

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 105 OF 2016

IN

PUBLIC INTEREST LITIGATION NO. 20 OF 2006

The State of Maharashtra

...Applicant

Versus

Ashok N. Kulkarni & Anr.

...Respondents

Mr. A.B. Vagyani, G.P. a/w Mr. P.G. Sawant, AGP, for the Applicant.

Mr. R.D. Soni, Advocate Amicus curiae.

Mrs. N.V. Masurkar, a/w. Mr. S.G. Thakur, for UOI-Respondent No. 4.

CORAM : A.S. OKA &
A.A. SAYED, JJ.

DATE : 27th September 2016

P.C. :

1. Heard learned Government Pleader for the Applicant State of Maharashtra. A draft amendment is tendered on record. It is taken on record and marked 'X-1' for identification. Amendment to be carried out within two weeks from the date on which this order is uploaded. We have proceeded on the basis that the amendment has

been carried out.

2. Now the Government is pressing the Civil Application in terms of amended prayer clause (b), which reads thus :-

“(b) this Hon'ble Court be pleased to modify the order dated 21st January 2010 passed by this Hon'ble Court in Civil Application No. 128 of 2009 and companion matters in Public Interest Litigation No. 20 of 2006 to the extent of payment of grant of transportation subsidy to the private sugar factories payable to the farmers in furtherance of Government Circular dated 25.5.2011.”

3. A complete copy of order dated 21st January 2010 passed by the Division Bench of this Court in the Civil Application No. 128 of 2009 and other companion Applications in Public Interest Litigation No. 20 of 2006 is tendered on record. Paragraph 5 of the said order reads thus:-

“We are, therefore, inclined to allow these Civil Applications. Accordingly, the applicants are permitted to be impleaded as party respondents in the PIL. The

Commissioner for Sugar, Pune, is directed to grant permission to the applicants for crushing of the sugarcane for the year 2009-10 and thereafter. This shall be subject to the condition that the State Government shall not provide any financial assistance in the nature of grant/subsidy or guarantee for the establishments of the present applicants. We further clarify that the order dated 12.7.2006 would not come in the way of the State Government in considering similarly situated applicants for opening private sugar factories, provided that no financial assistance in the nature of grant/subsidy or guarantee is granted to the said applicants. Needless to state that the applications which are allowed and so also which would be considered by the State Government shall be subject to the final decision in the present petition.

(Underline supplied)

4 . The said order has attained finality. Notwithstanding the said order, the State Government issued the Government Resolution dated 6th May 2011 as well as Circular dated 25th May 2011. Both

the said Government Resolution and the Circular are contrary to the directions contained in paragraph 5 of the order dated 21st January 2010 to the extent that the State Government Resolution and Circular provide for grant of financial assistance in the nature of grant/subsidy for opening of a private sugar factory. The learned GP states that both the said Government Resolution and the Circular have not been acted upon. We accept the said statement.

5. From amended prayer clause (b), it is very apparent that the State Government wants to defeat clause 5 of the order dated 21st January 2010 by granting subsidy by releasing the same to the private sugar factories under the guise of providing the subsidy to the farmers. Hence, there is no reason to modify the order dated 21st January 2010. If such modification as prayer clause (b) is permitted, it will completely defeat the very object of passing the order dated 21st January 2010.

6. Hence, the Civil Application filed by the Applicant/State Government is rejected.

[A.A. SAYED, J.]

[A.S. OKA, J.]