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

WRIT PETITION NO. 561 OF 2019

M/s Jai Laxmi Sugar Products
Pvt. Ltd. Through Authorized Officer .. Petitioner

Versus

The Union of India and others .. Respondents

Shri R. N. Dhorde, Senior Advocate i/by Shri V. R. Dhorde, Advocate for the Petitioner.
Shri S. B. Deshpande, A. S. G. with Shri R. B. Bhosale, Advocate for Respondent Nos. 1 and 2.
Shri S. B. Pulkundwar, A.G.P. for Respondent Nos. 3 and 4.

CORAM : S. V. GANGAPURWALA AND MANGESH S. PATIL, JJ.
DATE : 07TH AUGUST, 2019.

FINAL ORDER :

. Mr. Dhorde, the learned senior advocate for the petitioner submits that, the petitioner company was granted IEM on 19.07.2011 for establishing its unit No. 2 at village Bolegaon, Tq. Tuljapur, Dist. Osmanabad. On or about 12.08.2011 the petitioner submitted performance guarantee issued by the respondent No. 5 in favour of the respondent No. 2. In between 18.05.2011 to 16.05.2012, the petitioner purchased land admeasuring 22H 55R at village Bolegaon, Tq. Tuljapur. The Government valuation of the property is more than Rs. 06

Crores. On or about 22nd March, 2013, the petitioner has placed firm order for purchase of plant and machinery and paid advance amount of Rs. 02 crores. On or about 25.10.2013, the petitioner entered into an agreement with Pruthivi Construction Company, Osmanabad for executing civil work of unit No. 2 at village Bolegaon, Tq. Tuljapur and paid advance amount of Rs. 50 Lacs to the construction company. On or about 23.02.2013, the financial institution namely Arvind Multistate Credit Society sanctioned loan of Rs. 31 crores in favour of the petitioner company to establish the new sugar factory at village Bolegaon. Under letter dated 08.11.2018, the Chief Director (Sugar), New Delhi asked the petitioner to remain present on 19.11.2018 along with progress report of the project. On 19.11.2018 representative of the petitioner remained present and submitted application requesting to grant extension to the IEM as sugar factory could not start due to drought situation in the area. The respondent No. 2 did not consider plea of the petitioner and passed the impugned order de-recognising the IEM and confiscated performance guarantee submitted by the petitioner without any notice.

2. Mr. Dhorde, the learned senior advocate submits that, the IEM is granted for starting sugar factory unit No. 2 in the region of Marathwada. Said region is drought prone. Because of the drought conditions the work was hampered. For continuous three to four years there was drought situation in Marathwada

and due to that civil work could not be performed. The learned senior advocate further submits that, the Bolegaon Gram Panchayat also raised an objection for starting civil work. The petitioner was required to approach the Civil Court Tuljapur. The petitioner complied all the terms and conditions. The bank guarantee was renewed. The exceptional conditions existed for extension of the IEM. The respondents in high handed manner, arbitrarily de-recognized IEM. According to the learned senior advocate, the period of five years is extended to seven years and further extension is also permissible depending upon the environment, delay due to court case relating to land use and such other reasons beyond the control of the petitioner. The respondents failed to exercise the discretion in its proper perspective and in proper manner. The show cause notice issued to the petitioner in the year 2014 is bereft of details as to the nature of non compliance on the part of the petitioner. The show cause notice was limited to the non furnishing bank guarantee of nationalized or scheduled bank. The petitioner had given renewal of bank guarantee. The same was also accepted by the respondents. The bank guarantee is also confiscated without giving proper opportunity to the petitioner. No proper opportunity and hearing was given to the petitioner. Under letter dated 08th November, 2018, the respondents sought only the progress report. The respondents never intimated that the hearing would be conducted with regard to extension of IEM or confiscation of bank guarantee. The order is illegal.

3. Mr. Deshpande, the learned Assistant Solicitor General for respondent Nos. 1 and 2 submits that, the petitioner is required to commence the activity within two years and commercial production within four years with effect from the date of IEM, failing, which IEM shall stand derecognised. As per amendment made in the year 2016 and 2018 to the provisions of the Sugarcane (Control) Order, 1966. The stipulation of time for taking effective steps and commercial production has been extended to 3 and 5 years respectively. The petitioner has failed to commence commercial production within extended period. The show cause notice very clearly shows non compliance on the part of the petitioner. It specifies that requirement under explanation 4 of Clause 6A were not complied. The petitioner was also asked to submit bank guarantee of a nationalized bank. The petitioner failed to produce the same. The petitioner did not commence construction work. The petitioner did not start commercial production. In view of these facts the IEM was not extended and confiscated the bank guarantee. The order is passed after hearing the petitioner.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. The petitioner is issued with IEM to establish its unit No. 2

at village Bolegaon, Tq. Tuljapur, Dist. Osmanabad on 19.07.2011. The bank guarantee was issued by the petitioner of the respondent No. 5/cooperative bank. The petitioner was required to take effective steps for implementation of IEM and the progress report is required to be submitted to the respondents on quarterly basis.

6. The petitioner is issued with show cause notice on 04^{th} September, 2014, wherein the clauses were enumerated. Clauses 17 and 18 of the show cause notice reads thus :

> "17. Whereas, it is now observed from the above that M/s. JSPL is not interested for implementing the said IEM as enumerated in Explanation 4 below Clause 6A of Sugarcane (Control) (Amendment) order, 2006.
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> 18. Now in exercise of powers conferred under the provisions of the Sugarcane (Control) (Amendment) Order, 2006, you are directed to Show-Cause within 15 days from the date of issue of this notice as to why action should not be initiated for derecognising the IEM No. 2335/SIA/IMO/2011 dated 19.07.2011 filed for setting up of new sugar factory at Gat No. 168, Bolegaon, Taluka- Tuljapur, District- Osmanabad, Maharashtra besides confiscation of Bank Guarantee PG/1/2011-12 dated 12.08.2011 of

Rs. One Crore."

7. The petitioner was again issued a letter dated 08th November, 2018 to bring the latest progress report in respect of the project to substantiate their claim. The petitioner filed its reply and accepted that, the civil work had not commenced. The production activity has not commenced. The reply dated 18.11.2018 is seven years after the grant of IEM to the petitioner to establish the unit. Even if we accept that the amended provision would apply to the petitioner i. e. the amendment made on 12th October, 2018 under Clause 6C of the Sugarcane (Control) Order, 1966 and the extension of time is permissible after five years for further period of two years not exceeding more than a year at a time. The extended period would be seven years. At the time action is taken by the respondents, seven years had lapsed. The petitioner has not commenced the civil work, nor any commercial production. The same is writ large from the say/application of the petitioner dated 18.11.2018, wherein the petitioner admitted that, it has approached the Court and for other reasons the work could not be started.

8. Under the Sugarcane (Control) Order, respondent do not have power to extend the period for starting the commercial production beyond seven years.

9. In the light of the above, we do not see any error in the

order derecognising the IEM.

10. The consequence of non implementation of the provisions of clause 6B and 6C are provided in clause 6D. In the clauses enumerated therein the performance guarantee can be returned upon eventualities as laid down in the said provisions. The respondents are supposed to consider the same. From the order it does not appear that the said aspect has been considered with regard to forfeiture of performance guarantee.

11. In the light of the above, we set aside the order to the extent of forfeiting the performance guarantee of the petitioner. The respondents shall take fresh decision on the aspect of forfeiture of performance bank guarantee after hearing the petitioner and considering the clause as is laid down in Clause 6D of the Sugarcane (Control) Order, 1966.

12. The writ petition is accordingly disposed of. No costs.

[MANGESH S. PATIL, J.] **[S. V. GANGAPURWALA, J.]**

bsb/August 19