

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.120 OF 2015

IN

PUBLIC INTEREST LITIGATION NO.20 OF 2006

Mula Sahakari Sakhar Karkhana Ltd.

...Applicant

versus

1.The Secretary, Department of Co-operation
State of Maharashtra & Ors.

... Respondents

Mr.R.C.Barge, for the Applicant.

Mr.R.D.soni, Amicus Curiae present.

Mr.Rajiv Chavan with Mrs.Neeta Masurkar, for Union of India.

Mr.Vikas Mali, AGP for State.

Ms.Niraja Patani i/b. Ms.Kiran Bagalia, for the Original Petitioner.

**CORAM : NARESH H. PATIL &
G.S. KULKARNI, JJ.****Date : 19th JANUARY, 2016.**

PC:-

1. The applicant Mula Sahakari Sakhar Karkhana Ltd. has filed the present application for the following relief:-

“(A) That this Honourable Court may be pleased to grant the permission and be pleased to grant the

direction to the Commissioner of the Sugar to consider the case of the Applicant for the expansion of the Applicant sugar factory by relaxing the rigours of the order passed by the Honourable High Court dated 14th March 2011 in Public Interest Litigation No.20 of 2006 of which copy is enclosed to the memo of this Civil Application.”

2. The Division Bench by an order dated 26th August,2011 considered the identical prayer in the application filed being Civil Application (St.) No.16843 of 2011 in Public Interest Litigation No.20 of 2006 by Pandurang Sahakari Sakhar Karkhana Ltd. praying for direction to the Commissioner of Sugar to grant the applicant therein permission to make necessary modernization/expansion of the plant and machinery of the applicant. After considering the submission advanced, the Division Bench observed in paragraph 5 as under:-

“5. In view of the above averments in the application and the statements made by the learned Counsel for the applicant and the oral undertaking, we clarify that the order dated 14 March 2011 shall not prevent the Commissioner of Sugar from considering the applicant's application for permission for expansion/modernization of machinery for its co-generation project on its own merits. It is clarified that we may not be deemed to have expressed any opinion on the merits of the

application which shall be decided by the Commissioner of Sugar and State Government.”

The applicant states that for the reasons stated in paragraph 17 of the application, Respondent No.1 - Commissioner be directed to consider the application.

3. We have heard Mr.Soni, learned Counsel appearing as Amicus Curiae and the learned Counsel for the PIL Petitioner and learned AGP on behalf of the State. An affidavit is filed by Mr.Rajendra Fakira Nikam, Second Special Auditor, Co-operative Societies (Sugar) Class-1, Ahmednagar. The deponent has given the details of loans obtained by the applicant which are payable to A.D.C.C. Bank, Ahmednagar. It is stated that the loans are regular loans and the applicant-factory is not defaulter as on the date of filing of the reply, as per the records of the factory. According to the deponent, the applicant-factory is running in profit. Their accumulated profit as on 31.3.2015 is of Rs.13,57.61 lacs. The deponent, therefore, submits that the proposal of the applicant-factory may be considered by Respondent No.2 on its own merit.

4. Mr.Soni, learned Counsel appearing as Amicus Curiae submits that the Commissioner can consider the application on the undertaking

filed by the Applicant that he shall not take any financial assistance from the State Government.

5. We have perused the record. In the facts, we are satisfied that following directions could be given to the Commissioner, Sugar that :-

(a) The Commissioner, Sugar is entitled to take appropriate decision on the application of the Applicant for expansion of the applicant Sugar Factory, in case the applicant satisfies all the necessary requirements;

(b) The applicant shall not seek financial assistance or guarantee in any manner from the State Government for the proposed expansion of the applicant-factory.

6. The application is disposed of in the above terms. Learned AGP to communicate the order to the State Government and the Commissioner, Sugar.

7. Parties to act on the authenticated copy of the order.

(G.S.KULKARNI, J.)

(NARESH H. PATIL, J.)