the other hand, it came to the knowledge of the petitioner to the consignee, when they started lifting the levy sugar. Respondents No.1 and 2 having considered the intimation of the consignee as per Annexure- F, had not verified the subsequent dispatch/delivery of the levy sugar by the petitioner to the consignee hence, initiated the proceedings against this petitioner vide complaint dated 10.04.2013 as per Annexure- K and so also request was made not to take any action or register FIR as against the petitioner under Section 7 of the Act, thus, the complaint is filed as against the petitioner sugar factory by the respondent No.5 as per Annexure- L and FIR is also registered and same is marked as Annexure- M and thereafter, representation was given on 26.04.2013 vide Annexure- N and also when the action was sought to be initiated as against the petitioner, has requested respondent No.3 not to take any penal action as per Annexure-N1.

6. The other contention that on the request of the petitioner regarding explanation given for levy obligation and considering those facts, respondent No.1 has intimated the District Magistrate/Respondent No.3 regarding the penal action as against the petitioner Sugar Mills be kept in abeyance till further direction from them and also intimation was given to the Deputy Commissioner not to take any penal action and the same be kept in abeyance till further direction. The said intimation is produced as Annexure- P. That the said consignee- Government of Andhra Pradesh has already lifted the allotted Levy Sugar and prior to it, it has finalized the movement of levy sugar to its destiny and in this order, it has been referred the lifted levy sugar from the petitioner sugar factory and the same is produced as Annexure- Q.

7. The contention of the petitioner is that the action of the respondents is illegal and error as the initiation of the penal action as against the petitioner is being kept in abeyance by respondent No.1 and as already intimated the same to respondent No.3, in spite of the same, penal action is initiated against the petitioner, hence, the impugned order at Annexure- K and registering the complaint and FIR by respondent No.4 and 5 are illegal, arbitrary and totally without jurisdiction. The other contention that the levy obligation imposed on the petitioner as per Annexure- D shall be commenced from 1.3.2013 to be completed by 31.05.2013 and before completion of this period, criminal action is initiated in the 1st week of May itself, hence, the very action has to be quashed.

8. The petitioner's counsel along with IA has filed Annexure- S contending that the Central Government has passed an order that there is no liability on the part of the petitioner and in view of Annexure- S, no penal action has to be continued against the petitioner and counsel also prayed this Court to allow the writ petition and quash Annexure- K by issuing writ in the nature of certiorari.

9. Per contra, learned counsel for the respondents in his arguments, he contends that the criminal action has already been initiated, since the petitioner has committed default and in view of Annexure- S, observation may be made and if any penal action is necessary, liberty may be given to the concerned insofar as the same and prayed this Court to give liberty to dispose of the matter.

10. Having heard the petitioner's counsel and also respondents ' counsel, this Court has to examine whether this Court can exercise the writ jurisdiction to quash the Annexure- K as sought.

11. The main contention of the petitioner is that the very initiation of the criminal proceedings against the petitioner is illegal and arbitrary and other contention is that Annexure- D shall commence from 1.3.2013 and same has to be completed by 31.05.2013, thus within this period, the levy obligation sugar to be delivered and before completion of this period, respondent No.1 has illegally and deliberately directed respondent No.3 to initiate the action of seizure of Levy Sugar under Section 6 (A) of the Act and to lodge FIR under Sections 3 and 7 of the Act. The counsel in his arguments, he contends that when the mistake has been realized by the respondents, they issued Annexure- P keeping in abeyance the initiation of the proceedings. On perusal of Annexure- J, the petitioner has addressed the letter dated 14.05.2013. It is further contended that it is important to note that the order is passed on 10.04.2013 and on perusal of the Annexure- D, it is clear that as per the conditions for delivery and dispatch, period is allowed from 1.3.2013 to 31.05.2013, hence, it is clear that the very initiation of the proceedings against the petitioner is premature and further, Annexure- K initiation of the penal action against the petitioner was passed on 10.04.2013 before the expiry of 31.05.2013 and Annexure- L complaint was given on 3.5.2013 and FIR was registered as per Annexure- M. Hence, the very initiation of the proceedings against the petitioner in keeping Annexure- D into consideration, it is premature and also same is evident in terms of Annexure- P which has been issued subsequently, keeping in abeyance the proceedings against the petitioner. Apart from that, the petitioner now along with IA has produced document Annexure- S and in terms of Annexure- S, the petitioner is not in due and having taken note of these facts into consideration, I am of the opinion that the petitioner has made out grounds to invoke the Articles 226 and 227 of the Constitution of India to quash Annexure- K as sought by issuing writ in the nature of certiorari and Annexure- L is consequent upon Annexure- K so also Annexure- M, it is appropriate to issue writ in the nature of certiorari quashing Annexure- K, L and M. The other writ sought by the petitioner to consider the representation does not survive for consideration, since already decision has been taken and Annexure- S has been issued.

12. Having taken note of the material on record and also discussions made above, this writ petition is disposed of by passing the following order:

i) Writ petition is allowed.

ii) A writ of certiorari is issued quashing Annexures- K, L and M.

iii) In view of disposal of the main petition, pending interlocutory applications, if any, do not survive for consideration, hence, they are also disposed of.