

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

**Writ Petition No.8292 of 2012**

Sahakar Maharshi Bhausahab Thorat  
Sahakari Sakhar Karkhana Limited,  
Amrut Nagar, Taluka Sangamner,  
District Ahmednagar  
And Another.

**.. Petitioners.**

**Versus**

The Union of India & Others.

**.. Respondents.**

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Shri. R.N. Dhorde, Senior Counsel, instructed by Shri. V.R. Dhorde, Advocate, for petitioners.

Shri. Alok Sharma, Assistant Solicitor General, for respondent No.1.

Shri. V.D. Godbharale, Assistant Government Pleader, for respondent Nos.2 and 3.

Shri. P.R. Patil, Advocate, holding for Shri. S.B. Ghatol Patil, Advocate, for respondent No.4.

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**CORAM: NARESH H PATIL &  
A.B. CHAUDHARI, JJ.**

**DATE: 10<sup>th</sup> OCTOBER 2012**

**PER COURT :**

1) Heard.

2) The petitioners challenge the order dated 9-8-2012 passed by respondent No.3-Commissioner of Sugar granting aerial distance certificate in favour of respondent No.4 to erect a new sugar factory at village Kavthe-Malkapur, Taluka Sangamner, Dist. Ahmednagar. The petitioners challenge validity of clause 6A of the Sugarcane (Control) Order, 1966 as amended by Sugarcane Control (Amendment) Order 2006 as violative of Articles 14, 19(1)(c) and 19(1)(g) of the Constitution of India.

3) The learned Senior Counsel Shri. R.N. Dhorde submits that the aerial distance certificate granted in favour of respondent No.4 is contrary to the observations made by the Apex Court while dismissing Petition for Special Leave to Appeal (Civil) No.10891 of 2010 in the case of Dnyaneshwar Sahakari Sakhar Karkhana Limited Vs. State of Maharashtra and others. It is submitted that considering the factual background and the ground reality in case the respondent No.4 is allowed to erect sugar factory then there would be scarcity of sugarcane for the purpose of utilization by the petitioner. Starting of new

sugar factory will create unhealthy competition. The same will not be in the larger interest of the agriculturists and sugarcane growers.

4) The learned Senior Counsel further submits that while deciding Writ Petition No.8145 of 2009 (Gangamai Industries v. State of Maharashtra) Division Bench of this Court had observed in para 14 thus :-

**“14.** The impugned order thus is illegal and deserves to be quashed and set aside. Suffice it to state that while exercising the power and authority under Clause 6-B, the Commissioner of Sugar cannot entertain objections other than the one in relation to the aerial distance. The question of viability of the existing sugar factory and/or the question of unhealthy competition between two sugar factories, is not germane in exercise of power under Clause 6-B. Even otherwise a petition filed by respondent no.4 in this Court is already dismissed. Touching the said aspects and against the said judgment and order passed in the Writ Petition, Special Leave Petition is filed and pending in Supreme Court, wherein leave is already granted.”

5) In the Petition for Special Leave to Appeal (Civil) No.10891 of 2010 (supra) the Apex Court had observed that the reasons recorded by the High Court for setting aside the order of the Commissioner may not be appropriate. The learned Senior Counsel submits that while deciding application for aerial distance certificate

the Commissioner was bound to verify whether there is sufficient sugarcane available for starting a new sugar factory. The observations of the Apex Court are obiter in nature which are binding on this Court, according to the learned Senior Counsel. The learned Senior Counsel has placed reliance on the following judgments in support of his contentions.

- (a) Fuljit Kaur Vs. State of Punjab, AIR 2010 SC 1937;
- (b) C. Balachandran Vs. State of Kerala, (2009) 3 SCC 179;
- (c) Suresh Estates Private Limited Vs. Municipal Corporation of Greater Mumbai, (2009) 3 SCC 186;
- (d) Sarwan Singh Lamba Vs. Union of India, AIR 1995 SC 1729;
- (e) Director of Settlements, A.P. Vs. M.R. Apparao, AIR 2002 SC 1598.

6) The learned counsel Shri. P.R. Patil appearing for respondent No.4 submits that challenge to the validity of the provisions of Clause 6A of the Sugarcane (Control) Order 1966 was already raised and considered in Writ Petition No.3063 of 2009 filed by Dnyaneshwar Sahakari Sakhar Karkhana Limited, Dnyaneshwar Nagar, Taluka

Newasa. By judgment and order delivered on 16<sup>th</sup> November 2009 by Division Bench (Coram: Naresh H Patil and K.U. Chandiwala, JJ.) it was observed that the challenge to clause 6A of the Sugarcane (Control (Amendment) Order 2006 on the touchstone of Articles 14, 19(1)(c), 19(1)(g) of the Constitution of India is not sustainable. The Petition for Special Leave to Appeal (Civil) No.31797 of 2009 filed against the said judgment and order was admitted on 4-12-2009. During the course of hearing Shri. P.R. Patil learned counsel had placed on record a copy of status report in respect of the said SLP showing that, the same has been disposed of. The said statement is disputed by learned Senior Counsel Shri. R.N. Dhorde.

7) The learned counsel Shri. P.R. Patil submitted that the issue as to whether the Commissioner is entitled to look into availability or scarcity of sugarcane while considering the application for issuance of aerial distance certificate is no more *res integra*. In the submission of the counsel the Commissioner is not authorised and entitled to look into this aspect of the matter. The observations

made by the Apex Court while dismissing the SLP in the facts of the case do not constitute *obiter* and are not binding on this Court. Even if the observations are taken to be binding, the same does not lay down a proposition or principle in fact and in law, according to the learned counsel. The learned counsel submits that, as the area restrictions are removed in the State of Maharashtra the petitioner is not entitled to say that sugarcane growers or suppliers are bound to supply sugarcane to the petitioner even in the area where the petitioner - sugar factory is located. The learned counsel Shri. P.R. Patil has placed reliance on the following judgments in support of his contentions.

- (i) Delhi Airtech Services Pvt. Ltd. Vs. State of Uttar Pradesh, (2011) 9 SCC 354.
- (ii) Gangadhara Palo Vs. Revenue Divisional Officer, (2011) 4 SCC 602.
- (iii) Davinder Singh Vs. State of Punjab, (2010) 13 SCC 88.
- (iv) Jitendra Kumar Singh Vs. State of Uttar Pradesh, (2010) 3 SCC 119.

- (v) Arnit Das Vs. State of Bihar, (2000) 5 SCC 488.
- (vi) The Simbhaoli Sugar Mills Ltd. Vs. Union of India, ILR (1992) II Delhi 1092.
- (vii) Mithilesh Garg Vs. Union of India, (1992) 1 SCC 168.
- (viii) The Nagar Rice and Flour Mills Vs. N. Teekappa Gowda, AIR 1971 SC 246.
- (ix) Competition Commission of India Vs. Steel Authority of India, (2010) 10 SCC 744.
- (x) State through CBI Vs. Parmeshwaran Subramani, (2009) 9 SCC 729.
- (xi) Gurpreet Singh Bhullar Vs. Union of India, (2006) 3 SCC 758.
- (xii) Purushottam Vs. Shivraj Fine Arts Litho Works, (2007) 15 SCC 58.
- (xiii) Maharashtra Rajya Sahakari Sakhar Karkhana Sangh Ltd. Vs. State of Maharashtra, (1998) 4 SCC 324.
- (xiv) Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttaranchal, (2007) 8 SCC 418.

8) The learned Assistant Government Pleader supported the order passed by the Commissioner. The

learned Assistant Solicitor General for Union of India too supported the order passed by the Central Government. Both the learned Government Pleaders are of the view that the provisions of Section 6A of Sugarcane (Control) Order are reasonable and the challenge raised by the petitioners must fail in the light of the material placed on record.

9) We have perused the record placed before us, the case-law cited supra. We have also considered the submissions advanced by the learned counsel.

10) In the facts of the case and after considering the judgment delivered by the Division Bench in Writ Petition No.8145 of 2009 (Gangamai Industries & Constructions Ltd. v. State of Maharashtra) and after perusal of the judgments cited supra we are of the opinion that the observations made by the Apex Court while dismissing the SLP do not operate as *obiter*. It is not mandatory and obligatory for the Commissioner to consider other issues than the aerial distance of 25 kms from the existing factory.



11) On merits we find that the Commissioner acted in accordance with the policy and the facts of the case in granting aerial distance certificate in favour of respondent No.4.

12) By a notification dated 3<sup>rd</sup> December 2011 issued by the Cooperation, Marketing and Textiles Departments of State of Maharashtra, the minimum aerial distance was increased from 15 kms to 25 kms. The relevant provisions under the said notification read thus :-

“ ..... And whereas, with a view to ensure viability of the existing sugar factories and also with a view to ensure long term sustenance of the sugarcane crop, the Government of Maharashtra, considers it expedient to provide that the minimum distance between the existing sugar factory and the new factory to be setup shall be 25 kms;

Now, therefore, in exercise of the powers conferred by the proviso to the said clause 6A, the Government of Maharashtra, after prior approval of the Central Government hereby directs that no new sugar factory shall be set up within a radius of 25 kms of any existing sugar factory or another new factory.”

13) This stand of the State itself demonstrates that to ensure viability of the existing sugar factories and to ensure long term sustenance of the sugarcane the aerial

distance was increased from 15 kms to 25 kms. This would demonstrate that the plea of the non availability of sugarcane or scarcity of the same in case permission to new factory is accorded is not sustainable.

14) Considering the changes brought to the Maharashtra Sugar Factories (Reservation of Areas and Regulation of Crushing and Sugarcane Supply) Order, 1984, the petitioner is not entitled to say that sugarcane growers in the area where the petitioner-factory is situated are bound to supply sugarcane to the petitioner.

15) We are therefore of the considered opinion that there is no merit in this petition. It is accordingly dismissed.

Sd/-  
**(A.B. CHAUDHARI, J.)**

Sd/-  
**(NARESH H PATIL, J.)**

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