

**IN THE HIGH COURT OF KARNATAKA AT
BANGALORE**

Dated this the 18th Day of March, 2005

BEFORE

THE HON'BLE MR.JUSTICE N.KUMAR

WRIT PETITION No. 31345 of 2004 (GM-RES)

BETWEEN:

M/s. Sri Chamundeswari Sugars Ltd.,
Having its Regd. Office at
No.76, Ulsoor Road,
Bangalore - 560 042,
By its General Manager,
Sri.D.K.Jayaram

...Petitioner

(By Sri D.N.Nanjunda Reddy and M.P.Subbaiah,
Advocates)

AND :

- 1 The State of Karnataka
By its Secretary to Government
Department of Commerce
& Industries, M.S. Building
Bangalore - 560 001
- 2 The Deputy Commissioner
Mandya District
Mandya



- 3 The Commissioner of Case
Development & Director of Sugar
in Karnataka, No.32
Chougle Road, Crescent Road
Bangalore - 560 001
- 4 M/s SCM Sugars
Koppa Village
Maddur Taluk
Mandya District
By its Managing Director ...Respondents

(By Sri Sateesh M. Doddamani, AGA, for R1 to R3;
Sri Prabhuling K. Navadagi, Advocate for R4]

This Writ Petition is filed under articles 226 and 227 of the constitution of India, praying to quash vide Annexure-L dated 3-3-2001 issued by Respondent-1.

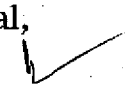
This writ petition coming on for orders this day, the Court made the following:

ORDER


The petitioner is a Public Limited Company running a sugar factor at Bharathinagar (Kalamuddana Doddi), Maddur Taluk, Mandya District. It was established in the year 1973 with a crushing capacity of 1250 Tons Crushing per day (TCD) and at present it has an expanded capacity of 4000 TCD. The Government has

approved the proposal for the factory to increase its crushing capacity from 4000 TCD to 5000 TCD with further expansion to 6500 TCD.

2. In 1975 in order to meet the requirement of crushing capacity of 1250 TCD an area comprising in all 302 villages in Maddur, Malavalli, Mandya, Ramanagaram, Channapatna, Kanakapura and Kunigal Taluks were reserved to enable the petitioner to secure 2.5 Lakh Tons of sugarcane. Subsequently, on 17.12.1990 at the request of the petitioner they allotted additional 23 free villages comprised in Maddur and Malavalli Taluks to the petitioners. By another order dated 19.12.1990 12 free villages of Maddur Taluk and 140 free villages of Malavalli Taluk were allotted to the petitioner. Again on 15.11.1996 the petitioner was allotted 5 free villages of Channapatna Taluk. Thus, between 1975 and 1996 the Government in all allotted 482 villages of Maddur, Mandya, Malavalli, Kunigal,




Ramanagaram, Kanakapura and Channapatna Taluks. The sugarcane required by the petitioner for a crushing period of 270 days with crushing capacity of 4000 TCD, 5000 TCD and 6500 TCD is 10.8 lakhs MTs., 13.5 Lakhs MTs and 17.5 Lakhs MTs respectively. The Government in its notification dated 3.5.1997 reduced the reserve area of the petitioner by taking away 19 villages from Channapatna Taluk, 5 villages each from Ramanagaram and Kanakapura Taluks and allocated the same in favour of M/s SPR Sugars which is being established at Kanchugaranahalli Village in Bangalore Rural District. The said allotment was not challenged by the petitioners. The Government by another notification dated 10.6.1997 again took away 211 villages of Kunigal Taluk from the petitioner and allocated the same to M/s.Prem Sugars, Thinmapura. Aggrieved by the same, the petitioner preferred a Writ Petition in W.P.No. 20859/2001. The petition was allowed, allotment was quashed and the matter was remitted to the Government for fresh



consideration in accordance with law. According to the petitioner the said proposal is still under consideration. However, it is to be noticed that the said factory is not established at all even to this day.


3. Fourth respondent obtained a licence in the year 2000 for establishing a sugar factory at Koppa Village, Maddur Taluk in Mandya District. For the purpose of reserving an area in favour of the fourth respondent, the Government proposed to take out a few villages in Maddur Taluk from the reserved area of the petitioner and in that connection a meeting was called for in which the petitioner was present on 2.6.2000. Again, a meeting was convened on 10.12.2000. In the said meeting it was proposed that 11 villages from Maddur Taluk be taken out from the petitioner's reserved area and 16 villages from the Mysore Sugar Company and the same be allotted to the fourth respondent. The eleven villages to be deleted were identified and annexed to the

proceedings. The petitioner did not challenge the said proposal. The Government by a notification dated 3.3.2001 has taken away 27 villages in Maddur Taluk from the petitioners' allotted quota and has assigned the same in favour of the fourth respondent which includes 11 villages proposed and mentioned in the annexure to the proceedings dated 12.10.2000. A copy of the said Government Order is produced at Annexure-L. On coming to know of the said order, the petitioner made a representation dated 22.5.2001 requesting them to reallocate the villages in their favour. On 31.12.2003 the Director of Sugar wrote to the Deputy Commissioner, Mandya, requesting him to examine the request made by the fourth respondent for allocation of three more villages which are in the reserved area of the petitioner factory as per Annexure-N. In pursuance of the said letter, a meeting was convened on 16.1.2004. In respect of the petitioners' objection for reallocation of the said three villages a recommendation is made for reallocation but




the said recommendation is yet to be considered by the Government.

4. The petitioners contend that the fourth respondent is going for trial production during the current crushing period i.e. 2004-05. As the fourth respondent had not commissioned the factory, respondent No.3 by his letter dated 19.4.2003 has directed the petitioner to purchase the sugarcane from the area allotted in favour of respondent No.4. By a subsequent letter dated 22.6.2004 he had directed the petitioner not to draw sugarcane from the area allotted in favour of respondent No.4. Petitioner contends as they were not aggrieved till date, they did not challenge the notification dated 3.3.2001 earlier. As the fourth respondent is starting its trial production from the current crushing season and as no third party rights had intervened so far, he submits though there is delay in filing the Writ Petition, the Writ Petition filed now is



maintainable and petitioner is entitled to the relief of quashing of Annexure-L where 16 villages allotted to the petitioner have been taken away from him and allotted to the fourth respondent behind the back of the petitioner and without notice, without hearing them as it offends principles of natural justice.


5. The Government has filed a detailed counter. They contend the Writ Petition is liable to be rejected on the ground of delay and laches. The Government has the power to make allocation of villages. They have power to withdraw the villages which are allotted to factories earlier. As long as the said power is exercised bona fide and is in the interest of sugar cane growers, the said decision of the Government cannot be interfered with. As the impugned order passed is in the interest of sugar cane growers and the sugar manufactures and in the absence of any mala fides alleged against the



Government, the impugned order cannot be found fault with.

6. The fourth respondent has filed a detailed statement of objections. He contends after the allocation of villages were made in their favour in terms of the impugned order they worked extensively in the villages allocated to them. They have undertaken a series of steps in the past three years based on the impugned order. Any reversal of the impugned order at the instance of the petitioner would cause irreparable loss and injury to them. Even before the crushing season commences, the sugar factories almost 8 to 12 months in advance enter into agreements with the concerned sugarcane growers and educate them on better augmentation of sugarcane by scientific methods. Fourth respondent has advanced loans to various sugarcane growers in the villages referred to in the impugned order under tie-up arrangement. Annexure-R1 produced along with the

statement of objections shows the amounts advanced by the fourth respondent in certain villages like Koppa Besagarahalli, Shivapura, Kestur, Kowdle, Halligere, Kunigal, Nidasel. They have also advanced a loan of Rs.17,18,546.70 to various farmers as advance seed loan, the particulars of which have been set out in Annexure-R2. In fact they have also entered into agreements with the sugarcane growers promising minimum statutory price. They have invested a huge amount of Rs.40 crores to set up the industry based on the assured input of bagasse of which a major chunk comes from the villages referred to in the impugned order. They have also installed borewell and taken up the cause of the farmers for financial assistance and the farmers who are benefited in this regard are listed in Annexures-R5 and R6. The fourth respondent has changed its position to a point of no return. If at this stage there is any change in the allocation not only the respondent No.4 factory would be



affected but the same would have cascading effect on the sugarcane growers.

7. In the Writ Petition the petitioner has specifically pleaded they were present in the meeting in which a decision was taken to delete eleven villages out of the villages allotted to them. A recommendation was made to that effect but the same is not final. It is for the State Government to reassess the entire position having regard to the crushing capacity of the sugar factory, the availability of the sugarcane in the area and the need for production of the sugar and come to the conclusion regarding allocation of villages. It is in exercise of that discretion as against recommendation of 11 villages, 27 villages have been allotted to the fourth respondent keeping in mind the requirement. Therefore, the contention that the petitioner was not heard before allotting 16 villages other than what is recommended is without any substance. Therefore, they submit not only

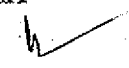
the petition is liable to be dismissed on the ground of delay and laches but also on merits.

8. Learned counsel appearing for the petitioners, Sri.Nanjunda Reddy, assailing the impugned order contends when in the meeting the petitioner was present a decision was taken to recommend for deletion of 11 villages which were allotted to the petitioner and when actual decision was taken by the Government 27 villages are deleted, in so far as deletion of 16 villages, the petitioner has not been heard. As the said order is passed in violation of principles of natural justice, the same is liable to be quashed.

9. Learned counsel for the respondents have reiterated what is stated in the statement of objections in their arguments and contend the Writ Petition is liable to be dismissed. ✓

10. From the aforesaid facts it is clear petitioner was aware of the establishment of the sugar factory by the fourth respondent in the year 2000. It is to allot villages which are allotted to the petitioner a meeting was convened. Petitioner attended the meeting. Admittedly in the said meeting 11 villages which were allotted to the petitioner were recommended to be allotted to the fourth respondent. Though the petitioner protested against such reallocation he did not choose to challenge the same as he reconciled to the said position. That is also clear from the submission that principles of natural justice is violated in so far as allocation of 16 villages only is concerned. The decision to allot 16 villages in addition to the 11 villages recommended by the committee was taken as per Annexure-L on 3.3.2001. A copy of the same was marked to the petitioner and they have been duly served. Petitioner is in the field for the last 30 years. It is on the basis of Annexure-L the fourth respondent as set out in the statement of objections started working on the

project. They have met the sugarcane growers, they have provided them financial assistance, they have given them money for purchase of seeds, they have also spent money for digging up borewells and the particulars of the money invested on these farmers and assistance given to them are clearly set out in the annexures. That apart they have invested Rs.40 crores for the establishment of the factory. That decision was taken by the fourth respondent on the basis of Annexure-L. If really the petitioner was not agreeable to the allocation of the villages as mentioned in Annexure-L as they had challenged earlier orders, they should have challenged Annexure-L before this Court. It is within their knowledge notwithstanding the allocation till the factory becomes operative there is no question of villagers in those villages supplying sugarcane to the fourth respondent. Therefore, they had the benefit of the sugarcane from those growers grown till the fourth respondent became operative. It is only when the fourth




respondent started crushing, the petitioners have approached this Court as the Government passed an order restraining the petitioner from getting supply from those villages which are allotted to the fourth respondent. If third party rights had not been intervened between the period of Annexure-L and the date of Writ Petition, probably the petitioner cannot be accused of laches and delay. But, once it is shown that in the background of Annexure-L fourth respondent has invested a huge amount of Rs.40 crores for establishment of the factory and has advanced money to the sugarcane growers in various places as set out in the statement of objections supported by particulars given in the Annexures, if at this point of time the allocation of those villages to the fourth respondent is interfered certainly it would have a cascading effect on the fourth respondent. In this regard it is necessary to notice what the Supreme Court has said in the case of **MUNICIPAL COUNCIL, AHMEDNAGAR AND ANOTHER vs SHAH HYDER BEIG AND OTHERS**

[2000 (2) SCC 48] dealing with delay and latches in preferring the Writ Petition. The Supreme Court has said,

"14. ...It is now a well settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-by to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law"

11. The petitioner who has been denied sugarcane in 11 villages after hearing him reconciled to the said fact. But, when the Government on the said recommendation thought the justice of the case would be



met by withdrawing not 11 villages but 27 villages, though he was duly intimated the petitioner did not move his little finger. On the contrary on the basis of the said representation made by the Government, the fourth respondent proceeded to invest Rs.40 crores and invested equally huge amount in developing the infrastructure and assisting the sugarcane growers in growing sugarcane and has also entered into agreements for supply of sugarcane. When the fourth respondent's factory became operational when crushing is to start the petitioner has approached this Court, nearly three years after the impugned order. Having regard to the facts of this case delay defeats the rights of the petitioner as a valuable right has accrued to the fourth respondent and it has reached a stage of no return. The Government taking note of the aforesaid facts has allotted 89 villages as is clear from Annexure-R7 to the petitioners and thus they have been suitably compensated by the Government. The petitioner has been now allotted more villages than he

lost in allocation. Therefore, there is no equity in favour of the petitioner and the petitioner cannot have any grievance whatsoever. Accordingly, the Writ Petition is rejected.

Sd/-
Judge

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