IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 WRIT PETITION NO.1109 OF 2019

M/S TULJABHAVANI SUGAR AND ALLIED INDUSTRIES LIMITED THROUGH MANAGING DIRECTOR ..PETITIONER

VERSUS

GOVERNMENT OF INDIA AND OTHERS ..RESPONDENTS

…

Mr. J. N. Singh and Ashutosh S. Kulkarni, Advocates for the Petitioner.
Mr. Ramdas B. Bhosale, Advocate for Respondent No.1.
Mr. Pravin N. Kalani, Advocate for Respondent No.5.

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CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.

DATED : 9th JULY, 2019.

PER COURT:-

1. The bank guarantee of Rs.1,00,00,000/- (Rs.One Hundred Lacs only) given by the petitioner is confiscated.

2. Mr. Singh, learned counsel for the petitioner submits that it was an error on the part of the respondents to pass the impugned order confiscating the bank guarantee given by the petitioner and de-recognizing IEM dated 02.02.2011 issued to the petitioner. Pursuant to the IEM dated 02.02.2011, the petitioner has taken effective steps. It is because of the circumstances beyond the control of the petitioner,

the petitioner could not start the production activity within a stipulated period. The report was also given by the State Government on 19.10.2018 that the petitioner has taken effective steps and the petitioner can submit the proposal as per Rule 6 (c) of the Sugar (Control) Order, 1966. The learned counsel submits that because of the drought situation, the petitioner was not given permission for bore well and the water connection. The petitioner has spent huge amount. The petitioner has purchased a land admeasuring 13.77 hectares required for the sugar factory and has also submitted the firm order for purchase of machinery and advance of Rs.1.50 crore is also paid. The civil work for construction of the building and premises and infrastructural development has commenced. Towards the construction of the factory building approximately Rs.173.50 lakhs has been spent. The financial institutions have also sanctioned requisite term loans from the Banks. The recommendation has been made to the Commissioner (Sugar) for further extension of time in view of the amended provision of Section 6(c) of the Sugar (Control) Order, 1966. The respondents without considering the huge investments and the steps taken by the petitioner, so also the report of the State Government and without affording the opportunity of hearing passed the impugned order. The same is illegal and does not stand to any reason. The respondents could not have passed the order to encash the bank guarantee and further de-recognise the IEM.

3. Mr. Deshpande, learned ASG submits that, in fact, the petitioner is required to commence the activity within two years and the commercial production should commence within four years with effect from the date of IEM, failing which IEM shall stand de-recognized. As per the amendment made in the year 2016 ad 2018 to the provisions of the Sugar (Control) Order, 1966, the stipulated time for taking effective steps and for commercial production have been extended to 3 and 5 years respectively. The petitioner failed to start the commercial production even within the extended time.

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

5. The petitioner is issued with IEM on 02.02.2011. The bank guarantee was issued initially for a period of 48 months and subsequently extended up to 23.02.2019. The petitioner was required to take effective steps for implementation of the IEM and the progress report was required to be submitted on quarterly basis. The impugned order suggest that the few progress reports submitted by the petitioner demonstrates

that the petitioner had not taken all the mandatory effective steps with regard to the implementation of the project. The petitioner was issued with the show cause notice initially on 16.01.2014 on the ground that the petitioner has not taken all the effective steps with regard to the implementation of the project within three years. The petitioner replied that the delay was on account of the fact that the area of the proposed factory was declared drought area. Due to which Irrigation Department did not give permission for water connection and bore well work. The request was made by the petitioner for grant of extension of time for three years. The order states that the petitioner has not implemented IEM within stipulated period, so also the extended period.

6. The order states that a personal hearing was also accorded to the petitioner on 24.10.2018. The representative of the petitioner was also present and the authority concluded that the petitioner has not taken all the mandatory effective steps as enumerated in the Explanation 4 below Clause 6A of the Sugar (Control) Order, 1966 within the stipulated time. The maximum permissible time to implement the IEM also expired on 01.02.2018.

7. In light of that, the order has been passed. The same does not appear to be against the

provisions of law. We do not find any merit in the petition and to exercise our writ jurisdiction under Article 226 of Constitution of India.

8. Writ Petition as such is dismissed. No costs.

9. The learned counsel for the petitioner further submits that interim orders were operating in favour of the petitioner. The same be extended by two weeks.

10. We see no reason in extending the interim orders. More particularly, in view of the discussion in the aforesaid paragraphs.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/July-19