

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

WRIT PETITION NO. 2705 OF 2019

M/s Pingle Sugar and Agro Products
Pvt. Ltd. Through Director, Jagdish
Kakasaheb Ghogre .. Petitioner

Versus

The Union of India and others .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Shri S. B. Deshpande, A.S.G. for Respondent Nos. 1 and 2.
Shri S. B. Yawalkar, Addl.G.P. for Respondent Nos. 3 and 4.
The Respondent No. 5 is served.

**CORAM : S. V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 16TH OCTOBER, 2019.

FINAL ORDER :

. The petitioner was issued with Industrial Entrepreneur Memorandum (I.E.M.). On or about 29.11.2018, the IEM issued to the petitioner is de-recognized as per Clause 6-D of the Sugarcane Control Order, 1966. Same is assailed in the present writ petition.

2. Mr. Khandare, the learned advocate for the petitioner submits that, in fact, the I. E. M. came to be issued to the petitioner on 27.06.2014. The distance certificate was issued by the respondent No. 3 and the performance bank guarantee was issued by the respondent No. 5 in favour of the petitioner. The

learned advocate submits that, Writ Petition No. 214 of 2012 was filed against the petitioner challenging distance certificate. The petitioner had taken effective steps as per Clause 6 of the Sugarcane Control Order. The learned counsel further submits that, the required land is purchased by the petitioner and duly recorded in the name of the company. The order has been placed for purchase of plant and machinery and requisite advance amount has also been paid. The loan has been sanctioned by the bank. An amount of Rs. 1,00,00,000/- (Rs. One crore only) was paid to M/s S. S. Engineers. Even contract for construction was issued. The learned counsel submits that, huge investment has been made by the petitioner in erecting plant. The work is in progress. The impugned order does not take into consideration all these contentions of the petitioner. According to the learned counsel, it is erroneous on the part of the respondents to suggest that I.E.M. was issued on 23.05.2011. It is only on 27.06.2014, the I. E. M. can be said to have been issued. The effective steps have been undertaken. As per the amendment to Sugarcane Control Order, the period for taking effective steps has been extended to four years and for production the same is extended to seven years. The respondents have not considered said aspect. The litigation pending before this Court also ought to have been considered by respondents. It was only under order dated 25/27th June, 2014, the performance guarantee No. 01/2011 dated 18.06.2011 of Rs. One crore only is accepted by respondents and it is under the said order the chimney of the proposed factory was directed to be erected on the same location. According to the

learned counsel considering the date as 27.06.2014, the impugned order passed by the respondents is before the stipulated period. The respondents were bound to consider the effective steps taken by the petitioner. Huge investment has been made by the petitioner. Even photographs were filed showing the work having commenced and performed.

3. The learned counsel further submits that, Mumbai District Central Co-operative Bank Ltd. has also sanctioned term loan of Rs. 61.58 crores to the petitioner in consortium with the Maharashtra State Co-operative Bank. The respondents have failed to consider all these aspects in its proper perspective and, therefore, have arrived at erroneous conclusion. The learned counsel submits that, it was only on 02nd May, 2014, the writ petition filed by one M/s Twaritapuri Sugars Ltd. was withdrawn. In the said writ petition aerial distance certificate sought by the petitioner and the aerial distance certificate granted in favour of the petitioner was challenged. All these aspects were required to be considered.

4. Mr. Deshpande, the learned Assistant Solicitor General for respondent Nos. 1 and 2 submits that, longer period has been given to the petitioner. The I. E. M. is issued to the petitioner in the year 2011. Applying the amended provisions also, the petitioner has not taken effective steps within the period as contemplated, nor has commenced the production within seven years. The order has been rightly passed.

5. The learned A. S. G. relies on the **judgment dated 02.04.2007 of the Apex Court in a case of M/s Ojas Industries (P) Ltd. Vs. M/s Oudh Sugar Mills Ltd. And others in Civil Appeal No. 1730 of 2007.** The commercial production ought to have been commenced by 22.05.2018. The same was not commenced. The respondents have not committed any illegality in resorting to the impugned order.

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

7. It is not subject matter of dispute that commercial production has not been commenced till this date, nor the construction of infrastructure is completed. It is also not the case of petitioner that, the petitioner has commenced commercial production or has completed entire construction of the infrastructure.

8. It appears from the facts on record that, I E M is issued to the petitioner on 23.05.2011. Clause 6-C of the Sugarcane Control order, 1966 prescribes the time limit to implement the I. E. M. As per the said provision, the stipulated time for taking effective steps as specified in Clause 6-C shall be three years and commercial production of sugar shall commence within five years from the date of issuance of I. E. M. by the Central Government, failing which the I. E. M. shall be de-recognized. Sub Clause 2 of

Clause 6-C provides the extension of time limit under certain circumstances. Clause 6-D provides that, if an I. E. M. remains unimplemented within the time specified in Clause 6-C performance guarantee furnished for its implementation shall be forfeited after giving the concerned person a reasonable opportunity of being heard. Vide order dated 27.06.2014, the petitioner's sugar factory in land gut No. 56 and 57 at village Selu, Post Jategaon, Tq. Georai was taken on record as a new sugar factory. The Sugarcane Control Order, 1966 is amended in the year 2016 and 2018. The stipulated time for taking effective steps of commencing commercial production have been amended to three and five years respectively. The petitioner was required to take effective steps by 22.05.2014 and to commence production from 22.05.2016. The Sugarcane Control Order was further amended in the year 2018, which provides for maximum permissible time limit for implementation of time limit including extension of two years under unforeseen circumstances beyond the control like drought. In view of that, the petitioner can be granted maximum extended period upto 22.05.2018 for commencing the commercial production. However, the period cannot be extended beyond seven years under any circumstances.

9. It appears that, the petitioner was given personal hearing on 15.11.2018. The respondents found that, the petitioner has not taken all the mandatory effective steps as enumerated in Explanation 4 to Clause 6A of the Sugarcane Control Order, 1966 within the time stipulated. The petitioner has not

commenced the commercial production by 22.05.2018 i. e. maximum permissible time under Clause 6-C of the Sugarcane Control Order, 1966. In view of that, the respondents have de-recognized the I. E. M. and forfeited the bank guarantee. The petitioner has been given the maximum extension for commencing the commercial production i. e. seven years from the date of I.E.M. i. e. 23.05.2011. The respondent also do not have any authority to grant extention to start the commercial production.

10. In view of the admitted position that the petitioner could not commence the commercial production till the extended period of seven years, the respondents were justified in cancelling the I. E. M. and confiscating the bank guarantee.

11. It appears that, the principles of natural justice were followed. The opportunity of hearing was also given to the petitioner. We do not see any illegality in the action of the respondents.

12. In the light of the above, the writ petition is dismissed. No costs.

[ANIL S. KILOR, J.]

[S. V. GANGAPURWALA, J.]