

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

BENCH AT AURANGABAD.

WRIT PETITION NO.11272 OF 2016

Shiv Tulja & Associates
and another. ... Petitioners.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.A.N.Nagargoje, advocate for the petitioners
Mr.S.G.Karlekar, A.G.P. for the State.
Mr.P.A.Pisal, advocate holding for Mr.R.K.Ingole
Patil, advocate for Respondent No.4.
...

**CORAM : S.V.GANGAPURWALA AND
S.M.GAVHANE, JJ.**

Date : 05.12.2017.

PER COURT :

1. The petitioners have made following
prayers :

*"A) For a writ of
certiorari order or direction in the
nature of certiorari calling for the
record and proceeding of the E-*

Auction Notice dated 17.9.2016, published by respondent No.4 in Daily Sakal dated 17.9.2016 (Exhibit 'I') and after examining the legality, validity and propriety thereof, the E-Auction Notice dated 17.9.2016, published by respondent No.4 in Daily Sakal dated 17.9.2016 (Exhibit 'I') be quashed and set aside and the Tender, if any accepted in pursuance to the said Notice be cancelled.

B) For a writ of mandamus order or direction in the nature of mandamus directing the respondents herein to lease out the Sugar Factory i.e. Kalambar Vibhag Sahakari Sakhar Karkhana Ltd., Gandhinagar, Kalambar (Bk.), Tq. Loha, District Nanded be given on lease in favour of petitioner No.1."

2. The petition would not survive with regard to prayer clause A as the affidavit is

filed stating that the Government Resolution dated 29.11.2005 will have to be considered and followed. It is submitted by learned A.G.P. that the proposal for sale of the sugar factory is not under contemplation pursuant to the impugned auction notice. In view of that prayer clause A does not survive.

3. Mr.Nagargoje, learned counsel submits that the proposal of the petitioner was recommended by the Committee for giving on lease Kalambar Vibhag Sahakari Sakhar Karkahna Ltd., to the petitioner. Twice the proposal of the petitioner is recommended. No decision is taken upon the said proposal and now affidavit is filed by the Respondents to the effect that Liquidator of Respondent No.4 Sugar factory has been informed to submit lease proposal. The proposal of the petitioners is already pending. The same be directed to be considered. The Respondents have given on lease the Sakhar Karkhana under liquidation to other private sugar factory and that too on lower rate. The petitioner has offered much better rate. When the Respondent

No.4 Sugar factory was put on lease, two offers were received. One Bhaurao Chavan Sahakari Sakhar Karkhana, Nanded has quoted the highest price, however, it backed out and the petitioner was the only remaining factory under consideration. The Respondents are discriminating.

4. Learned A.G.P. states that while giving the factory on lease, the Government Resolution dated 29.11.2005 will have to be considered.

5. Reading Government Resolution dated 29.11.2005 and 6.12.2016, it is manifest that priority is to be given to a co-operative sugar factory. In GR dated 29.11.2005, the manner of giving on lease the Cooperative Sugar factory is laid down. As per the said Government Resolution, priority is to be given to a Cooperative Sugar factory when the sugar factory is to be given on lease. Second priority is to the Cooperative Financial institutions or those cooperative Societies in Agricultural produce. It further states that if the private

organisations are giving more rate then opportunity should be given to Co-operative Societies to increase the rates to that level. It is only after all the priorities are exhausted then lastly the private organisations can be considered for giving the sugar factory on lease. The authorities have directed the Liquidator of Respondent No.4 to submit lease proposal taking into consideration the said Government Resolution dated 29.11.2005 read with GR dated 6.12.2016. We do not see any illegality in the same. The proposal of the petitioner was never accepted. No right is created in favour of the petitioners.

6. Considering above, no case for interference is made out. The Writ Petition as such is disposed of. No costs.

(S.M.GAVHANE, J.)

(S.V.GANGAPURWALA, J.)

