

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5253 OF 2017

Siddheshwar Sahakari Sakhar Karkhana
Ltd., through its Managing Director
Santosh Jaykumar Kumbhar

.... Petitioner

Vs.

Collector and District Magistrate,
District Solapur & Others

.... Respondents

WITH

WRIT PETITION [STAMP] NO.11873 OF 2018

Shree Siddheshwar Sahakari Sakhar
Karkhana Ltd.

.... Petitioner

Vs.

Union of India & Others

.... Respondents

WITH

WRIT PETITION NO.12131 OF 2017

Siddheshwar Rastriya Sakhar Kamgar
Union

.... Petitioner

Vs.

The State of Maharashtra & Others

.... Respondents

Mr. Y.S. Jahagirdar, Senior Advocate with Mr. S.C.
Wakankar for the Petitioner in WP-5253/2017.

Mr. Vineet B. Naik, Senior Advocate with Mr. Yuwraj
D. Patil for the Petitioner in WP-12131/2017.

Mr. S.B. Kalel, Assistant Government Pleader, for

Respondent Nos.1 & 4 in WP-5253/2017 and for
Respondent Nos.1 & 2 in WP-12131/2017.

Mr. Deendayal G. Dhanure for Respondent No.2 in
WP-5253/2017 and for Respondent No.3 in WP-12131/
2017.

Mr. Anil C. Singh, Additional Solicitor General, with
Mr. Adwait Sethna, Ms Shilpa Kapil & Mr. Chidanand
Kapil for AAI-Respondent No.3 in WP-5253/2017 and
for Respondent No.4 in WP-12131/2017.

Smt. S.V. Bharucha for Respondent No.5 in WP-5253/
2017.

Mr. Girish Shrivastav, Jt. General Manager (AAI),
present in Court.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : AUGUST 06, 2018

ORAL ORDER (Per Shri S.C. DHARMADHIKARI, J.):

1. These petitions under Article 226 of the Constitution of India have been filed by the petitioners - Siddheshwar Sahakari Sakhar Karkhana Limited through its Managing Director and Siddheshwar Rastriya Sakhar Kamgar Union - to challenge the communication dated 17-5-2017, issued by the respondent/Airports Authority of India.

2. That communication informs the petitioner/sugar factory that the Airport at Solapur has to be made functional. If that Airport at Solapur has to be made functional, then, facilities have to be provided for the safe landing and take-off of aircrafts from the Runway of this Airport.

3. It is common ground that the petitioner in the first two petitions is a sugar factory and in that sugar factory the authorities found a Chimney of 90 metres height. That comes directly in the way of approach to the Runway and, therefore, for smooth and proper, so also safe landing of the aircrafts and with a view to make the Airport functional, it is necessary to remove the same from the site or reduce the height of the same to the permissible limits.

4. On 15-3-2017 itself, the Collector, District Solapur was informed by the Department of General Administration, Government of Maharashtra that there is a project styled as Regional Connectivity Scheme of the Central Government. By that, area connectivity has to be established so that major cities

and towns having Airports are connected with each other and from that Airport aircrafts can take-off and land for carrying the crew and passengers and cargo to nearby and adjoining States in India.

5. As far as Maharashtra State is concerned, the Airports have been identified. These Airports were already constructed. The Runways also were laid. However, the other facilities and amenities enabling the aircrafts to land and take-off were not provided for several reasons. That is how these Airports were rendered non-functional. Resultantly, the public funds investment running into several Crores of rupees was wasted.

6. With great fanfare and inaugural ceremonies presided over by none other than the Hon'ble Prime Minister of India, the Central Government proclaimed that now even a common man can fly and reach his destination by air. "Ude Desh Ka Aam Naagrik" ("UDAN" for short) was the scheme and by which the dreams of thousands of people was to come true and

equally the Regional Connectivity was to be achieved.

7. The petitioner/sugar factory was informed that it should either reduce the height of the Chimney or remove it altogether as the same is directly coming in the Flying Zone. If that is coming within the Flying Zone, then that cannot be allowed to stand. It is the question of safety of passengers and to avoid any untoward incident that such structures have to be removed.

8. In pursuance of the directions from the State Government, on 6-4-2017 the Managing Director of the petitioner/sugar factory was informed that within a period of one month it should remove its Chimney or bring its height within the permissible limits else coercive steps would have to be taken.

9. We do not see how the petitioner/sugar factory could have then approached the State of Maharashtra or the State Government. Be that as it may, it was advised to address a representation on 12-4-2017 to the Secretary to the Chief

Minister of the State.

10. In this representation, copy of which is at page 74, the petitioner did not dispute that, in the month of September, 2015 a meeting was convened by the Department of Civil Aviation in which Solapur Airport was identified as a Class “C” Airport. The petitioner denied that the Chimney comes in the way of smooth landing and take-off of the aircrafts. In fact, it is not within the Funnel Zone. Hence the petitioner disputed the contents of the communication from the State Government and the District Collector. On the other hand, it asserted that it applied for a No Objection Certificate (“NOC” for short) to the Airports Authority of India (“AAI” for short). That proposal was received and on 17-2-2017 that proposal was accepted.

11. This proposal was forwarded and on which on 17-2-2017 the AAI had communicated to the petitioner its no objection in the following terms:-

“1. This NOC is issued by Airports Authority of India (AAI) in pursuance of responsibility conferred by and as per the provisions of Govt. of India (Ministry of Civil Aviation) order GSR751 (E) dated 30th Sep. 2015 for Safe

and Regular Aircraft Operations.

2. *This office has no objection to the construction of the proposed structure as per the following details:*

NOC ID:	SOLA/WEST/B/121316/186296
Applicant Name*	Dharmraj A Kadadi
Site Address*	New Survey No.21/4 and Old Survey No.21/A At Post Tikekarwadi Tal North Solapur District Solapur, At Post Tikekarwadi Tal North Solapur District Sol, Solapur, Maharashtra
Site Coordinates*	75 56 49.I-17 36 50.2,
Site Elevation in mtrs AMSL as submitted by Applicant*	463 M
Permissible Top Elevation in mtrs Above Mean Sea Level (AMSL)	493.96 M (Restricted)

** As provided by applicant*

3. *This NOC is subject to the terms and conditions as given below:*

a. *Permissible Top Elevation has been issued on the basis of Site coordinates and Site Elevation submitted by Applicant. AAI neither owns the responsibility nor authenticates the correctness of the site coordinates & site elevation provided by the applicant. If at any stage it is established that the actual data is different, this NOC will stand null and void and action will be taken as per law. The office in-charge of the concerned aerodrome may initiate action under the Aircraft (Demolition of Obstruction caused by Buildings and Trees etc.) Rules, 1994.*

b. *The Structure height (including any superstructure) shall be calculated by subtracting the Site elevation in AMSL from the Permissible Top Elevation in AMSL i.e. Maximum Structure Height = Permissible Top Elevation*

minus (-) Site Elevation.

c. The issue of the 'NOC' is further subject to the provisions of Section 9-A of the Indian Aircraft Act, 1934 and any notifications issued thereunder from time to time including the Aircraft (Demolition of Obstruction caused by Buildings and Trees etc.) Rules, 1994.

d. No radio/TV Antenna, lighting arresters, staircase, Mumtee, Overhead water tank and attachments of fixtures of any kind shall project above the Permissible Top Elevation of 493.96 M (Restricted), as indicated in para 2.

e. Only use of oil fired or electric fired furnace is permissible, within 8 KM of the Aerodrome Reference Point.

f. The certificate is valid for a period of 7 years from the date of its issue. If the construction of structure/Chimney is not commenced within the period, a fresh 'NOC' from the Designated Officer of Airports Authority of India shall be obtained. However, if construction work has commenced, onetime revalidation request, for a period not exceeding 8 years from the date of issue of NOC in respect of building/structure and for a period not exceeding 12 years from the date of issue of NOC in respect of chimney, may be considered by AAI. The date of completion of the Structure should be intimated to this office.

g. No light of a combination of lights which by reason of its intensity, configuration or colour may cause confusion with the aeronautical ground lights of the Airport shall be installed at the site at any time, during or after the construction of the building. No activity shall be allowed which may affect the safe operations of flights.

h. The applicant will not complain/claim compensation against aircraft noise, vibrations, damages etc. caused by aircraft operations at or in the vicinity of the airport.

i. *Day markings & night lighting with secondary power supply shall be provided as per the guidelines specified in chapter 6 and appendix 6 of Civil Aviation Requirement Series 'B' Part I Section 4, available on DGCA India website: www.dgca.nic.in.*

j. *The applicant is responsible to obtain all other statutory clearances from the concerned authorities including the approval of building plans. This NOC for height clearances is to ensure the safe and regular aircraft operations and shall not be used as document for any other purpose/claim whatsoever, including ownership of land etc.*

k. *This NOC has been issued w.r.t. the Civil Airports. Applicant needs to seek separate NOC from Defence, if the site lies within their jurisdiction.*

l. *In case of any discrepancy/interpretation of NOC letter, English version shall be valid.*

m. *In case of any dispute w.r.t. site elevation and/or AGL height, top elevation in AMSL shall prevail.”*

12. From a bare perusal of this NOC, it is evident that the permissible Top Elevation in metres Above Mean Sea Level (“AMSL” for short) was 493.96 metres (restricted). This is thus a conditional NOC. The petitioner is well aware of this communication. We do not see how it still asserted before the State Government that it has a NOC to construct a Chimney of 90 metres. Far from such a permission, the AAI by the above

communication, styled as a NOC, restricted the height.

13. On 7-3-2017, the petitioner addressed a communication to the General Manager, Airports Authority of India, and the same reads as under:-

“Respected Sir,

We are a Co-Operative Society of Industrial complex engaged in Manufacturing of Sugar, Alcohol & Kraft Paper operating for past 45 years in Solapur (Maharashtra). As a part of business expansion, we are establishing a 38 MW Co-Generation Power Plant in the existing Sugar Complex. We obtained necessary approvals from Govt of Maharashtra and Gov of India.

As a part of Project, we are installing a Boiler of 200 TPH capacity. We are required to construct 90 Meter RCC chimney as per MPCB Consent to Establish NOC Condition (NOC Ref: 1.0/BO/CAC-CELL/RO(PUNE)E/CAC-370 DT 28.1.2014)

With reference to above cited subject, we had already submitted proposal of construct RCC chimney of 90 Meter height from FFL. We had already paid the appeal fee Rs.2,24,720/- by DD No.018414 Dated 16/10/2014 drawn on Axis Bank in favour of Airport Authority of India along with relevant document.

As per discussions at your office dated 30.08.2016, it was informed that our case is under active consideration. We were also advised to approach Mumbai office of AAI, as a first step for grant of NOC, and which we did and the said office has issued NOC for the height as per jurisdiction. The copy of the said NOC is attached.

You are requested to consider our application for grant of NOC.”

Thus, in this communication it is admitted that the proposal was to construct RCC Chimney of 90 metres height. Reliance was placed on the consent of the Maharashtra Pollution Control Board (“MPCB” for short).

14. The petitioner was aware that this communication could not have altered the earlier decision of the AAI.

15. Hence, on 10-4-2017 (page 28A) the AAI reiterated its decision and communicated to the petitioner that there is no question of going back on its NOC. In fact, by this communication, while reiterating the contents of the NOC and taking the petitioner's request as an appeal, the AAI communicated that the petitioner's case was re-examined in detail, data was collected from Aerodrome Ground Aid, procedure for Air Navigation Operations and Communication, Navigation and Surveillance criteria, Permissible Top Elevation approved by the Competent Authority is 493.96 metres AMSL. It is in these circumstances that the petitioner was informed that

it is not possible to clear the height and the communication was not to be construed as a NOC. In any event, the revised height clearance to the Local Municipal Bodies was also relied upon.

16. Then, there was a NOC for height clearance dated 17-5-2017 and copy of which is found at page 28B. The petitioner's request was re-examined by the AAI and with this communication it treated the matter as closed.

17. Then, there is a Notification (Exhibit "D", page 29) dated 30-9-2015, issued by the Ministry of Civil Aviation.

18. Learned Senior Counsel appearing for the petitioners in above petitions do not dispute that in the Notification/Rules, the definition of the term "aerodrome elevation" {see Clause 3(iii)} means the elevation of the highest point of the landing area as specified in Schedule III to Schedule VII is set out. There is a "Colour Coded Zoning Map" which is also a term defined and referable to Schedule IX of the Rules. The term "No Objection Certificate" is defined in Clause 3(viii) thereof. Then the relevant and material definition is of the term "structure". As

per Clause 3(ix) that definition reads as under:-

“(ix) “structure” includes building, mast, tower, chimney, poles, transmission lines, elevated roads or viaducts or bridges and elevated railway lines, wind farms and all other man-made structures;”

19. It is undisputed, therefore, that the definition includes a Chimney. Once no structure shall be constructed or erected, or any tree planted or grown on any land within a radius not exceeding 20 kms. from the Aerodrome Reference Point of the civil and defence aerodromes, as specified in Schedule III to Schedule VII, without obtaining a NOC for the height clearance, then, by Clause 4 of this Notification exception is made only in the cases specified in sub-rule (2) of Rule 7 of the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015. That is in cases of those aerodromes where the Colour Coded Zoning Maps have been issued and the Local, Municipal or Town Planning and Development authorities, in accordance with the height specifications, provided a Colour Coded Zoning Maps, approved the construction of the structure as per the existing building

regulations or bye laws or any other law for the time being in force, but there is a proviso to sub-rule (2) of Rule 7 by which no approval can be given by the Local authorities as also the Development authorities for sites which lie in approach, take off and transitional areas of an airport or in any other area, marked in the Colour Coded Zoning Map for the compulsory obtaining of NOC from the Designated Officer or Authorised Officer.

20. A full procedure is, therefore, laid down in these Rules and which also provides for the remedy of an appeal to the aggrieved party.

21. We do not, therefore, see how the petitioner could have claimed that its Chimney of 90 metre height does not, in any manner, violate or breach these Rules. That these Rules are very elaborate and concern the safety of aircraft operations, then, all the more we do not think we should allow the petitioner to rely on the NOC from the MPCB, or some understanding given to it through meetings with the said authorities.

22. On Writ Petition No.5253 of 2017, when it was initially moved, a Division Bench of this Court heard both sides and a detailed order was passed. On 10-8-2017, a request was made to allow the petitioner to approach the Chairman, Appellate Committee of respondent No.3 and request it to pass an order on the pending application. This was after being aware of the refusal by this Court of any interim relief on 4-5-2017. The order of 4-5-2017 is fairly detailed and reads as under:-

“1) Heard the learned Counsel for the respective parties.

2) The petitioner is being aggrieved by letter communication dated 6th April, 2017 issued by Respondent No.1-Collector Sholapur and order dated 15th March, 2017. By order dated 15th March, 2017 the Under Secretary, Government of Maharashtra, Mantralaya, Mumbai has informed the Collector, Sholapur that all structures beyond permissible limit near Sholapur Airport should be demolished. In view of the said direction given by the Under Secretary, State of Maharashtra, the Collector by letter dated 6th April, 2017 informed the Managing Director of the Petitioner to remove the Chimney which was coming in the approach way of the Runway within a period of one month.

3) Shri Apte, learned Senior Counsel for the Petitioner submits that height of the chimney is about 90 meters and it is slightly beyond the permissible limit. It is submitted that they have approached the Airport Authority of India, Delhi seeking relaxation of the said restriction.

4) *It is quite well settled that no structure shall be constructed or erected within a radius not exceeding twenty kilometers from the Aerodrome Reference Point of the civil and defence aerodromes. It is admitted position that Chimeny is located in the approach/take off area.*

5) *The Airport Authority of India has issued NOC in respect of construction of proposed structure which is below 463 meters and Permissible Top Elevation in 493.96 (restricted) meters Above Mean Sea Level (AMSL). It is settled position in law while calculating this Permissible Top Elevation, it has to be done from the Mean Sea Level. This is done by using special equipment to find out whether the structure or the height of the structure is above from the Mean Sea Level.*

6) *These restrictions have been imposed taking into consideration safety of the passengers in the Aircraft and overall safety of people residing in the said area where the Airport is situated. Shri Apte, learned Senior Counsel appearing on behalf of the petitioner has submitted that they have applied to the Airport Authority of India seeking requisite permission. The said application is pending.*

7) *The petitioner may apply to the said Airport Authority of India, New Delhi to seek stay of the impugned order. We are not inclined to stay the said order.*

8) *In the present case, the respondents to file their reply before the next date.*

Stand over to 12th June, 2017.”

23. In terms of both these orders, all that was permitted was to approach the authorities or seek relief in terms of the pending application. Merely because the respondents did not file

a reply or did not report about the outcome of the pending application, this Court could not have been persuaded to direct otherwise.

24. On 10-11-2017, when both the petitions (WP-Nos.12131 and 5253 of 2017) were placed before the Division Bench, it was stated that there is a communication from the AAI which was annexed to the additional affidavit at page 108 of the paper-book and time was sought to obtain instructions with regard to examination of the file concerning the petitioner. The authority was to revert back and report to this Court whether it is intending to give an opportunity of hearing to the petitioner/sugar factory.

25. A direction was issued to file an affidavit.

26. However, this Court was persuaded to pass an order that till the next date of hearing of the petition, the respondents should not take any coercive steps in pursuance of the orders passed by the Collector, Solapur and the Under Secretary to the State Government. Because that order was passed, it has

continued till date. The matter was mentioned before us by Ms Shilpa Kapil and our attention was invited to the fact that these orders and directions of this Court are an impediment in making the Airport functional. The respondent No.4/AAI attempted to obtain a relief of vacating this interim stay but that was on 23-7-2018. We were surprised by this approach of the AAI for it suddenly feels that this one Airport cannot be made functional on account of pendency of the petition and the orders therein.

27. It is in these circumstances, on 23-7-2018, we passed the following order:-

“1. Let the petitioner's advocate on record circulate a praecipe setting out the details of a pending Writ Petition on the point particularly filed by the petitioner to challenge the orders of the authorities under the Aircraft Act, 1934. Secondly, we find that the petitioner's petitions are being rendered infructuous or at least attempted to be by the Airport Authority of India by relying on documents or pleadings which are either not in proper format or if already filed, copies have not been given to the other side. We deprecate such state of affairs by any parties in this Court.

2. In the event any party wishes to rely on current policies or any further developments, it should, so as to vacate the interim order take out an appropriate

proceedings or at least file further affidavits enclosing copies of these materials and serve them on the opponent in advance. We would expect similar conduct and assistance by the petitioners so that at one stretch all the matters can be listed and disposed of.

3. We post these matters on 3rd August 2018 on Supplementary Board.”

28. Thereafter, these writ petitions, namely, of the petitioner/sugar factory and the Union were posted on 3-8-2018 and we were informed that an attempt would be made to approach the AAI and find a solution. However, it does not seem to be working out for there are clear instructions to the Additional Solicitor General, who appears for the Union of India, the Department of Civil Aviation and the AAI, to the contrary.

29. Our attention was also invited to the fact that on 28-7-2017 the petitioners sought to rely upon an order of the National Green Tribunal or its requirements to increase the height above the ground level to 90 metres. Pertinently, on such an application made as on 28-7-2017, the AAI has not altered its stand. It has been also urged by the petitioners that there is construction of a Chimney by National Thermal Power

Corporation Limited (“NTPC” for short) and of the same height. That is also an industry. That construction is made pursuant to the NOC of 13-9-2012. However, the Chimney has been constructed, according to the Additional Solicitor General, by this Corporation at a far off place and that does not obstruct or pose any threat to the safety of aircraft operations at the concerned Airport. Hence no parity can be established insofar as this Corporation is concerned.

30. Thus, it was only a facility or opportunity to the petitioner to sit with the representatives of the statutory bodies and work out a solution as was assured on the earlier occasion. The instructions to the Senior Counsel are to urge that there is a plantation and ready crop of sugarcane and which is now due to be harvested. There is a crushing season of the sugar factory and that is to commence in October, 2018. At least till that time the construction of the Chimney should be allowed to remain or stand at site. This sugar factory is of 1969. It caters Talukas such as North Solapur, South Solapur, Akkalkot and Mohol in Solapur District and Tulzapur Taluka in Osmanabad District and two

Districts of Karnataka State which are also being catered to by this sugar factory. Now what is projected before us is the hardship and prejudice to about 26381 members of the petitioner who are poor farmers. For the last 44 years, various members and employees of the petitioner are cultivating and harvesting sugar crops or rendering service to this sugar factory. To enable it to manufacture sugar, there are about 1200 workers whose future is at stake. Then there are dependent families of these harvesters and cane transporters all of whom would be affected prejudicially. Then it is stated that a 38 Mega Watt Co-Generation Power Plant has also been erected in the existing sugar factory complex and to carry out the expansion of the crushing capacity of the factory upto 7500 TCD and as a part of it, a Boiler of 200 TPH (110 kg pressure) capacity was to be installed and therefore in the year 2014 the construction of the Chimney was necessary and that is how it has come up at the site. We should, therefore, take a sympathetic view, is the further instruction to this Counsel.

31. After hearing both Counsel at great length and

perusing with their assistance the memo of these petitions so also the annexures, the affidavits in reply and the additional affidavits in reply, we find that the attempt by the petitioner is not bona fide at all. There is already reference to a Civil Suit filed by one Mahadev Baburav Chakote being Regular Civil Suit No.406 of 2017 in the Court of Civil Judge, Senior Division, Solapur. On 7-7-2017, an application seeking a restraint against the authorities from demolishing this Chimney was rejected. Secondly, we find that the petitioner knowing fully well that no permission can be granted to put up a Chimney of more than the prescribed height and as stipulated in the NOC, still went ahead and has put up this Chimney/structure at site. That flies in the face of the NOC. If the permissible height cannot be exceeded even by the Ministry of Civil Aviation and the Government of India, then, we do not see how any accommodation could have been sought by the petitioner. It is thus apparent that what is done by the petitioner at the site is erection and construction of a structure contrary to law. It is unauthorized and beyond the limits specified. Once everything that the petitioner attempted to

do has been unsuccessful and the AAI reiterated the terms of its conditional NOC dated 17-5-2017, then, we do not see how the petitioner can request us to make any order contrary to the Rules, much less an order directing the AAI to accommodate the petitioner further.

32. This is virtually an attempt to use the writ jurisdiction of this Court to seek a relief which is in contravention of law. Once the petitioner accepted the conditional NOC, then, the writ jurisdiction is not meant to enable it to wriggle out or escape the consequences of this NOC. Neither the Rules nor the conditions imposed have ever been challenged. The matters of safety of aircraft operations are exclusively to be determined and decided by the authorities under the Aircraft Act, 1934. The authority is the Department or Ministry of Civil Aviation and the Directorate General of Civil Aviation (Safety). Neither of them are in a mood to accommodate the petitioner, as is evident from their affidavits filed in this Court. This is a stand reiterated and repeatedly even in the latest affidavit of 6-2-2018. It has been brought to our

notice, in fact, by the last affidavit filed on 31-7-2018 that the petitioner is utilising the pendency of this petition to delay the obvious. This affidavit also points out as to how respondent No.3 had considered the petitioner's request despite a direction to remove the Chimney. The petitioner approached this authority to suggest alternate sites for the Chimney. Today also this is reiterated before us as if it is the job of the AAI to suggest to everybody who builds an offending structure, a site, which would be convenient for law breakers and such offenders. We do not see why the authorities like the AAI or the Ministry of Civil Aviation indulged the petitioner who is a patent wrong-doer. The authorities in-charge of Civil Aviation and particularly aircraft operations (safety) ought to be concerned with only these aspects and it is not their business to suggest alternate site to parties like the petitioner. Yet, these authorities are themselves to be blamed if the Airport is not made functional. They cannot blame this Court for passing an order in November, 2017 and then making a capital of it, only to cover up their inefficiency. We find that the petitioner/sugar factory seems to

be very influential for 7-3-2018 was the date on which the AAI informed the petitioner that it should check approximate site locations by referring to the website. However, a careful perusal of this letter of 7-3-2018 reveals that the entire burden was on the petitioner to find the alternate location. This is but a suggestion from the AAI. This does not mean that there is any form of assurance, much less a representation so as to allow the petitioner to continue with the use of its existing Chimney. Then there was a meeting and the Minutes of that meeting, dated 19-3-2018, also would clarify the matter as above.

33. On 6-4-2018, the Principal Secretary, Civil Aviation Department was informed that the flight operations, in the first round, could not start from Solapur due to presence of obstacles surrounding the Airport. Even the District Magistrate, Solapur, was informed about the possible alternate sites for the Chimney by letter dated 6-6-2018. The existing NTPC Chimney is not going to impact the RCS operation at Solapur. The petitioner, on 25-6-2018, informed the Collector, Solapur, that to shift the said Chimney at alternate sites, as suggested by the AAI, is practically

impossible. The petitioner sought advice from their technical expert at Chennai. We do not see how the petitioner could request this Court for accommodation, for nothing suggested by the AAI or the Ministry was acceptable to it and they fairly communicated that it is not possible to shift the Chimney to such sites as was suggested by the AAI. That is practically impossible. Yet, the petitioner was informed by the Collector, Solapur on 4-7-2018 to expedite the process of obtaining advise. It is strange that a wrong-doer is requested to expedite the process of obtaining advise. In the garb of the order of this Court dated 10-11-2017, restraining allegedly the authorities from taking any coercive steps, all this was done is the explanation of the learned Additional Solicitor General.

34. It may be true but we do not see how a person like the petitioner can be accommodated and based on the orders of this Court. It can go on dictating terms to the authority. We find that on 31-7-2018, the petitioner has been bold enough to tender an affidavit and to say that the petitioner has learnt that there is an acquisition of a site for new Greenfield Airport at

Boramani, Solapur. The process of acquisition of about 550 Hectares of land is complete. This is, therefore, an assertion of a petitioner who says that it will not shift its Chimney but now a new Airport site is identified so let the Airport shift from the existing site at Hotgi to Boramani. Even otherwise, until then this Airport is not going to be made functional. Thus, the regional connectivity scheme is sought to be defeated by the petitioner and it seems to be more influential than the respondents for it goes on then alleging discrimination. It also says that the Solapur Airport is not operational regularly and it is used only by the VIPs. We do not see how VIPs were allowed to use it or permissions were given for the aircrafts carrying them to land with the obstacle at site. This is a clear case of compromise with air safety by accommodating a wrong-doer.

35. All this is going on in the garb of an interim order of this Court. This only shows that until there are proven changed circumstances, this Court should never modify its interim order. The mandate of Order XXXIX, Rule 4 of Civil Procedure Code, 1908, as amended, requires changed circumstances not only to

be brought to the notice of this Court but the satisfaction of this Court that there are indeed changed circumstances and only then its refusal to grant an injunction or interim relief should be modified by it. Else, this is the result and then the parties claim equities. The parties then seek to rely on extraneous and irrelevant materials to perpetuate a wrong already done.

36. This last affidavit of the petitioner/sugar factory, therefore, smacks of arrogance and displays its adamancy. This petitioner does not, therefore, deserve any accommodation from this Court.

37. This is a clear abuse of our writ jurisdiction and this Court is sought to be persuaded to interfere in policy matters. We are nobody to prescribe policies and particularly concerning safe aircraft operations. We should never be seen as interfering with policy matters or suggesting to the framers of the policy any alternatives even if, in our opinion, they are better. We have no business to frame policies or re-write existing policies. Our jurisdiction in such matters is extremely limited and in judicial

review we cannot sit as an appellate body so as to consider whether the existing policy is wise or foolish.

38. In the case of **Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth**, reported in AIR 1984 SC 1543, the Hon'ble Supreme Court has this to say with regard to the powers of this Court in judicial review, particularly in policy matters:-

"14. In our opinion, this approach made by the High Court was not correct or proper because the question whether a particular piece of delegated legislation - whether a rule or regulation or other type of statutory instrument - is in excess of the power of subordinate legislation conferred on the delegate has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or

regulations made by it have a rational nexus with the object and purpose of the Statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegated by the Statute. Though this legal position is well established by a long series of decisions of this Court, we have considered it necessary to reiterate it in view of the manifestly erroneous approach made by the High Court to the consideration of the question as to whether the impugned clause (3) of Regn. 104 is ultra vires.

15.

16. *In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal*

infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. None of these vitiating factors are shown to exist in the present case and hence there was no scope at all for the High Court to invalidate the provision contained in cl. (3) of Regn. 104 as ultra vires on the grounds of its being in excess of the regulation-making power conferred on the Board. Equally untenable, in our opinion, is the next and last ground by the High Court for striking down cl. (3) of Regn. 104 as unreasonable, namely, that it is in the nature of a bye-law and is ultra vires on the ground of its being an unreasonable provision. It is clear from the scheme of the Act and more particularly, Ss. 18, 19 and 34 that the legislature has laid down in broad terms its policy to provide for the establishment of a State Board and Divisional Boards to regulate matters pertaining to secondary and higher secondary education in the State and it has authorised the State Government in the first instance and subsequently the Board to enunciate the details for carrying into effect the purposes of the Act by framing regulations."

The petitioner/sugar factory has gone as far as instigating and putting up its employees through their Union to file a substantive petition (Writ Petition No.12131 of 2017) to challenge the action of the AAI. We do not see how the Union has any locus and over and above the petitioner-establishment to question the AAI's action.

39. Once we find the litigation to be of the above nature,

we dismiss it outright. The writ petitions are, therefore, dismissed. The interim orders are vacated forthwith. It is only because of the persuasion of the learned Senior Counsel that we do not impose costs so as to discourage such litigation. We warn all authorities and parties that we would be constrained to take strict action in future in the event we find that their acts and actions are apparently collusive and resulting in compromising the safety of aircraft operations. The paramount consideration for the AAI and DGCA ought to be the safety of the passengers and the crew. If we are proclaiming to the world that there is ease of doing business with India and Indian Government policies are suited for meeting that end, then, this conduct is surely not sending the correct signal and message to the world. We say nothing more.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)

Suresh
Jagdish
Sajnawat

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by Suresh
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