

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
53 WRIT PETITION NO.12165 OF 2018**

AMRUT SUGARS AND DISTILLERY PRIVATE LIMITED
DAMBHURNI THROUGH DIRECTOR ..PETITIONER

VERSUS

THE UNION OF INDIA AND OTHERS ..RESPONDENTS

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Mr. Girish V. Wani, Advocate for the Petitioner.
Mr. V. M. Kagne, AGP for Respondents-State.
Mr. S. S. Deve, Advocate for Respondent Nos.1 to 3.

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**CORAM : S. V. GANGAPURWALA &
AVINASH G. GHAROTE, JJ.**

DATED : 10th DECEMBER, 2019.

PER COURT:-

1. Mr. Wani, learned counsel for the petitioner submits that the petitioner is challenging the order confiscating the bank guarantee. According to the learned counsel, the petitioner had replied the show cause notice issued to the petitioner. However, the respondents did not consider the reply filed by the petitioner and forfeited the bank guarantee. The learned counsel submits that immediately after the petitioner was issued with the Aerial Distance Certificate the same was challenged by one party by filing writ petition before this Court. In the year 2016 that writ petition was disposed of observing that the Aerial Distance Certificate of the present petitioner stands canceled. According to the learned counsel because of the pendency of the writ

petition challenging the Aerial Distance Certificate issued to the petitioner, the petitioner could not get necessary finance from the Bank and inter alia could not take further steps. The learned counsel submits that all these aspects are not considered while passing impugned order. The learned counsel submits that as per Clause 6-D of the Sugarcane Control Order, 1966, the respondents are bound to consider the eventualities. As the same has not been considered, the impugned order deserves to be set aside.

2. The learned counsel submits that the petitioner had purchased 45 acres of land for the purpose of establishing the sugarcane factory. It is only because the Aerial Distance Certificate was challenged by Madhukar Sahakari Sakhar Karkhana in Writ Petition No.3933/2013 the further steps could not be taken. The same was beyond the control of the petitioner.

3. Mr. Deve, learned counsel submits that Aerial Distance Certificate of the petitioner stood canceled in March-2016. The show cause notice was already issued to the petitioner. The petitioner gave reply. Thereafter, opportunity of hearing was given to the petitioner. The petitioner could not show any efforts taken for establishing the factory. In view of that, the order is rightly passed under Clause 6-D of the Sugarcane Control Order, 1966.

4. Mr. Wani, learned counsel relies on the order passed by this Court in writ Petition No.561/2019 dated 07.08.2019.

5. In the present matter the petitioner was issued with IEM on 29.08.2012. The Aerial Distance Certificate issued to the petitioner was challenged by Madhukar Sahakari Sakhar Karkhana Limited by filing Writ Petition No.3933/2013. In the said writ petition no interim orders were operating against the present petitioner. Eventually, the Aerial Distance Certificate issued to the petitioner stood canceled as has been observed by the Division Bench of this Court under order dated 31.03.2016 in Writ Petition No.3933/2013.

6. It is a fact that the petitioner till cancellation of the Aerial Distance Certificate did not start the construction work, did not engage the contractor for start of the construction work nor could secure any finance nor had placed any order for plant and machinery.

7. The case relied by the learned counsel for the petitioner bearing Writ Petition No.561/2019 would not inure to the benefit of the petitioner. In the said case, the petitioner therein had already placed the order for plant and machinery and had paid Rs.2 crores in advance to the supplier. The petitioner therein was also

sanctioned loan of Rs.31 crores. The petitioner had also engaged the contractor for civil work. The Grampanchayat raised an objection for starting the civil work. The petitioner was required to approach the Civil Court at Tuljapur against the obstructions of the Grampanchayat and its members. The petitioner therein had paid advance of Rs.50 crores to the contractors for start of civil work. However, it was only because objections raised by the Grampanchayat i.e. the Planning Authority of the said village, the petitioner had to approach the Civil Court and work could not commence. All these facts were not considered by the authorities and the petitioner therein was also not given any personal hearing. In the light of that, order was passed on 07.08.2019 in Writ Petition No.561/2019 directing reconsideration of forfeiture of the bank guarantee as laid down in the Clause 6-D of the Sugarcane Control Order, 1966.

8. In the present case there is no prohibitory order operating against the petitioner. After four years the Aerial Distance Certificate stood canceled, as petitioner did not take any steps. There is nothing on record to suggest that the petitioner was ever sanctioned any finance by financial institution or any such application was made. There is nothing on record to show that petitioner had placed order for plant and machinery or had engaged contractor to do civil work. There is also nothing on record to show that there was

any advance paid by the petitioner for purchase of plant and machinery. Except that the writ petition was pending against the petitioner challenging the Aerial Distance Certificate, no other explanation is coming forth and the same appears to have been considered in the impugned order.

9. In the light of above, we do not find any error on the part of the authority in forfeiting the bank guarantee pursuant to the impugned order.

10. Writ Petition is disposed of. No costs.

(AVINASH G. GHAROTE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE