

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 107 OF 2012

IN

PUBLIC INTEREST LITIGATION NO. 20 OF 2006

Kukadi Sahakari Sakhar Karkhanan
LimitedApplicant.

In the matter between

Ashok Kulkarni
Vs.
The State of Maharashtra & Anr.Respondents.

Mr. G.S. Godbole i/by Mr. Sarang Aradhye for the Applicant.

Mr. A.B. Vagyani, AGP for Respondent No.1.

**CORAM: MOHIT S. SHAH, C.J. AND
ANOOP V. MOHTA, J.**

DATE : 21 NOVEMBER 2012

P.C.:

Leave to amend the cause title to correct the description of Respondent No.2 as Commissioner for Sugar, State of Maharashtra. Amendment to be carried out forthwith.

2. By the impugned communication dated 20 April 2011 (Exhibit-D), the applicant factory has been informed by respondent No.2, the Commissioner of Sugar that the proposal for expansion of its sugar crushing capacity cannot be considered in view of the order dated 14 March 2011 of this Court in PIL No. 20 of 2006. The applicant-factory has, therefore, filed the present Application for quashing the said communication and directing the said respondent to consider the applicant-factory's application for expansion of its crushing capacity and the proposal for establishment of distillery of capacity of 3 KLPD. The applicant has also prayed for a clarification that the said order in PIL No. 20 of 2006 is not applicable to the applicant's case, as the applicant is not seeking any subsidy from the State Government for the expansion of the capacity.

3. Affidavit in reply has been filed by the Regional Joint Director (Sugar), Ahmednagar, stating inter-alia that:-

“Since year 2009-09, 2009-10 and 2010-11 the factory has got grade A as audit class. The accumulated profit of sugar factory as on 31.03.2011 is Rs.111.76 lacs. No inquiry under sec. 78/83/88 of Maharashtra Co-operative Societies Act 1960 is initiated against sugar factory. After perusing the statutory audit report of the sugar factory for the year 2008-09, 2009-10, 2010-11, the sugar factory is running in profit.”

It is further stated in the affidavit that the sugar factory is paying the Government outstanding dues from time to time and as on 12 September 12 they are not defaulters of any Government dues. The Sugar Factory is also not in default of secured loans

taken from Ahmednagar District Central Co-operative Bank. As regards other government dues, the applicant factory has submitted the proposal of conversion of an amount of Rs.129.66 lacs Government Guarantee fee into interest free loan and conversion of Rs. 65.79 lacs sugarcane purchase tax into interest free loan. It is stated that such government outstanding dues are to the tune of Rs.195.45 lacs, but the applicant factory has submitted proposal to the Government for conversion of this amount into interest free loan, but the State Government is yet to take decision on the said proposal.

4. At the hearing of this application, Mr. Girish Godbole, learned counsel appearing for the applicant factory states that if the Government does not accept the above proposal for conversion into interest free loan, the applicant factory will pay the aforesaid Government outstanding dues within reasonable time.

5. The learned Assistant Government Pleader states that the respondents are ready to consider the applicant's proposal for expansion of its crushing capacity and also for establishment of distillery, in accordance with law, if this Court clarifies that order dated 14 March 2011 in PIL No. 20 of 2006 would not apply to the applicant factory, as it is not incurring any losses and is not going to seek any subsidy from the Government for expansion of the crushing capacity and for establishment of distillery.

6. By order dated 14 March 2011, this Court has restrained the Commissioner of Sugar from giving permission to any sugar factory for expansion/ modernization/ alteration/ addition programme without the leave of this Court. The reason for giving directions is to be found in Paragraph 3 of the said order dated 14 March 2011, which reads as under:-

“The petitioner in the public interest litigation submits that although the applications for starting new factory may not be made by the co-operative societies, basically it is same individuals, who were earlier having sugar factories through the co-operative societies, who are now coming forward to run the sugar factories through the other corporate entities. It is submitted by the petitioner in the public interest litigation that the co-operative sugar factories which had obtained the funds from the State Government or the guarantees from the State Government, are now in the red and the persons in the management of co-operative societies are themselves coming forward and purchasing the sugar factories through other corporate entities.”

7. Since the applicant factory is not making losses and since the applicant factory does not propose to seek any subsidy from the Government for expansion of the crushing capacity and for establishment of distillery, ordinarily there would be no impediment for grant of leave to the Commissioner of Sugar for considering the applicant factory's proposal for permission for expansion of crushing capacity and for establishment of distillery, in accordance with law. But non-payment of Rs.65.79 lacs due as sugarcane purchase tax as well as non-payment of Rs.129.66 lacs

due as Government Guarantee fee are, however, matters of concern. What is also a matter of concern is that notwithstanding the non payment of the above dues, the applicant is not treated as a defaulter of government dues.

8. It is thereupon pointed out by the learned counsel for the applicant factory from the averments made in the application that though ordinarily the crushing season is only till April, in view of availability of excess sugarcane crop, the applicant factory is required to continue its crushing operations till June and therefore, the crushing capacity is required to be expanded. The learned counsel for the applicant factory submits that once the applicant is allowed to expand its crushing capacity and to establish a distillery, the profit margins of the factory would substantially improve.

9. Hence, while expressing our reservations about the proposal for converting the applicant factory's outstanding dues into an interest free loan, we clarify that the Commissioner of Sugar is not precluded from considering the applicant factory's proposal for expanding its crushing capacity and establishment of distillery in accordance with law.

It is clarified that this order is passed only for the limited purpose of granting leave to the Commissioner of Sugar as provided in the order dated 14 March 2011 and this order does not

exempt the applicant's factory from complying with the other legal requirements.

Subject to the above clarifications, the Commissioner of Sugar may consider the applicant's proposal for expansion of the crushing capacity and establishment of distillery in accordance with law.

10. The Civil Application is accordingly disposed of in the above terms.

CHIEF JUSTICE

(ANOOP V. MOHTA, J.)