

(2010) 03 BOM CK 0065

In the Bombay High Court

Case No : Writ Petition No's. 1237 and 1593 of 2010

The Maharashtra State Cooperative Bank Ltd.

APPELLANT

Vs

The Assistant Provident Fund Commissioner and Others

 The Maharashtra State Cooperative Bank Limited
Mumbai Vs The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 3
Constitution of India, 1950 — Article 14, 141, 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 11,
11(2), 3, 6
Essential Commodities Act, 1955 — Section 2, 3, 3(3D), 3(3E), 3(4)
Reserve Bank of India Act, 1934 — Section 2
Transfer of Property Act, 1882 — Section 11(2)

Citation : (2010) 3 ALLMR 176 : (2010) 2 BomCR 724 : (2010) 112 BOMLR 1568

Hon'ble Judges : S.S. Shinde, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : R.N. Dhorde, for the Appellant; K.B. Choudhary, for Respondent Nos. 1 and 2 in Writ Petition No. 1237 of 2010, Alok Sharma for Respondent Nos. 4 and 5 in Writ Petition No. 1237 of 2010, S.K. Tambe, A.G.P. for Respondent Nos. 6, 7 in Writ Petition No. 1237 of 2010, Alok Sharma for Respondent No. 1 in Writ Petition No. 1593 of 2010 and K.B. Choudhary, for Respondent Nos. 2 to 5 and 7 in Writ Petition No. 1593 of 2010, for the Respondent

Judgement

A.M. Khanwilkar and S.S. Shinde, JJ.—Heard learned Counsel for the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioner, a registered Cooperative Society under the provisions of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as "The Act of 1960") is an Apex Society, prays that it be declared that the auction notice dated 11022010 published by the Recovery Officer, Provident Fund Organisation (respondent No. 2), in the local newspaper for auctioning 6000 quintals of sugar bags to effectuate the recovery of the provident fund dues of the employees of

respondent No. 3 M/s. Shivajirao Patil Nilangekar Sahakari Sakhar Karkhana Ltd., Nilanga District Latur, by invoking the enabling provisions of the Employees of the Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "The Act of 1952"), is illegal and violative of Article 14 of the Constitution of India as well as Section 11(2) of the Act of 1952 and also provisions of Essential Commodities Act, 1955 (hereinafter referred to as "The Act of 1955"), and the Sugar (Control) Order, 1966. The petitioner has also prayed for quashing and setting aside the auction notice dated 11022010.

3. These reliefs are claimed on the assertion that the petitioner being an Apex Society and also a Scheduled bank, had advanced loans to respondent No. 3 sugar factory which is a Cooperative society registered under the provisions of Act of 1960; and to secure the said loans and advance given towards working capital loan, an agreement to pledge/hypothecation of sugar gunny bags produced and to be produced by respondent No. 3 sugar factory was executed. Besides, a mortgage deed in respect of immovable properties of respondent No. 3 sugar factory was also executed. In other words, the petitioner was the secured creditor in relation to the stated movable and immovable properties of the respondent No. 3 sugar factory. The pledge account is of total 31045 quintals of sugar lying in Godown Nos. 1 to 4 of respondent No. 3 sugar factory and are in possession of the petitioner bank. Further, the petitioner bank has to recovery an amount of Rs. 85.93 Crores alongwith interest as on 31112009 from the respondent No. 3. In terms of deed of pledge/hypothecation, the petitioner had complete control over the sugar gunny bags weighing about 31045 quintals of sugar lying in the above mentioned Godowns of respondent No. 3 sugar factory, being secured creditor. Notwithstanding this, the Assistant Provident Fund Commissioner and Recovery Officer, Provident Fund Organisation, respondent Nos. 1 and 2 respectively (for the sake of brevity hereinafter referred to as "P.F.C."), proceeded to attach 6000 quintals of sugar bags out of the abovesaid stock of sugar lying in the above mentioned Godowns of respondent No. 3 sugar factory which was in possession of the petitioner bank and also proceeded to issue the impugned auction notice dated 11022010 for sale of the said sugar to be held on 16022010 at 1100 a.m. According to the petitioner, respondent Nos. 1 and 2 have no authority, in law, to auction the said sugar. Therefore, this petition was filed on 16022010 and the matter was moved by producing it before us on the same day at 230 P.M. apprehending completion of auction sale by respondent No. 2. We directed the matter to be listed on 23022010. In the meantime, we ordered that even if auction was to be conducted, sale shall not be confirmed. On being intimated of the above order, the matter was moved by respondent Nos. 1 and 2 on 17022010 pointing out that the sale was already confirmed by the time the order was passed and communicated to the said respondents. In the circumstances, we directed the parties to maintain status quo as of that date with regard to sugar stock in question. The matter was then heard in part on 23rd and 24th February, 2010 and placed today when this order is passed.

4. According to the respondent Nos. 1 and 2 however, no relief can be granted to

the petitioner as the Apex Court has already taken the view that the P.F.C. would have priority to recover provident fund dues over all other debts of respondent No. 3, in terms of Section 11(2) of the Act of 1952. Section 11(2) has been construed to mean that the priority of the P.F.C. would operate against the statutory as well as non statutory, secured as well as unsecured debts including mortgage or pledge and the dues payable under the Act of 1952 would always remain as first statutory charge and shall be paid first out of the assets of the establishment notwithstanding anything contained in any other law for the time being in force. This view has been taken in the case of Maharashtra State Coop. Bank Limited (petitioner herein) v. Assistant Provident Fund Commissioner and Anr. reported in 2009 AIR SCW 6784. According to the respondents, therefore, the petition is devoid of merits. Further, the petitioner, to overcome the decision of the Apex Court, which is binding on the petitioner as well as this Court, is attempting to raise frivolous and untenable pleas out of desperation.

5. Counsel for the petitioner, however, was at pains to persuade us that the judgment of the Apex Court can be distinguished and in any case, the same cannot be treated as a binding precedent, in any case it is per incuriam. To buttress the above submissions, it is contended that in the case decided by the Apex Court, the matter arose from an interlocutory order passed by this Court granting relief to P.F.C. during the pendency of Writ Petition in this Court, between the parties in that case. We do not find any substance in this submission. In our view, however, the said decision of the Apex Court expounds the legal position pertaining to the scheme of Act of 1952 and in particular Section 11 of the Act of 1952 and has had an occasion to consider the similar issues as in the present case. In that, the stocks/goods/commodities of the sugar factory were pledged to the petitioner bank and the P.F.C. to recover the provident fund dues of the employees of the sugar factory attached part of the pledged stocks/goods/commodities thereof. The petitioner objected to the said action of the P.F.C. and claimed that the attachment and sale of sugar which was in possession of the petitioner bank could not be proceeded with in law.

6. To overcome this position, it was contended that the above said decision of the Apex Court is per incuriam, in as much as the same proceeded to examine the point in issue without there being any proper adjudication or interpretation of pledge document which could be done by the Court of first instance where the Writ Petition was filed and pending. Besides, the Apex Court decided the matter by interpreting the pledge deed alone which was produced before it and the conclusion reached by the Apex Court is not on the basis of all the relevant facts and documents and the provisions of law. It is not possible to countenance this plea at the instance of the petitioner herein who was party to the appeal before the Apex Court in the said matter. We are conscious of the fact that finding in that case on factual matrix which arose for consideration before the Apex Court will be of no avail to decide the present case. At the same time, as noticed earlier, the decision, in our view, is an unambiguous exposition of law regarding the interpretation and scope of the provisions of the Act of 1952 to answer the

objection of this very petitioner. That opinion would be binding on us in view of Article 141 of the Constitution of India.

7. It was then submitted that certain relevant facts were not brought to the notice of the Court such as that BRIO was appointed by the petitioner for each factory who is employee of the petitioner bank and posted by the petitioner for each sugar factory like respondent sugar factory. The effect of such arrangement is that the entire sugar stock and Godowns are exclusively in the possession of the petitioner bank through its BRIO who locks the Godowns and keeps the keys of the said Godowns and one set of keys are as per rules kept with the petitioner bank and it is the duty of the said BRIO as prescribed by rules to keep the custody of said sugar which is pledged with the petitioner bank. In other words, the petitioner has exclusive custody of the stock/sugar and the respondent sugar factory has no concern whatsoever with the said stock. Even this argument does not commend to us. The Apex Court in the above said judgment has held that even though symbolic possession of the sugar bags was given to the petitioner bank as security for the repayment of loan, sugar mill continued to be the owner thereof and that the action of P.F.C. was in respect of general property of the sugar factory. The Apex Court has held that even if the contract of pawn or pledge, the pawnee/pledgee has only a special property in the pledge but the general property remains with the pawnor/pledgor and wholly reverts to him on discharge of the debt. Further, the right to property vests in the pledgee only so far as necessary to secure his debt and that arrangement between pawnor and pawnee, as security for repayment of loan does not have the effect of transferring the ownership of the sugar bags to the petitioner bank. For that reason, the Recovery Officer could legitimately attach the said property and sell the same to recover the amount due towards provident fund of the employees which was payable by the respondent No. 3 sugar factory.

8. Counsel for the petitioner, however, placed reliance on the decision of the Apex Court in the case of *The Bank of Bihar Vs. The State of Bihar and Others*, and another case of *Central Bank of India Vs. Siriguppa Sugars and Chemicals Ltd. and Others*, , to contend that pawnee has special property of lien on the goods and so long as his claim is not satisfied, no other creditor of pawnor has any right to take away the goods or its price. Both these decisions are of no avail to the petitioner. They deal with the situation which is governed by the ordinary law of Contract Act. Indeed, these decisions are not specifically adverted to by the Apex Court while deciding the case of *Maharashtra State Cooperative Bank Ltd.* (supra). That would make no difference. For, in the reported decision of the petitioner bank, the question has been answered in the context of special provisions of Act of 1952 which give priority and operates against the statutory as well as non statutory, secured as well as non secured debts including a mortgage or pledge. According to the petitioner, the statement of law expounded in the case of *Maharashtra State Cooperative Bank Ltd.*, inter alia in Para. 33 thereof, is not correct and runs counter to the exposition in the two cases relied by the petitioner. We do not find any merit in this submission. Counsel for P.F.C.

rightly relied on the decision of our High Court in the case of Indus Agro Products Vs. Union of India (UOI) and Others, and of the Kerala High Court in the case of Recovery Officer and Assistant Provident Fund Commissioner Vs. Kerala Financial Corporation, to support the argument that the Courts have considered the similar contention regarding priority of payment of contribution over other debts, as also, the effect of non obstante clause in Section 11(2) qua provisions of Transfer of Property Act, 1882. It is held that Section 11(2) of the Act of 1952 overrides all other provisions of law including Transfer of Property Act, 1882.

9. It was next contended that the decision of the Apex Court is per incuriam on account of the fact that it has not adverted to the crucial provisions of the Act of 1955, as well as Sugar (Control) Order, 1966 which are special provisions in the interests of general public unlike the Act of 1952 is only in the interests of public, intended to regulate production, supply and distribution and trade and commerce of the essential commodities like sugar. That being special enactment will prevail and for which reason, the action of the P.F.C. will be illegal and without authority of Law. Reliance is placed on Sub-sections (3D), (3E), (4) to (6) of Section 3 the Act, 1955, which read thus:

(3D) The Central Government may direct that no producer, importer or exporter shall sell or otherwise dispose of, or deliver any kind of sugar or remove any kind of sugar from the bonded godown of the factory in which it is produced, whether such godowns are situated within the premises of the factory or outside, or from the warehouses of the importers or exporters, as the case may be, except under and in accordance with the direction issued by the Government: Provided that the Sub-section shall not affect the pledging of such sugar by any producer or importer in favour of any scheduled bank as defined in Clause (c) of Section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) or any corresponding new bank constituted u/s 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (5 of 1970), so, however, that no such bank shall sell the sugar pledged to it except under and in accordance with a direction issued by the Central Government.

(3E) The Central Government may, from time to time, by general or special order, direct any producer or importer or exporter or recognised dealer or any class of producers or recognised dealers, to take action regarding production, maintenance of stocks, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any kind of sugar in the manner specified in the direction. Explanation. For the purposes of Sub-section (3D) and this Sub-section.

(a) "producer" means a person carrying on the business of manufacturing sugar;

(b) "recognised dealer" means a person carrying on the business of purchasing, selling or distributing sugar;

(c) "sugar" includes plantation white sugar, raw sugar and refined sugar, whether indigenously produced or imported.

(4) If the Central Government is of opinion that it is necessary so to do for maintaining or increasing the production and supply of an essential commodity, it may by order, authorise any person (hereinafter referred to as an authorised controller) to exercise, with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order such functions of control as may be provided therein and so long as such order is in force with respect to any undertaking or part thereof, (a) the authorised controller shall exercise his functions in accordance with any instructions given to him by the Central Government, so, however, that he shall not have any power to give any direction inconsistent with the provisions of any enactment or any instrument determining the functions of the persons incharge of the management of the undertaking, except insofar as may be specifically provided by the order; and (b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller under the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions.

(5) An order made under this Section shall, (a) in the case of an order of a general nature or affecting a class of persons be notified in the Official Gazette; and (b) in the case of an order directed to a specified individual be served on such individual (i) by delivering or tendering it to that individual, or (ii) if it cannot be so delivered or tendered, affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report thereof shall be prepared and witnessed by two persons living in the neighbourhood.

(6) Every order made under this section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made.

10. Our attention was also invited to Section 2(b) and 2(e) of the Act of 1955. Section 2(b) defines expression "food crops" to include crops of sugarcane, whereas the term "sugar": is defined in Section 2(e). As a result, the Central Government has power u/s 3 to control production, supply, distribution of essential commodities (sugar in this case) and it is competent to issue order for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. According to the petitioner, the entire sugar production, supply and distribution is regulated under the Act of 1955 and the Orders passed there under. Our attention was also invited to Clauses 3(3) and 3(3A) in particular, of the Sugarcane (Control) Order, 1966. The same read thus:

3(3) Where a producer of sugar purchases any sugarcane from a grower of sugarcane or from a sugarcane growers' cooperative society, the producer shall, unless there is an agreement in writing to the contrary between the parties, pay within fourteen days from the date of delivery of the sugarcane to the seller or tender to him the price of the cane sold at the rate agreed between the producer and the sugarcane grower or the sugarcane growers' cooperative society or that

fixed under Subclause (1), as the case may be, either at the gate of the factory or at the cane collection centre or transfer or deposit the necessary amount in the Bank account of the seller or the cooperative society, as the case may be. 3[3A) Where a producer of sugar or his agent fails to make payment for the sugarcane purchased within 14 days of the date of delivery, he shall pay interest on the amount due at the rate of 15 per cent per annum for the period of such delay beyond 14 days. Where payment of interest on delayed payment is made to a cane growers' society, the society shall pass on the interest to the cane growers concerned after deducting administrative charges, if any, permitted by the rules of the said society.]

Relying on these provisions, it was contended that it is the obligation of the sugar factory to pay the purchase price to cane growers within 14 days, failing which the producer is liable for necessary action including payment of interest @ 12% p.a. and such payment is required to be made by Cooperative Society such as respondent No. 3 herein through scheduled bank like the petitioner. Our attention was also invited to Sugar (Control) Order, 1966 and clause 4 in particular which provides that no manufacturer can sell the sugar except with written permission of the Central Government. The same reads thus:

[4. Power to restrict sale, etc. of sugar by producers or importers. The Central Government may direct that no producer or importer shall sale or agree to sell or otherwise dispose of, or deliver or agree to deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced or from the warehouses of the importers except under and in accordance with a direction issued in writing by the Central Government;

Provided that this clause shall not affect the pledging of such sugar by any producer or importer in favour of any scheduled bank as defined in Clause (e) of Section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) or any corresponding new bank constituted u/s 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (5 of 1970) and no such bank shall sale the sugar pledged to it except under and in accordance with a direction issued in writing by the Central Government].

Besides, reliance is placed on Clause 5A of Sugar (Control) Order, 1966 which was introduced in 1971 stipulating that sugar attached by Government Officers shall not be sold without directions issued by the Central Government. The same reads thus:

[5A. Sugar attached by Government officers etc., not to be sold without directions. Where any stock of sugar with any [producer or importer] or recognised dealer is attached or seized (i) by any officer of the Central or State Government in accordance with the provisions of any enactment for the time being in force, or (ii) in pursuance of any proceedings in a Civil Court, the sugar so attached or seized shall not be ordered to be sold unless the officer or Court is satisfied that directions have been issued by the Central Government under

Clause 5 regarding the sale of such sugar.]

Referring to the above provisions, it is contended that there is statutory prohibition for sale of sugar by virtue of provisions of Act of 1955 and the Orders issued thereunder, which is in vogue to maintain supply of sugar in the interests of general public. All these provisions though material have not been adverted to by the Apex Court while deciding the question answered by it.

11. The argument though attractive, is of no avail to the petitioner. In that, the Apex Court was concerned with the issue as to whether P.F.C. can resort to auction and sale of sugar by invoking provisions of Act of 1952 so as to recover the amount towards the provident fund dues of the employees of the sugar factory by attaching and selling the property of the employer even though the said sugar was in the custody of the petitioner bank as pledgee thereof. The provisions of the Act of 1955 would not militate against the authority of P.F.C. vested on account of provisions of the Act of 1952, to take such action as may be necessary, for recovery of the amount towards provident fund dues of the employees. The provisions of the Act of 1952 gives priority over the statutory as well as non statutory, secured as well as unsecured debts including mortgage or pledge.

12. In the case decided by the Apex Court, the question of priority against the claim of the petitioner being a secured creditor has been answered against the petitioner. That is the moot question for consideration even in the present case. The legal position expounded by the Apex Court on that question would remain unaffected. We are in agreement with the submission of the respondents that the petitioner cannot overcome that situation by pointing out that there is prohibition for sale of sugar stipulated by the provisions of Act of 1955. For, the Act of 1955 does not create any higher right in favour of the petitioner, who is only a secured creditor. The plea of prohibition of sale of sugar by the P.F.C. at best is available to the employer who is incidentally sugar factory in this case. The sugar factory has not come forward to set up that plea. Similarly, it is not the stand of the Central Government who is party to this petition that the sale of sugar in question by the P.F.C. violates any condition either under the Act of 1955 or the Orders issued thereunder. Moreover, Section (3D) which is reproduced in the earlier part of this order, envisages that no producer, importer or exporter shall sell or otherwise dispose of or deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced except under and in accordance with the directions issued by the Government. In first place, the bar is placed on the sugar factory to sell or otherwise dispose of or deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the sugar factory. The sale of sugar in the case on hand is not by the sugar factory as such. It is involuntary sale by the P.F.C. to recover the outstanding amount of provident fund of the employees. We would proceed on the assumption that this sale would result in otherwise disposal of sugar of the producer sugar factory, since the exercise undertaken was to recover the amount

by selling the sugar produced by the sugar factory and kept in the bonded godown of the sugar factory. Even then, we are in agreement with the stand taken by Counsel for the P.F.C. that the Central Government has been issuing periodical quota for sale in favour of the sugar factory in relation to the sugar kept in the bonded godowns of the sugar factory. The sale of 6000 quintals of sugar by the P.F.C. even if treated as if made for and on behalf of the sugar factory will be ascribable in the quota of sugar factory and it can be adjusted against the allotted quota of the sugar factory. In other words, the sale will be deemed to have been effected against the allotted quota of the sugar factory. Thus, the quota limit of the sugar factory can be invoked by adjusting sale of 6000 quintals of sugar from the aggregate quantity of quota allotted to it. Further, the P.F.C. has sold the sugar in question only after being satisfied that the same was within the limits of permissible quota of the sugar factory. That is in compliance of Clause 5A of the Sugar (Control) Order, 1966. It is not the case of the petitioner or the sugar factory that the sale of 6000 quintals of sugar by the P.F.C. exceeds the existing quota of the sugar factory. Notably, if the petitioner bank were to sell the sugar pledged to it, on account of proviso to Section (3D), which postulates that the bank with whom the sugar in question was pledged shall not sell the same except under and in accordance with the directions issued by the Central Government, it would be required to take specific directions of the Central Government in that behalf. In other words, the Central Government would allocate separate quota and permission to the petitioner bank to enable the petitioner bank to sell the pledged sugar kept in the factory godown. There is no such absolute prohibition as against the involuntary sale of sugar on account of the Court order or attachment and sale by the authority in exercise of the powers under Law which provides for priority such as Act of 1952. On the other hand, in cases covered by the Clause 5A of Order, 1966, sugar can be sold subject to the satisfaction of the officer or Court as the case may be, that there are subsisting directions of the Central Government in favour of the sugar factory for sale of such sugar. With regard to such sale, the quantity of sugar so disposed of in terms of the provisions of the Act of 1955 and the Orders issued thereunder will have to be treated as disposed of by the sugar factory against the allotted quota to it for sale. Insofar as Section (3E) is concerned on the same logic as in relation to Section (3D), there is no merit in the grievance made by the petitioner. For, the P.F.C. is neither producer, importer, exporter or recognised dealer. The direction to be issued u/s (3E) by the Central Government are intended against the said persons. The expression "producer" has been defined in the explanation below Section (3E) which applies to both Section (3D) and (3E) of the Act. It means, a person carrying on the business of manufacturing sugar. The term "recognised dealer" has been defined in Clause (b) of the explanation to mean, a person carrying on business of purchasing, selling or distributing sugar. Even if we were to give expansive meaning to these definitions, P.F.C. would not be covered thereunder.

13. Be that as it may, whether the act of P.F.C. of selling 6000 quintals of sugar

has resulted in violation of any direction issued by the Government and the consequences therefore will have to be considered by the appropriate authority. That cannot be used as the fulcrum by the petitioner bank (secured creditor) to whittle down the authority of the P.F.C. to continue with the intended action so as to recover the outstanding amount towards provident fund dues of the employees which was payable by the employer sugar factory, so long as the sale does not breach the quota of the sugar factory allotted by the Central Government. There is nothing on record to hold that in fact the sale of 6000 quintals of sugar exceeds the limits of quota allotted to the sugar factory by the Central Government.

14. Counsel for the petitioner then contended that the Apex Court while deciding the earlier case has not taken into account the efficacy of Section 6 of the Act, which reads thus:

6. Effect of orders inconsistent with other enactments. Any order made u/s 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

15. Relying on the decision of Apex Court in the case of Harishankar Bagla and Another Vs. The State of Madhya Pradesh, it was argued that the object of Section 6 was to simply bypass the enactment other than the Act of 1955, which would include the Act of 1952 during the continuance of Order made u/s 3 of the Act of 1955. In other words, the provisions of the Act of 1952 would not operate in the field during the continuance of the Order made u/s 3 of the Act of 1955. This is another shade of the same argument which is already answered by us earlier. We have already rejected the argument that the provisions of Act of 1955 do not per se prohibit the action founded on the provisions of Act of 1952 which inheres in the P.F.C. to attach the sugar produced by the respondent sugar factory already pledged to the petitioner bank, for recovering the amount towards outstanding provident fund of the employees of the sugar factory subject however to being satisfied that the proposed sale of attached sugar of the sugar factory is consistent with the directions issued by the Central Government regarding the quota of sale of such sugar allotted to the sugar factory.

16. That takes us to the last submission canvassed by the petitioner that the Act of 1955 has overriding effect being subsequent legislation. In that, Sections (3D) and (3E) of the Act of 1955 have been introduced posterior to coming into force of Section 11(2) of the Act of 1952 in 1973, on account of Amending Act No. XXVII of 2003. Hence, the same should prevail being the subsequent legislation. In support of this submission, reliance has been placed on the decisions of the Apex Court in the case of Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, ; Solidaire India Ltd. Vs. Fairgrowth Financial Services Ltd. and Others, and Maharashtra Tubes Ltd. v. State Industrial and Investment Corporation of Maharashtra Ltd. and Anr. reported in 1993 AIR SCW 991 to

contend that both the legislations, namely, Act of 1952 and 1955 are special legislations and Sections (3D) and (3E) of the Act of 1952 being subsequent legislation would ordinarily prevail and govern the field. For which reason, the P.F.C. cannot precipitate the matter by taking recourse to the provisions of Act of 1952. In the first place, constitutional validity of Section 11(2) of the Act of 1952 has not been challenged by the petitioner. Besides, considering the above discussion, we are of the view that the argument regarding overriding effect due to the subsequent legislation, is of no avail. That question would arise for consideration only if it were to be held that the provisions of Act of 1955 postulate total or absolute prohibition for sale of sugar by P.F.C. in exercise of powers under the Act of 1952.

17. Counsel for the petitioner had pressed into service the decisions of the Apex Court in the case of Sunita Devi Vs. State of Bihar and Another, and in the case of ICICI Bank Ltd. and Another Vs. Municipal Corporation of Greater Bombay and Others, to contend that the decision of the Apex Court pressed into service by the P.F.C. be ignored, as it is neither a binding precedent and in any case is per incuriam. For the reasons already recorded, we do not find merit in this submission.

18. Accordingly, this petition fails and the same is dismissed.

19. At this stage, Counsel for the petitioner states that the petitioner may take recourse to appeal before the Apex Court against this decision, for which the interim arrangement of status quo with regard to the sugar in question be continued. Ordinarily, we would have acceded to this request, as sugar in question which has been stored with care in the factory godown is not likely to perish or get damaged immediately. However, we are in agreement with the submission of the P.F.C. that the auction has been concluded on 16022010 and the price received is the best quoted price as per the prevailing market rate at the relevant time for the said commodity. Moreover, considering the market trend of relative decline in the price of sugar, if the same is not delivered to the auction purchaser and even if the auction purchaser does not openly back out may resort to measures which may create further complications. Therefore, the order of status quo should not be continued any further. On the other hand, the P.F.C. can be bound by a conditional order that it may proceed to take the auction to its logical end on condition that the amount towards sale proceeds will be brought back by the P.F.C. and deposited in the Court if the Court were to so direct. We think that such arrangement will meet the ends of justice. Accordingly, we would modify the order of status quo on above condition. Order accordingly.

WRIT PETITION No. 1593 OF 2010

1. In Writ Petition No. 1593 of 2010 issue notice to the respondents returnable on 19th April, 2010, limited to the prayer clauses B and C.

2. Insofar as the prayer Clause D is concerned, the same is rejected for the same reasons recorded in our order passed today while dismissing companion W.P. No.

1237 of 2010. For the same reasons, interim reliefs as prayed for in terms of prayer clauses E, F and G cannot be granted and the same are rejected. However, we make it clear that the sale of sugar in question should be within the permissible limits of quota allotted to the sugar factory and further the sale proceeds of sugar in question recovered by the P.F.C. will abide by the same conditions as provided in the companion matter. In other words, the P.F.C. can proceed further on clear understanding that the sale proceeds will have to be brought back and deposited in the Court if such direction is issued by the appropriate Court. Order accordingly.

3. Mr. Alok Sharma, Standing Counsel waives notice for respondent No. 1. Mr. K.B. Choudhary, Advocate waives notice for respondent Nos. 2 to 5 and 7.

4. In addition, the petitioner to serve the remaining respondent by Advocate's notice either personally or through speed post/email/ fax and file affidavit of service ONE WEEK before the returnable date.