

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

**WRIT PETITION NO.5706 OF 2013**

Tarini Sugars and Distilleries Limited,  
New Delhi

PETITIONER

**VERSUS**

The State of Maharashtra  
and others

RESPONDENTS

Mr.V.D.Hon h/f Mr.A.V.Hon, Advocate for petitioner.  
Ms.A.V.Gondhalekar, A.G.P. for respondent/State.  
Mr.Alok Sharma, A.S.G.I. for respondent Nos. 5 to 7.

**(CORAM : S.C.DHARMADHIKARI AND  
RAVINDRA V.GHUGE, JJ.)**

**DATE : 10/02/2014**

**PER COURT :**

1. By this petition under Article 226 of the Constitution of India, the petitioner is praying for issuance of a writ of certiorari or any other writ, order, or direction in the nature thereof, to quash and set aside a communication dated 28/03/2013 of respondent No.1. The further prayer is to quash and set aside another communication dated 11/06/2013 of the Commissioner of Sugar, Maharashtra State. It is then urged that the order dated 01/07/2013 passed by

respondent No.5, Chief Director (Sugar), be also quashed and set aside. Final prayer is that a writ of mandamus or any other writ or direction in like nature be issued to respondent No.5 to accept the proposal for change in location instead of Gat No. 99, situated at village Gulkhand, Tal.Sailu, Dist. Parbhani to land Gat Nos. 60 to 63, 67, 68, 72, 76 and 78 at village Pardi, Tal.Sailu, Dist.Parbhani on priority basis.

2. As far as the communication dated 28/03/2013 is concerned, it informs the petitioner that no sugar factory can be set up on a Government and pertinently *Gairan* land. As far as this communication is concerned, we are of the opinion that the Government of Maharashtra, through the Department of Revenue and Forest, did not commit any error in refusing the request of the petitioner to set up a sugar factory on the *Gairan* land. The communication, therefore, is in consonance with the Law laid down by the Hon'ble Supreme Court and the Government Resolution dated 12/07/2011.

3. As far as the next communication is concerned, that is dated

11/07/2013. Therein, what has been communicated is that the petitioner cannot be permitted to shift the location of the Sugar Factory proposed to be set up. That is for the reason that there once a aerial distance certificate has been issued in respect of a land, then, the factory cannot be set up at the new land, which is stated to be acquired, about 3 kms. away. That has been claimed to be the land where the proposed sugar factory will be set up. However, aerial distance Certificate / I.E.M. is issued for a specific location. There is no provision in the Sugarcane (Control) Order 1966 (Amendment 2006), by which change in location of sugar factories can be accepted by the Commissioner of Sugar. Therefore, once I.E.M. is issued in respect of a specific location, then, the request, as made by the petitioner, cannot be granted.

4. Finally, the order passed on 01/07/2013 is concerned, thereunder the petitioner has been informed that its Bank Guarantee has been confiscated for the reason that the petitioner was unable to determine a location or a land for sugar factory. The petitioner could not set up a sugar factory at the location in respect of which the I.E.M. was issued. Therefore, this bank guarantee has been

confiscated.

5. Learned Advocate Mr.Hon, appearing for the petitioner, submits that the petitioner has no grievance with regard to the communication of the Government that the factory cannot be set up on a *Gairan* Land. That part of the order is not, therefore, under challenge. However, the petitioner has acquired an alternate location or land for setting up a sugar factory and which is 3 kms away from the *Gairan* Land. Now, what has transpired is that a Local M.L.A. Mr.Ramprasad Bordikar has applied to the State and for setting up a sugar factory. He is proposing to set up a sugar factory on the location proposed by him. He is a promoter of Tuljabhavani Sugar Private Limited. The I.E.M. has been issued in favour of said Tuljabhavani Sugar Pvt. Ltd. Now if the petitioner submits another proposal or pursues his existing proposal, the respondents/ Authorities are bound to inform the petitioner that another sugar factory cannot come within the restricted area of 25 kms aerial distance. In such circumstances, the petitioner's proposal cannot be accepted, will be the stand taken by these authorities. They would not, then, allow the petitioner to shift the proposed location of the

sugar factory and this would frustrate the entire purpose of approaching this Court or making any application in terms of the liberty reserved vide paragraph no.4 of the reply filed.

6. Learned Advocate Mr.Hon has tendered an affidavit in rejoinder controverting the statements made in the affidavit in reply. He submits that there are several instances wherein State has not followed its own policy of allowing another sugar factory to be set up within a distance of 25 kms of the existing sugar factory. There are instances of a sugar factory permitted by the wife of the present Minister for Co-operation and Textiles, Government of Maharashtra Mr.Harshwardhan Patil and others cases enumerated in the rejoinder affidavit, wherein such shifting has been permitted. Further, Mr.Hon submits that if the policy is to permit setting up of a sugar factory by considering the applications on "first come, first serve basis", then, making a fresh application by the petitioner would amount to his application being entertained only after the existing applications are dealt with and disposed of. Meaning thereby, in terms of seniority and in terms of pendency, the petitioner's application would not be given priority and treated as a fresh

application.

7. We are of the view that the petitioner will have to abide by all the applicable laws in the event the petitioner proposes to set up the sugar factory. The petitioner has filed an application and was pursuing it according to the petitioner throughout. The application was pursued not only in order to obtain the Aerial Distance Certificate (I.E.M.), but also to request shifting of the location as the existing location is a *Gairan* Land. Therefore, irrespective of what has been stated on affidavit, if the petitioner has filed an application and perceives the same to be pending and not disposed of finally by issuance of the I.E.M., then, nothing prevents the petitioner to adopt appropriate course or treat the application already filed as a pending one and placing further details in accordance with the statements made in the affidavit in re-joinder. We are of the view that these are matters where we should not express any opinion and at this stage. The petitioner can point out that no fresh applications or no fresh proposals were invited and other applicants were allowed to change the location or shift the sugar factory to some other location even after the I.E.M. for any existing location has been issued. The

petitioner also can point out the deviations allegedly made from the existing policy of not allowing another sugar factory to be located in the 25 kms area from the existing sugar factory. All such contentions are open and merely because the reply affidavit states that the petitioner will have to submit a fresh proposal, does not mean that the petitioner is remediless or that is the end of the matter.

8. The petitioner can, if so advised, pursue the course of not making any application as stated in the affidavit in reply. The petitioner can insist that the existing application be treated as a pending one and thereunder request to shift the location may be considered. We are leaving all such courses open for the petitioner and the contentions therein. We are not expressing any opinion either way. It is for the authorities to consider the request, as made, either as a fresh proposal or otherwise and deal with the same on its own merits and in accordance with Law. While pursuing the application, the petitioner can point out the instances, which have been referred to in the affidavit in re-joinder. We are not expressing any opinion as to any deviation is permissible from the existing policy

or whether there has been a deviation in the cases referred by the petitioner. It is for the authorities to deal with the case on its own merits and in accordance with Law. Giving liberty to the petitioner either way and as observed above, we dispose of the present writ petition. No costs.

( **RAVINDRA V.GHUGE, J.** )

( **S.C.DHARMADHIKARI, J. )**

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