

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION ST. NO.34286 OF 2016

Nutrients Agro Fruits Pvt. Ltd. ...Petitioner.
vs.
The State of Maharashtra and anr. ...Respondents.

Mr. A.S. Kumbhakoni, Sr. Advocate with Mr. Bhushan Walimbe
for the Petitioner.
Mr. P. G.Sawant for the State.

CORAM : R.M. BORDE AND
A.S. GADKARI, JJ.
DATE : 11th January, 2017

PC:

1. The petitioner is objecting to the order dated 3.12.2016 passed by the Commissioner of Sugar, Pune refusing to issue crushing licence in favour of the petitioner. The petitioner company has taken over the assets of one Daulat Sahakari Sakhar Karkhana, a society registered under the provisions of Maharashtra Co-operative Societies Act, 1960, on long term lease. The Daulat Sahakari Sakhar Karkhana has availed a loan facility of Kolhapur District Central Co-op. Bank. Since Co-op. Sugar factory failed to repay the amount of loan, the proceedings under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 were initiated by the creditor. It is the case of the petitioner that in auction proceedings initiated at the instance of the creditor bank, the assets of the Daulat Sahakari Sakhar Karkhana are taken over by the petitioner. It is further pointed out that the Kolhpur District Central Co-op. Bank Ltd.

Kolhapur has approved the proposal of long term lease entered into with the petitioner. It is further stated by the petitioner that since the property is taken over under the SARFAESI Act, consent of the State Government or Daulat Sahakari Sakhar Karkhana is not required for grant of crushing licence in favour of the petitioner. It is the contention of the petitioner that there was no reason for the Commissioner of Sugar to refuse to issue crushing licence in favour of the petitioner which has taken over the assets of Daulat Sahakari Sakhar Karkhana during the proceedings initiated under SARFAESI Act. Reliance is placed on the Judgment delivered by the Division Bench of this Court in **Writ Petition No.10970 of 2016** decided on 25.10.2016 wherein an identical issue came up for consideration of the Division Bench. While disposing of the writ petition, it is observed by the Division Bench, in Paragraphs 3 to 5 of the order as quoted below:

“3. The grievance of the petitioner is that before passing the impugned order, respondent No.2 has not complied with the provisions of Sub clause 5 of Clause 4 of the Maharashtra Sugar Factories (Reservation of Areas and Regulation of Crushing and Sugarcane Supply) order, 1984 (for short “said Order”).

4. Having gone through the said sub clause we find that if the authority wants to refuse the licence, the authority shall not refuse the same unless the applicant has been given opportunity to show cause against such refusal. Thus, there is

clear non compliance of sub clause 5 of clause 4 of the said Order.

5. In so far as the reason is concerned, we are of the view that since the lease was executed on the basis of the order passed under provisions contained in section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, therefore, the permission as stated by the respondent No.2 in the impugned order will not be necessary.”

2. It has been specifically observed by the Division Bench of this court in the aforesaid matter that permission of the State Government is not necessary for issuing crushing licence and the application of the petitioner before the court was directed to be considered. It has been canvassed before us on behalf of the Government that earlier crushing licence was in the name of Daulat Sahakari Sakhar Karkhana which has not accorded consent for issuance of licence in the name of the petitioner. Such consent may not be insisted upon since the assets have been taken over by the petitioner in pursuance to the proceedings initiated under SARFAESI Act. The agreement of lease has been approved by the lending bank. As has been observed by the Division Bench in the above noted judgment, the consent of the State Government is not essential.

3. In the instant matter, the grievance has been raised by the petitioner that the order impugned in the petition is passed without extending opportunity of hearing to the

petitioner. In the absence of extension of appropriate opportunity, it was not possible for the petitioner to raise relevant contentions before the deciding authority. The decision rendered by the Commissioner of Sugar is vitiated on account of non observance of principle of natural justice and therefore deserves to be set aside. In our view, the Commissioner of Sugar needs to consider the prayer of the petitioner for extending appropriate opportunity and shall pass fresh order in accordance with the provisions of law and in consonance with the policy prescribed in that behalf. The Commissioner of Sugar shall also take into consideration the decision of the Division Bench of this court referred to above and the observations made by us in the instant order. The Commissioner of Sugar shall take decision in the matter as expeditiously as possible on or before 21.1.2017. The petitioner undertakes to appear before the Commissioner of Sugar on 16.1.2017 and as such, no separate notice requiring the presence of the petitioner before the deciding authority shall be necessary. Writ Petition is disposed off accordingly.

(A.S.GADKARI, J.)

(R.M. BORDE, J.)