

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO.29456 OF 2019

Sarvodaya Sahakari Sakhar Karkhana Ltd. ... Petitioner
versus
The Commissioner of Sugar and Ors. ... Respondents

WITH
WRIT PETITION (ST) NO.28791 OF 2019
WITH
INTERIM APPLICATION NO.01 OF 2019

Sarvodaya Sahakari Sakhar Karkhana Ltd. ... Petitioner
versus
The Commissioner of Sugar and Ors. ... Respondents

WITH
WRIT PETITION NO.9418 OF 2019
WITH
INTERIM APPLICATION NO.2 OF 2019

**Rajarambapu Patil Sahakari Sakhar
Karkhana Limited ... Petitioner**
versus
Government of India and Ors. ... Respondents

Mr.Venkatesh Dhond, Senior Advocate i/b
Vijay Killedar for the Petitioner in WPST/
28791/19 and WPST/29456/19 and for
Respondent No.6 in WP/9418/19.

Mr.Vijaysinh Thorat, Senior Advocate i/b
Mr.A.M.Kulkarni a/w Mr.Sarthak Diwan
and Ms.Akansha Helaskar for Respondent
No.3 in WPST/28791/19 and
WPST/29456/19 and for the Petitioner in
WP/9418/19.

Mr.Ram Apte, Senior Advocate a/w
Mr.Parag Vyas for Respondent Nos.1 to 3
in the Interim Application No.2 of 2019 in
WP/9418/19.

Mr.A.I.Patel, Additional Government
Pleader a/w Mr.B.V.Samant-AGP for State
in all Petitions.

**CORAM :- S. C. DHARMADHIKARI &
R.I.CHAGLA, JJ.**

DATE :- NOVEMBER 21, 2019

P.C. :-

1. By this writ petition (WPST/29456/19) under Article 226 of the Constitution of India, the petitioner is challenging a Crushing Licence issued by the first respondent in favour of the third respondent.

2. The petitioner before us is a sugar factory duly registered in the year 1996. It says that it commenced its crushing season in the year 2003 and, therefore, is entitled for protection of its right to crush the sugarcane harvested and brought at the gate of the sugar factory. Respondent No.1 is the Commissioner of Sugar and respondent No.2 is the State. However, the Crushing Licence is not issued in favour of the petitioner, but the third respondent.

3. Mr.Venkatesh Dhond, learned senior counsel appearing on behalf of the petitioner, invited our attention to the impugned Crushing Licence, copy of which is at Exhibit 'E' (Page 46 of the paper-book).

4. He would submit that this is a Licence for Crushing given for the season 2019-2020. The crushing season has commenced and

from 14th November, 2019, the third respondent can crush the sugarcane, which has been harvested and brought at the gate of the factory.

5. The argument of Mr.Dhond is that the licence is granted in favour of respondent No.3 on the assumption that it holds an industrial licence dated 29th January, 2018. However, that is not the end at all. The licence condition requires the licensee to possess the necessary and relevant document, namely, Industrial Entrepreneurs Memorandum (IEM). That is admittedly not in favour of the third respondent. Mr.Dhond would submit that there is a history to all this, inasmuch as, the third respondent has filed Writ Petition No.9418 of 2019 in this Court. That challenges the order passed by the Central Government effecting an amendment in the IEM. That amendment was with effect from 6th August, 2019. By that amendment, the name of the petitioner-Sarvodaya Sahakari Sakhar Karkhana Ltd. is inserted in place of Rajarambapu Patil Sahakari Sakhar Karkhana Ltd.-the third respondent to this petition.

6. This amendment/substitution is challenged by filing a petition on 19th August, 2019. That petition may have been entertained and interim order has been passed staying the effect of the amendment or insertion, however, that by itself does not

mean that there is a valid and subsisting IEM in favour of the third respondent-Rajarambapu Patil Sahakari Sakhar Karkhana Ltd. If there is no such valid IEM in its favour and particularly, after the substitution, then, the Crushing Licence could not have been granted. That licence cannot be granted because there are valid reasons for substitution or change in the IEM. The Central Government has filed an affidavit-in-reply in Writ Petition No.9418 of 2019 and particularly, justifying the amendment. Paragraph 14 of that affidavit-in-reply is relied upon by Mr.Dhond.

7. He would, therefore, submit that the Crushing Licence, which has been granted by the Commissioner of Sugar, State of Maharashtra, cannot stand in the face of the Central Government's assertions on affidavit before this Court. This vital material has been ignored while granting the Crushing Licence.

8. On the other hand, Mr.Vijaysinh Thorat, learned senior counsel appearing on behalf of respondent No.3 would submit that eventually, the licences are granted so as to crush the sugarcane crop harvested and kept ready for crushing by the sugarcane growers and brought at the gate of the factory. That has to be crushed so as to manufacture the sugar. The sugar has to be manufactured so as to bring in market the required number of

bags or stock. The Government is expected to built a buffer stock of sugar and maintained for all seasons and to meet the consumers' demand. The petitioner is not such existing sugar factory. In fact, the IEM in favour of the third respondent was issued on the basis that it has taken over the entire factory, including equipments and machines of the petitioner. The petitioner is not concerned with the sugar stock and would like this Court to take a note of pending litigation, which litigation was foisted upon the third respondent by undue and uncalled for intervention of the Central Government. For all these reasons, he would submit that the writ petition be dismissed.

9. We have perused the writ petition and the annexures thereto with the assistance of the learned senior counsel appearing for the parties. Since the paper-book of Writ Petition No.9418 of 2019 was also placed alongwith the instant petition, we had the benefit of the orders impugned therein, the affidavit filed in that petition and eventually the order of admission and interim relief granted therein.

10. The Crushing Licence has been granted in favour of the third respondent before us by the Commissioner of Sugar, Maharashtra State. It is not disputed before us that he has a power, inasmuch as, there is a Maharashtra Sugar Factories

(Reservation of Areas and Regulation of Crushing and Sugarcane Supply) Order 1984. The Commissioner of Sugar, Maharashtra State having been empowered by this Order, which is traceable to the Essential Commodities Act, 1955, to our mind, was possessed of the necessary authority and jurisdiction to consider the application made by respondent No.3. Respondent No.3 made that application for it was holding an industrial licence dated 29th January, 2018.

11. It may be that the Crushing Licence to be granted requires the applicant to mention the IEM. There is a Circular of 22nd July, 2019 under which the Commissionerate of Sugar, Maharashtra State, Pune can entertain and consider applications for grant of Sugarcane Crushing Licence. The applications have to be made between 1st August to 31st August, 2019. The applications have to be scrutinised within seven days thereafter. After the applications are scrutinised, the licences have to be issued within seven days on completion of the requisite procedural and other formalities. True it is that this Circular requires, as a necessary document, to be produced, a copy of the IEM.

12. The third respondent before us undoubtedly made an application. Respondent No.3 before us pointed out that there was an IEM issued in its favour. The third respondent pointed out

that this IEM continues to be valid, subsisting and binding on the petitioner before us. That is because though there was an agreement between both sugar factories and that agreement postulates taking over of the property of the petitioner's factory. That was indeed taken over. The sugar factory was taken over with all its equipments and was being operated by respondent No.3 before us. Therefore, when that agreement between both sides resulted in some disputes, which were then taken to arbitration and eventually to a Court, on account of the pendency of that proceedings, the petitioner herein prevailed upon the Central Government acting through its Ministry of Commerce and Industry to effect an amendment to the IEM. By the amendment, the name of Rajarambapu Patil Sahakari Sakhar Karkhana Ltd. was substituted with the name of Sarvodaya Sahakari Sakhar Karkhana Ltd. This was done behind the back and without any notice to Rajarambapu Patil Sahakari Sakhar Karkhana Ltd. It was, therefore, constrained to move the writ petition i.e. Writ Petition No.9418 of 2019 before this Court. This Court, not only entertained the petition, but has passed a detailed order also. That detailed order grants a stay to the amendment or the insertion, which is nothing but a deletion of the name of the Rajarambapu Sahakari Sakhar Karkhana Ltd. That order having been stayed or its implementation and enforcement kept in

abeyance, therefore, enables the Rajarambapu Sahakari Sakhar Karkhana Ltd. to urge that the Crushing Licence can be issued in its favour. The amendment could not be carried to its logical end and the IEM continues in favour of respondent No.3 on the basis of the orders passed by this Court. The Central Government's order and directions are, therefore, not given effect to.

13. We do not express any opinion on the rival contentions in so far as the controversy in Writ Petition No.9418 of 2019. That is pending before this Court. That will be decided on its own merits and in accordance with law.

14. We do not think that the Commissioner of Sugar acted in undue haste, much less arbitrarily or in a *mala fide* manner when it issued the Crushing Licence in favour of respondent No.3. Pertinently, there is no argument before us that in accordance with the Circular dated 22nd July, 2019 the condition that, necessary application has to be made, is not complied with. The Circular contains several stipulations. An on-line application was to be made in terms of that Circular accompanied by the necessary fees and the requisite and relevant documents. The crushing season having or to be commenced, the sugar factory has to demonstrate that there is a sugarcane crop duly registered in its name and after harvesting, it is going to be brought to its

factory. There is other requirement, namely, the certificate of the Pollution Control Board. Thus, the requisite consent of the Pollution Control Board and other documents, which are mandated by this Circular, have to be, therefore, placed on record together with the application. If there was a valid application in terms of this Circular made to the competent authority, then, he committed no error in law, much less any perversity in entertaining that application and granting the Crushing Licence. He has granted it in accordance with the Circular and has further imposed conditions on the third respondent. In accordance with these terms and conditions, the crushing has to be carried out.

15. To our mind, therefore, the Sugar Commissioner did not commit any error of law apparent on the face of the record or perversity. The Crushing Licence is valid and legal.

16. We do not think that any rights, much less substantive in nature of the petitioner before us are affected by mere issuance of the Crushing Licence in favour of respondent No.3. If it has any justification for substitution in the IEM, it can do so, for Writ Petition No.9418 of 2019 is pending. The petitioner before us is a party to that writ petition (Respondent No.6). Its rights and contentions therefore remain unaffected by the grant of Crushing Licence in favour of respondent No.3.

17. With the above clarification, all the more, we are reluctant to exercise our jurisdiction under Article 226 of the Constitution of India to interfere with this Crushing Licence. The writ petition is, therefore, dismissed. There will be no order as to costs.

18. In the light of the order passed in Writ Petition (St) No.29456 of 2019, Writ Petition (St) No.28791 of 2019 does not survive and stands disposed of.

19. Interim Application No.1 of 2019 in Writ Petition (St) No.28791 of 2019 also stands disposed of accordingly.

(R.I.CHAGLA, J.)

(S.C.DHARMADHIKARI, J.)