
(1990) 07 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 1143 of 1990 with W. Ps. No's. 1209, 1214, 1218, 1219, 1260, 1261, 1291, 1357, 1389, 1394, 1406, 1409, 1410, 1435, 1460, 1461, 1480, 1490, 1492, 1504, 1509, 1514, 1523, 1527, 1534, 1535, 1546, 1602, 1608, 1610, 1611, 1622, 1625, 1638, 1

Girdharilal Pardeshi

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 27-07-1990

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Essential Commodities Act, 1955 — Section 7
Maharashtra Co-operative Societies Act, 1960 — Section 91

Citation : (1991) MhLj 630

Hon'ble Judges : V.V. Kamat, J;N.P. Chapalgaonkar, J

Bench : Division Bench

Advocate : V.D. Hon, for the Appellant; Government Pleader, For respondents
Nos. 1 and 2, C.G. Solshe, for the Respondent

Judgement

N.P. Chapalgaonkar, J.—These writ petitions filed by the agriculturists who have grown sugarcane in the areas reserved for the Respondents-Sugar Factories by virtue of the provisions of the Maharashtra Sugar Factories (Reservation of Areas and Regulation of Crushing and Sugarcane Supply) Order. 1984 (for short hereinafter referred to as the Reservation Order), pray for a mandamus directing the Respondents Karkhanas to harvest and crush their sugarcane and for compensation for failure to harvest or for being late in harvesting and crushing the said sugarcane.

2. Out of two hundred seventy eight (278) Petitioners, two hundred forty (240) Petitioners are members of the Karkhanas and thirty-eight (38) are non members. Petitioners, belonging to these two categories, have registered their sugarcane with the respective Karkhanas. It is the case of the members that the bye-laws of the respective Karkhanas have cast an obligation on the Karkhanas to crush all the sugarcane of the members. The non-members also contend that

because of the provisions of the Reservation Order it is the duty of the Karkhanas to crush the sugarcane produced by them in the reserved areas. They further contend that the registration of their sugarcane with the Karkhanas has also created a contract and the Karkhanas have failed to perform their duty by not crushing their sugarcane. It has been alleged in some petitions that though the Karkhanas are bound to crush the sugarcane serially in order of the dates of the plantation, they have preferred the sugarcane of some growers who had planted the crop after the Petitioners, on extraneous considerations like the political affinity or relationship. In some petitions it has been alleged that though there were complaints made to the Director of Sugar or the Regional Deputy Director of Sugar in respect of these allegations, no action was taken by them. Even the Karkhanas were approached with the representations, but they have not complied with the obligations. It is the grievance of the Petitioners that the Director of Sugar and his subordinates have a duty to see that the Karkhanas do not discriminate amongst the sugarcane growers, follow the harvesting programme and abide by the rules of the Reservation Order and the bye-laws. It has also been alleged that the terms of the crushing licence have also not been followed by the Karkhanas. In spite of this the Director of Sugar has not discharged his statutory duty under the Reservation Order.

3. It is the submission of the Karkhanas that because of the unprecedented bumper crop of sugarcane this year, they could not keep up strictly with the harvesting programme and could not crush all the sugarcane from the reserved areas of operations allotted to them. It has also been contended that because of rains in the month of May, 1990 the transport of the sugarcane from the fields of the growers to the site of the Karkhanas became difficult. They also submitted that the harvesting of the sugarcane is normally done by the specialised labourers, who come from the distant places to the Karkhanas and they are always eager to return to their village immediately after the rains for the agricultural operations in their own lands. This labour force was not available in sufficient number after the month of May, 1990. This has made very difficult for the Karkhanas to continue the crushing operations.

They also contended that since a "co-operative sugar factory" is "society" registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short hereinafter referred to as the Act) it is not a "State" within the meaning of Article 12 of the Constitution of India and no mandamus would lie against it. It was also suggested on their behalf that the liability to crush sugarcane arises out of the bye-laws, they being not having the statutory force, the proper remedy is to approach the Co-operative Courts u/s 91 of the Act.

4. As there were number of similar writ petitions before us, on 7th July 1990 we passed a common order in all these writ petitions requiring all the parties to place all the relevant material before us to enable us to decide these Petitions at an early date looking to the urgency of the matter.

5. Most of the Karkhanas have filed their returns. In few writ petitions the

Regional Deputy Directors of Sugar have filed short affidavits. However, the Director of Sugar has chosen not to file any return in any of the writ petitions.

6. As in all these writ petitions, the common questions of fact and law are involved, they are being heard together. Rule is granted in all these petitions and it is made returnable forthwith by consent of the parties. These petitions are heard along with Rule already granted in Writ Petition No. 1260 of 1990.

7. It is the case of the Petitioner-Members that the bye-laws of the Karkhanas require them to supply all their sugarcane produced in the area of operation to that Karkhana and the Karkhana is bound to crush it. Our attention is invited to the provisions of the relevant bye-laws which are identical in respect of most of the Karkhanas. They are reproduced below:

8. These bye-laws prescribe that a member of a co-operative sugar factory shall be required to supply all the sugarcane produced by him in the area of operation of the said Karkhana. However, the Karkhana shall be under the obligation to crush the sugarcane in proportion of the shares held by him only and in respect of rest of the sugarcane the Karkhana has two options. First one is that the Karkhana may crush all the sugarcane and second one is that if the Karkhana is not able to crush the sugarcane in excess of the proportion of the shares held by the member it will invariably intimate the said fact to the member on or before 15 September. It is an admitted fact that no Karkhana before us has fixed the ration of sugarcane to be crushed mandatorily by it vis-a-vis the share held by him. In no case before us any Karkhana has intimated the member that it is unable to crush any sugarcane of the member by any of notice before 15th September preceding the crushing season. This provision of requirement of intimation to members before 15th September contained in most of the bye-laws appears to have justification which is found in clause (4) of the Reservation Order. Clause (4) provides that the grant of licence for crushing the sugarcane and sub-clause (3) of the said clause provides that every application for crushing licence shall be made to the licensing authority by 30th September of each year in Form "A". In Form "A" appended to the Reservation Order the information about the cane of the members and non-members available for crushing is to be furnished. Therefore the purpose of this provision in the bye-laws appears to be that if the Karkhanas are not in a position to crush the cane of members in excess to the the proportion to the shares held by them, they have to intimate the same to the members and they should not include that cane in the sugarcane for which the crushing licence is applied for and granted, and the members shall be able to dispose of the sugarcane for some other purpose or apply for the export permit under clause (5) of the Reservation Order. As no notice was given by the Karkhanas to its members before 15th September it will have to be presumed that they were prepared to crush all the sugarcane of members produced in the area of operation of that Karkhana.

9. In support of the contention that the co-operative sugar factory is not a "State" within the meaning of Article 12 of the Constitution of India and thus, no

writ petition is maintainable against it, our attention was invited by the Learned Counsel appearing on behalf of the Karkhanas to various decisions such as: (1) P. Bhaskaran and Others Vs. Additional Secretary, Agricultural (Co-operation) Department, Trivandrum and Others, ; (2) Pritam Singh Gill Vs. State of Punjab and Others, ; (3) Banabihari Tripathy Vs. Registrar of Co-operative Societies and Another, and (4) Sri Konaseema Co-operative Central Bank Ltd. Amalapuram and another vs. N. Seetharama Raju, AIR 1990 A.P. 171 (F.B). On the other hand, the Learned Counsel for one of the Petitioners submitted that the sugar factory is an "instrumentality of the State". In support of the aforesaid contention he invited our attention to a decision of the Division Bench of the Gauhati High Court in Nihar Sengupta Vs. Union Territory of Arunachal Pradesh and Others, , holding that a co-operative society registered under the Arunachal Pradesh Co-operative Societies Act, 1979, is a "State" within the meaning of Article 12 of the Constitution. We do not feel it necessary to consider this question in the matter presently before us. It is not necessary that a person or authority must be a "State" within the meaning of Article 12 for being compelled to perform a legal duty by the issuance of mandamus under Article 226 of the Constitution. Article 226 authorises High Court to issue Writs to any person or authority for the enforcement of any of the rights conferred by Part III or for any other purpose.

10. In The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, the Supreme Court while considering the scope of jurisdiction of High Court in respect of the issuance of mandamus held:

"Therefore, the condition precedent for issuance of mandamus is that there is one claiming it a legal right to performance of a legal duty by one against whom it is sought and the order of Mandamus is, in form, a command directing to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or authority on whom statutory duty is imposed need be a public official or an official body."

11. In Pandurang Hindurao Patil vs. State of Maharashtra and others, 1983 Mh.L.J. 1081 this Court had an occasion to consider the question whether a private individual acting as returning officer for the elections to the Managing Committee of a co-operative society can be directed by the issuance of Mandamus to do a particular act. this Court held that the returning officer has to perform a statutory duty and therefore, a writ petition for the enforcement of that duty would be maintainable. The Learned Counsel appearing on behalf of the petitioners invited our attention to a decision of the Supreme Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, and submitted that if the Petitioners succeed in establishing that the Karkhanas have a legal duty to perform then writ of mandamus can be issued compelling performance of the said duty by the Karkhanas. The real question involved therefore is not whether

the Karkhana is a "State" within the meaning of Article 12 of the Constitution, but the question that really requires our consideration is whether the Karkhanas owe a public or legal duty to the Petitioners. If it is established that they have a public or legal duty to be performed towards the petitioners then mandamus can be issued against them for the performance of that duty.

12. Now it is well-settled principle that bye-laws of a co-operative society do not have force of law. The decision of the Supreme Court in *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, was cited before us in support of the above proposition. In this case the Supreme Court observed thus (at page 252 of the report):

"We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law.....The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them but they do not have the force of a statute."

In the case of *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*, same view was again reaffirmed.

13. Relying on the decision of the Supreme Court in *Kulchhinder Singh and Others Vs. Hardayal Singh Brar and Others*, it was contended by the Learned Counsel appearing on behalf of the Karkhanas that since the bye-laws of a co-operative sugar factory do not have the force of law, the remedy of writ under Article 226 of the Constitution of India is unavailable to enforce a contract qua contract. We do not think that there can be any dispute about the proposition that the writ jurisdiction cannot be invoked for enforcing a liability or obligation under a simple private contract if it does not give rise to a legal or statutory duty. However, it cannot be presumed that the private contracts will never give rise to a legal duty. Professor S. A. de Smith points out that a mandamus lies to secure the performance of a public duty in the performance of which the applicant has a sufficient legal interest. The duty to be performed must be of a public nature. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract (see at page 540, *Judicial Review of the Administrative Action*, 1980). In recent years all pervading State powers have entered into different arenas of public life which were hitherto governed by simple contracts between the parties. In some cases the Legislature has given statutory protection to the relationship which was otherwise contractual. The obligation of the sugarcane growers to supply the sugarcane to the Karkhanas of which they are members has been re-enforced by the statutory sanction. Not only that but the contractual obligation of the sugarcane growers has become statutory obligation and the Karkhanas have also a legal duty to perform its part in conformity with the statutory requirements. If there are positive directions in the statute about the duties to be performed by the Karkhanas they are bound to obey those duties. When there is discretion left to the Karkhanas then they have

a duty to be reasonable and to judge whether they have acted reasonably the bye-laws would provide a fair guideline

14. The Government of Maharashtra has made the Maharashtra Sugar Factories (Reservation of Area and Regulation of Crushing and Sugarcane Supply) Order, 1984 under the powers conferred on it by the Sugarcane (Control) Order, 1966. The declared intention of the said Reservation Order was the apprehension that there may be non-availability of the sugarcane, to meet the requirements of the sugar factories in the State which may result in heavy losses to the Karkhanas, the Sugarcane growers, seasonal employees in the industry, etc. It mainly authorises for the reservation of the areas for the Karkhanas creating monopoly rights in them to purchase the sugarcane grown in that area. An attempt was made before us by some of the Learned Counsel appearing on behalf of the Karkhanas that though the Reservation Order 1984 restrains the Karkhanas from harvesting and crushing the sugarcane by bringing it from outside its reserved area unless it is allotted to them by a valid export permit, it does not create an obligation that the Karkhanas should crush the sugarcane and the sugarcane growers are at liberty to supply their sugarcane to any Karkhana. This would, in our opinion, be an untenable interpretation. If an area is reserved for the Karkhanas it follows therefrom that the sugarcane growers cannot supply their sugarcane to any other Karkhana other than the one for which the same area is reserved. Under clause (4)(6)(i) the licence to be granted to the karkhana for crushing shall have a condition regarding the minimum quantity of sugarcane that shall be crushed during the crushing season. The licence granted to the Karkhana does contain a term to the following effect:

"(3)(iii) The licensee shall crush the entire quantity of sugarcane, allotted to him by the Licensing Authority, unless prevented by reasonable cause, the burden of proving of which shall be upon him, in which case, he shall report the fact to the Licensing Authority without any delay."

There is no dispute that all the sugarcane of the members and the contracted sugarcane of the non-members in the reserved area is included in the sugarcane to be crushed under the licence. In the case of all the Karkhanas before us condition No. 3(viii) of the licence lays down:

"3(viii) It shall be the responsibility of the Licensee to ensure that harvesting of cane is done strictly according to the harvesting programme based on maturity of crop and that the concerned cane growers are informed well in advance." Condition No. 3(xv) of the licence lays down :

"The Licensee shall crush the sugarcane of its members first and non-members thereafter, during a calendar month, according to the harvesting programme, drawn on the basis of the plantation dates."

Thus, a statutory duty is created that the Karkhanas shall crush all the sugarcane for which the licence has been granted to it, unless prevented by a reasonable cause to be proved by it. In case of its inability to crush all the sugarcane it shall

inform the members and the Licensing Authority forthwith and shall follow the crushing programme which will be based on the plantation dates. This crushing programme shall be for each calendar month and the sugarcane of the members shall be given precedence for crushing over that of the non-members in the crushing programme of that month. The members sugarcane growers and the non members sugarcane growers who have contracted to supply their sugarcane to the Karkhanas. are from the reserved areas of the respective Karkhanas and their sugarcane is included in the crushing licence, thus have a right to compel that their sugarcane should be crushed by the Karkhanas. unless reasonable excuse is proved and they are informed well in advance about the same. It would be a legal obligation for the Karkhanas to perform this duty and in case of their failure a writ of mandamus would lie for compelling its performance.

15. On 14th January, 1988, the Reservation Order was amended and clause (14) was inserted into it. It provides that any person who contravenes any of the provisions of this Order or of the terms and conditions of a licence, permission or permit granted under this Order shall be punishable u/s 7 of the Essential Commodities Act, 1955. This strengthens our conclusion that the terms and conditions of the licence issued under the Reservation Order can be compelled to be performed by the Karkhanas as they are statutory duties. The right of the Petitioners which is sought to be pressed into service before us thus has not remained a merely contractual right but it has now become a legal right by virtue of the provisions of the Reservation Order.

16. In Shri Anadi Math Trust's case (supra) the Supreme Court considered the case of aided private educational institution which is discharging the public function of imparting education to the students. After noticing the fact that the University is supervising the relations between the teachers and the educational institutions and is laying down certain conditions, it observed (at page 1611 of the report):

"When the University takes a decision regarding their pay-scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal-right-duty relationship a between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party."

Similar is the situation of the relationship between a cane grower and a sugar factory. The obligations created by the bye-laws are given super-added protection by the statute i.e. the Reservation Order and it has created a legal right-duty relationship between the cane grower and the Karkhana and if there is non-performance of the said legal right-duty relationship mandamus would lie against the erring party.

17. The Learned Counsel appearing on behalf of the Karkhanas also wanted to suggest that the sugarcane growers have a remedy by way of a dispute u/s 91 of

the Act. We do not appreciate the contention that the farmers before us should be asked to resort to the remedy of filing a dispute before the co-operative Court though the relief of mandamus is a discretionary relief and the Court will decline to issue it if another remedy equally beneficial, convenient and effective is available. We do not think that the circumstances justify a proposition that the remedy u/s 91 of the Act is beneficial, convenient and effective since the Karkhanas are disputing the very existence of legal right-duty relationship between them and the sugarcane growers.

18. It was urged before us by the Learned Counsel for the Petitioners that the Director of Sugar, the Regional Deputy Directors of Sugar and their subordinates have a duty to see that the provisions of the Reservation Order of the terms and conditions of the licence issued under it are duly complied with. They cannot be just silent spectators. Clause (13) of the Reservation Order gives powers to the Director of Sugar or any officer authorised by him to require production of books of accounts, and documents, maintenance of such record, data or information, to break open and search any place, to inspect any book or document, to search, seize and remove and to take into custody crop of sugarcane or sugar and to put a seal on such vital or running part of the implements used in the process of manufacture of sugar. This power is to be exercised with a view to secure compliance of the provisions of the Reservation Order. We do not think that the powers under clause (13) are purposeless. The State, by this subordinate legislation, very much wanted that the power conferred must be purposefully exercised by the authorities. This is not merely an enabling provision. It casts a duty on the Director and his subordinates to see that the provisions of the Reservation Order are complied with by all concerned. In *The Rahuri Sahakari Sakhar Karkhana Ltd. and Another Vs. State of Maharashtra and Others*, , Dharmadhikari and Sugla. JJ. negated the challenge to the Reservation Order and found:

"if the provisions of the impugned order are tested on the touchstone of the well-settled principles, the restriction put can by no means be said to be unreasonable. They are regulatory in nature and are meant for achieving the object of equitable distribution of essential commodity to subserve the common good of producer, manufacturer and the consumer."

If the statute is intended to have the regulatory effect and if it creates certain authorities and confer certain powers on them then those authorities are duty bound to see that the provisions of that statute are complied with in order to have the desired effect. It is in this background the contentions of petitioners in respect of the acts of omissions on the part of the Director of Sugar and his subordinates will have to be examined.

19. Mr. N. K. Kakde, learned Government Pleader, submitted that the State Government and the Director of Sugar had taken a note of the unprecedented excess sugarcane production in the State and issued various directions from time to time. He pointed out that on 31-3-1990 the Home Department of the State

Government directed all the Collectors to requisition the trucks which would be necessary for the transport of the sugarcane in the Districts of Parbhani, Latur, Beed, Osmanabad and Aurangabad to the sugar factories in the Jalna, Akola and Ahmednagar districts. On 4-4-1990 the Director of Sugar issued a circular relaxing the condition of limiting the crushing period to 160 days and directed all the sugar factories not to close their crushing season till the entire sugarcane available in their reserved areas and the sugarcane allotted to them is crushed. It has been further directed that the Karkhanas should not close their crushing operations without the prior permission of the Director of Sugar, Maharashtra State. On 18th May, 1990, a circular was issued by the Director of Sugar to all the Karkhanas in the State pointing out that some Karkhanas, particularly from the Marathwada Region, are crushing the cane which is not ripe thereby bringing down the average yield of the sugar. Therefore, the sugarcane which was planted in the month of April or May (1989) should not be taken for crushing this season and it should be crushed in the next crushing season. Mr. Kakde further invited our attention to a government communication sent to him for the information of this Court that the Government has sanctioned financial assistance to the agriculturists, whose sugarcane could not be crushed this year, at the rate of Rs. 4,000/- per acre of the standing sugarcane. It further directed that the sugar factories should crush the unharvested sugarcane in the next crushing season of 1990-91 on priority. Shri Kakde further submitted that whatever complaints were received by the Director of Sugar and his subordinates have been forwarded to the Karkhanas to obtain their say. We have put a query to Shri Kakade as to how many sugar factories have obtained prior permission of the Director of Sugar before closing their crushing season this year and in how many complaints made by the sugarcane growers, the Director of Sugar or his subordinates have conducted inquiries. Shri Kakde had no information to furnish. We do not have a single affidavit on the record by the Director of Sugar in such an important matter and any of the affidavits filed by the Regional Deputy Director of Sugar in some of the petitions before us does not answer these queries. Mr. Kakde pointed out that the office of the Regional Deputy Director of Sugar is not having adequate staff and they do not have expertise in agriculture also. Despite our order dated 7th April, 1990 directing all the parties to place relevant material on record, no information is furnished to us as to what action actually has been taken by the Director of Sugar for the alleged non-compliance of the Reservation Order by the sugar factories.

20. Petitioners have alleged before us that though they are from the reserved areas of operation of the respective Karkhanas and their sugarcane is registered with the Karkhanas, their sugarcane is not harvested and crushed by the Karkhanas. It has been further alleged that by passing the reasonable crushing programme based on the plantation dates the Karkhanas have preferred the sugarcane for crushing which was planted later than that of the petitioners on extraneous considerations such as political affinity or relationship with the members of the Board of Directors of the Karkhanas. They have further made a

grievance that in case the Karkhanas were not able to crush their sugarcane they should have intimated the same to them on or before 15th September which the Karkhanas have not done to enable them to dispose of their sugarcane. It has also been alleged in some petitions that though written representations were made to the Director of Sugar and/or his subordinates, nothing has been done by them compelling the Karkhanas to crush their sugarcane. There is no convincing reply by the authorities to the contentions raised in any of the petitions. In some petitions we have issued directions to the Karkhanas to crush the sugarcane. In some cases even the Karkhanas undertook before us to crush the sugarcane. We are told that despite the interim orders or the undertaking some Karkhanas have not crushed the sugarcane of the petitionees. This has given rise to some contempt petitions also. Enough material has not been placed before us either by the petitioners or by the Respondents to investigate the contentions raised by the parties. Some Karkhanas despite oral directions did not produce the harvesting programme. The Karkhanas have taken a plea that because of the unprecedented crop this year, they could not crush the sugarcane of the petitioners. The excess production may delay the harvesting but it cannot change the serial order of the harvesting and crushing programme. Therefore, the allegations that the sugarcane which was planted after the cane of the petitioners was harvested and crushed if proved, cannot be justified by this submission. It is also not known as to why the sugarcane growers were not intimated before 15th September as was required. That would have enabled them to ask for the export permit or to dispose of the sugarcane in some other manner. Some writ petitions do make a grievance that though the todchitti (harvesting note) was given to them mentioning the date of harvesting, their sugarcane was not harvested. It is the submission of the Karkhanas that because of the heavy rains in the month of May 1990 lifting of the sugarcane from the fields of the growers and the transporting it to the Karkhanas became impossible. In some cases it is submitted by the Karkhanas that the labour was not available. In some cases the Karkhanas have complained about the non-cooperation of the petitioners. All these things will have to be inquired into by examining the record of the Karkhanas and other relevant material.

21. Even assuming that the sugarcane crop this year was very good, this by itself will not justify the non-crushing of the sugarcane from the reserved area. The sugarcane produced by the growers is entered into the revenue record like 7/12 extracts. It is also entered in the register of the Karkhanas by its field officers. Both these entries are based on the area under the sugarcane cultivation and this area in turn is mentioned in the crushing licence. Variation between the yield of the sugarcane if area under the cultivation is the same may be there, but not to a large extent. A situation may arise that sugarcane grower might have planted sugarcane in a larger area but registered if of a lesser area for some ulterior reason. We do not have material to examine this. Even this possibility will have to be examined to explain as to why the sugarcane of some of the members could not be crushed despite the fact that some Karkhanas have

crushed sugarcane almost one and half times more than the one mentioned in the crushing licence. It will have to be examined whether the Karkhanas had a reasonable excuse for not crushing the sugarcane and whether they are in a position to prove it.

22. In most of the petitions before us compensation from the Karkhanas is claimed because the Karkhanas have not crushed the sugarcane of the Petitioners despite the statutory obligation to do so and the Karkhanas have now closed the crushing operations. In some cases the compensation is claimed for late crushing of the sugarcane mala fide causing loss to the Petitioners. Mr. N.K. Kakde, learned Government Pleader, submitted before us that since the Government has promised the financial assistance at the rate of Rs. 4,000/- per acre to the sugarcane growers, whose sugarcane could not be crushed this year, we should not consider the prayer for the grant of compensation. The Learned Counsel for the Karkhanas have opposed this prayer with a submission that we do not have enough material and the machinery required to examine the question of grant of compensation. The State Government has fixed the sum of Rs. 4,000/- per acre for the grant of financial assistance. The amount of compensation may vary according to the circumstances in each case. In case the Karkhanas are able to prove that they have discharged this obligation strictly according to the Reservation Order and the crushing licence and that they have acted reasonably, then the sugarcane growers in a given case may not be entitled to any compensation at all. Therefore, the compensation would be a matter for detailed investigation by the proper machinery.

23. Relying on the decisions of the Supreme Court in habeas corpus cases of Rudul Sah Vs. State of Bihar and Another, and Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, , the Learned Counsel for the Petitioners contended that this Court under Article 226 of the Constitution has power to grant the compensation in an appropriate case. We have no hesitation in holding that in an appropriate case the High Court has power to grant compensation in a petition under Article 226 of the Constitution of India. Whether enough material is available before the Court in arriving at the quantum of compensation and whether there is adequate and efficacious remedy available to which the Petitioners can be directed for the grant of compensation would be the matters to be decided on the facts of each case. Therefore, at the preliminary stage, we wish to direct the Director of Sugar to undertake the necessary inquiry into the allegations of the Petitioners in the light of the pleadings of the Respondents-Karkhanas and in the light of the observations made hereinabove.

24. We hereby give the following directions to the Director of Sugar:

(a) The copies of the writ petitions along with the returns filed by the parties in those writ petitions be sent to the Director of Sugar.

(b) The Director of Sugar himself or any official, person or agency authorised by him shall investigate and inquire into the allegations made in the writ petitions in

the light of the pleadings of the Respondents and observations of this Court made hereinabove.

(c) The Director of Sugar shall give due opportunity to all the parties to lead evidence if necessary and relevant and then decide the following questions and submit a report thereof to this Court:

(i) Why the Karkhanas Respondents herein had not crushed the sugarcane of the Petitioners during the crushing season of 1989-90?

(ii) Whether the Karkhanas had prepared a proper harvesting programme for the crushing programme of 1989-90 on the basis of the plantation dates as required by the crushing licence?

(iii) Whether the Karkhanas have followed the crushing programme in general and in particular the sequence by which the sugarcane was to be harvested in respect of the Petitioners?

(iv) Whether the sugarcane of some other growers who had planted the sugarcane later than the Petitioners, was harvested earlier to that of the Petitioners?

(v) If the Petitioners' sugarcane or part of it was already harvested and crushed, whether there was undue delay in harvesting and crushing the sugarcane?

(vi) Whether the Karkhanas have bypassed the sequence given in the crushing programme and the licence mala fide or on some extraneous considerations?

(vii) Whether the Karkhanas on their part had taken efforts to intimate to the petitioners their inability to crush their sugarcane in time i.e. before 15th September or thereafter at the earliest opportunity?

(viii) Whether the Karkhanas had any reasonable cause for not harvesting and crushing the sugarcane of the Petitioners and whether they are able to prove it?

(ix) Whether the rains, non availability of labour or obstruction by the Petitioners to the harvesting of their sugarcane had prevented the cutting and harvesting of the sugarcane of the Petitioners as alleged by the Karkhanas in those petitions?

(x) Whether non-harvesting or late harvesting of the sugarcane of the Petitioners has resulted in monetary loss to the Petitioners? If yes, what is the approximate extent of such loss?

(xi) Whether the loss to the Petitioners so calculated is the result of non-observance of any of the rules, conditions prescribed in the Reservation Order and the crushing licence?

(xii) What is the quantum of amount which the Petitioners would receive from the State Government as assistance for non-crushing of their sugarcane by the Karkhanas in terms of the decision of the Government as communicated to this Court through the Government Pleader, dated 29th June, 1990?

(xiii) What is the further quantum of compensation amount to which the (Petitioners are entitled) (d) The Director of Sugar or any other person, or official or agency as authorised by him shall complete the inquiry as aforesaid on or before 8th October, 1990 and submit the report thereof before this Court on or before 24th October, 1990.

25. Though the communication dated 29th June, 1990 makes it incumbent on the Karkhanas to crush sugarcane which was not crushed in the crushing season of 1989-90 in the crushing season of 1990-91 by giving priority. In the circumstances we feel it necessary to give specific directions to all the Karkhanas-Respondents herein. They are:

(i) The respondents-Karkhanas shall prepare a list of the sugarcane growers (irrespective of the fact whether they are Petitioners or not) whose sugarcane was ripe in their reserved areas but could not be crushed this year. This list should be submitted by them to Director of Sugar and the Regional Deputy Director of Sugar on or before 30th August, 1990.

(ii) The list as directed to be prepared as aforesaid shall also be placed on the record of the writ petitions by the Karkhanas through their counsel on or before 30th August 1990.

(iii) The Karkhanas-Respondents herein shall harvest and crush the sugarcane of the petitioners from its exclusive area or overlapping area immediately after the start of the crushing season of 1990-91 and until such sugarcane is harvested and crushed by them, they shall not harvest and crush sugarcane of any other grower irrespective of the terms of the bye-laws or the crushing licences which will be issued to them for the crushing season of 1990-91.

26. We hereby further direct the State Government to pay the assistance of Rs. 4,000/- per acre to the Petitioners for their unharvested standing sugarcane on or before 8th October, 1990.

27. There are some contempt petitions pending before us. They arise out of the writ petitions filed by petitioners. As the decision on the question whether there was wilful disobedience of any of the directions of this Court or the undertaking given by the Karkhanas in some petitions before this Court is dependent on the availability of further material which would be available after completion of the inquiry which we have directed to undertake, would be proper to decide these petitions after the submission of the inquiry report by the Director of Sugar.

28. The writ petitions and the contempt petitions be placed before the Court on 29th October, 1990 for further hearing and disposal.