**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.13836 OF 2017**

1. Eknath S/o Bhanusas Barge
Age : 56 years, Occu: Agril,
R/o Gopalpur (Khamgaon), Post: Shirasgaon
Tq. Newasa, Dist. Ahmednagar

2. Dilip S/o Shamrao Kundhare,
Age: 40 years, Occu: Agril,
R/o. Warkhed, Tq. Newasa,
Dist. Ahmednagar

3. Vijay S/o Mannu Parsaiya,
Age : 35 years, Occu: Agril,
R/o. Ramdoh, Tq. Newasa,
Dist. Ahmednagar. ..Petitioners

Versus

1. The Union of India
Through its Ministry of Commerce
and Industry,
Secretariate for Industrial Assistance,
Public Relation & Complaints Section,
New Delhi.

2. The Chief Director (Sugar),
Government of India,
Ministry of Consumer Affairs,
Department of Food and Public Distribution
Directorate of Sugar, Krushi Bhavan,
New Delhi.

3. The State of Maharashtra
Through its Principal Secretary,
Co-operation, Marketing and Textile,
Department, Mantralaya, Mumbai-32.

4. The Commissioner of Sugar,
Maharashtra State,
Sakhar Sankul, Shivaji Nagar,
Pune-5.

5. The Survey of India,
Office of Director,

Maharashtra and Goa,
Geo-spatial Data Center,
Phule Nagar, Alandi Road,
Pune.

6. Swami Samarth Sugars and Agro
Industries Ltd. Warkhed (Ramdoh)
Tq. Newasa, Dist. Ahemadnagar,
Correspondence Office:
35, Bhiwada Best Staff Quarters,
Jerbai Wadia Road, Bhoiwada,
Parel, Mumbai-400012.
Through its Director,
Vinay S/O. Vijay Shivtare,
Age: 37 years, Occu: Business,
R/o Purandareshwar, 4373,
Sopan Nagar Road, Saswad,
Tq. Purandar, District : Pune-412301.
..Respondents

Mr. R. N. Dhorde Senior Advocate Petitioners.
Mr. A. G. Talhar A.S.G. for the Respondent Nos.1, 2 and 5.
Mr. K. N. Lokhande, A.G.P. for Respondent Nos.3 and 4.
Mr. A. Y. Sakhre, Senior Advocate i/by Mr. A. V. Hon, Advocate for Respondent No.6.

WITH
CIVIL APPLICATION NO.2704 OF 2018
IN
WRIT PETITION NO.13836 OF 2017

Vishwanath Eknath Shinde & Anr.. ..Applicants
Versus

The Union of India and Ors. ..Respondents

Mr. Ajinkya P. Deshmukh, Advocate for Applicants.
Mr. A. G. Talhar A.S.G. for the Respondent Nos.1, 2 and 5.
Mr. K. N. Lokhande, A.G.P. for Respondent Nos.3 and 4.
Mr. A. Y. Sakhre, Senior Advocate i/by Mr. A. V. Hon, Advocate for Respondent No.6.
Mr. R. N. Dhorde, Senior Advocate for Respondent Nos.7 and 8.

AND
WRIT PETITION NO.2405 OF 2018
WITH
CIVIL APPLICATION NO.3484 OF 2021
AND
CIVIL APPLICATION NO.8046 OF 2020
IN
WRIT PETITION NO.2405 OF 2018

Dnyaneshwar Sahakari Sakhar
Karkhana Ltd., Dnyaneshwar Nagar,
Post Bhende, Tq. Newas, Dist. Ahmednagar.
Throught its Authorised Officer,
Sunil S/o Laxman Shinde
Age-37 years Occ.: Service as Legal Officer
R/o, Dnyaneshwar Nagar, Post Bhende, Tq. Newasa
Dist. Ahmednagar .. Petitioner

Versus

1. The Union of India
Through its Ministry of Commerce
and Industry,
Secretariate for Industrial Assistance,
Public Relation & Complaints Section,
New Delhi.

2. The Chief Director (Sugar),
Government of India,
Ministry of Consumer Affairs,
Department of Food and Public Distribution
Directorate of Sugar, Krushi Bhavan,
New Delhi.

3. The State of Maharashtra
Through its Principal Secretary,
Co-operation, Marketing and Textile,
Department, Mantralaya, Mumbai-32.

4. The Commissioner of Sugar,
Maharashtra State,
Sakhar Sankul, Shivaji Nagar,
Pune-5.

5. The Survey of India,
Office of Director,
Maharashtra and Goa,

Geo-spatial Data Center,
Phule Nagar, Alandi Road,
Pune.

6. Swami Samarth Sugars and Agro Industries Ltd. Warkhed (Ramdoh)
Tq. Newasa, Dist. Ahemadnagar,
Correspondence Office:
35, Bhiwada Best Staff Quarters,
Jerbai Wadia Road, Bhoiwada,
Parel, Mumbai-400012.
Through its Director,
Vinay S/O. Vijay Shivtare,
Age: 37 years, Occu: Business,
R/o Purandareshwar, 4373,
Sopan Nagar Road, Saswad,
Tq. Purandar, District : Pune-412301.
..Respondents

Mr. R. N. Dhorde Senior Advocate i/b Mr. P. S. Dighe, Advocate for the Petitioner.
Mr. A. G. Talhar A.S.G. for the Respondent Nos.1, 2 and 5.
Mr. K. N. Lokhande, A.G.P. for Respondent Nos.3 and 4.
Mr. A. Y. Sakhre, Senior Advocate i/by Mr. A. V. Hon, Advocate for Respondent No.6.

AND

WRIT PETITION NO. 6754 OF 2020

Loknete Marutrao Ghule Patil
Dnyaneshwar Sahakari Sakhar
Karkhana Ltd., Dnyaneshwar Nagar,
Post Bhende, Tq. Newas, Dist. Ahmednagar.
Throught its Authorised Officer,
Sunil S/o Laxman Shinde
Age-39 years Occ.: Service as Legal Officer
R/o, Dnyaneshwar Nagar, Post Bhende, Tq. Newasa
Dist. Ahmednagar .. Petitioner

Versus

1. The Union of India
Through its Ministry of Commerce
and Industry,
Secretariate for Industrial Assistance,

Public Relation & Complaints Section,
New Delhi.

2. The research Officer,
Department for Promotion of Industry
and Internal Trade (SIA) (IEM Section)
Udyog Bhava, New Delhi- 110 011.

3. The Chief Director (Sugar),
Government of India,
Ministry of Consumer Affairs,
Department of Food and Public Distribution
Directorate of Sugar, Krushi Bhavan,
New Delhi.

4. The State of Maharashtra
Through its Principal Secretary,
Co-operation, Marketing and Textile,
Department, Mantralaya, Mumbai-32.

5. The Commissioner of Sugar,
Maharashtra State,
Sakhar Sankul, Shivaji Nagar,
Pune-5.

6. The Survey of India,
Office of Director,
Maharashtra and Goa,
Geo-spatial Data Center,
Phule Nagar, Alandi Road,
Pune.

7. Swami Samarth Sugars and Agro
Industries Ltd. Warkhed (Ramdoh)
Tq. Newasa, Dist. Ahemadnagar,
Correspondence Office:
35, Bhiwada Best Staff Quarters,
Jerbai Wadia Road, Bhoiwada,
Parel, Mumbai-400012.
Through its Director,
Vinay S/O. Vijay Shivtare,
Age: 37 years, Occu: Business,
R/o Purandareshwar, 4373,
Sopan Nagar Road, Saswad,
Tq. Purandar, District : Pune-412301.

8. Vinay S/O. Vijay Shivtare,
Age: 37 years, Occu: Business,
R/o Purandareshwar, 4373,
Sopan Nagar Road, Saswad,
Tq. Purandar, District : Pune-412301.

9. The Secretary,
Ministry of Consumer Affairs,
Department of Food and Public Distribution,
Krishi Bhavan, New Delhi-110 001
..Respondents

Mr. R. N. Dhorde Senior Advocate i/b Mr. P. S. Dighe, Advocate for the Petitioner.
Mr. A. G. Talhar A.S.G. for the Respondent Nos.1, 3, 6 and 9.
Mr. K. N. Lokhande, A.G.P. for Respondent Nos.4 and 5.
Mr. A. Y. Sakhre, Senior Advocate i/by Mr. A. V. Hon, Advocate for Respondent No.7.

CORAM : S. V. GANGAPURWALA AND SHRIKANT D. KULKARNI, JJ.

JUDGMENT RESERVED ON : 23.04.2021
JUDGMENT PRONOUNCED ON : 23.07.2021.

JUDGMENT (Per: S. V. Gangapurwala) :

1. Rule. Rule made returnable forthwith. With the consent of the parties matter is taken up for final hearing at the admission stage.

2. These writ petitions are based on similar set of facts and law, ergo, to avoid rigmarole are decided by common judgment.

3. Writ Petition No.2405/2018 and Writ Petition No.6754/2020 are filed by existing sugar factory. Writ Petition No.13836/2017 is filed by the members of the existing sugar factory.

4. In Writ Petition No.13836/2017, the petitioner seeks declaration that the IEM dated 08.09.2010 issued in favour of new sugar factory is de-recognized/cancelled in view of provisions of Clause 6-C of Sugarcane (Control) Order, 1966 (for short 'Order, 1966'). It seeks declaration that action on the part of respondent no.6 in changing the location of new sugar factory is illegal and arbitrary. Further prayer is made seeking declaration against the authorities to cancel or de-recognize the IEM in favour of new sugar factory.

5. In Writ Petition No.2405/2018 declaration is sought that IEM dated 08.09.2010 issued in favour of new sugar factory is de-recognized/cancelled in view of provision of Clause 6-C of Order, 1966. The said petitioner also seeks direction against the authorities from granting permission to new sugar factory within aerial distance of 25 kms from existing sugar factory in view of Notification dated 03.12.2011 of the State Government issued pursuant to the power vested in it as per Proviso to Clause 6-A of the Order, 1966. It also assails the action of new sugar factory in changing the location from the one mentioned in the IEM dated 08.09.2010. In Civil Application No.8046/2020 the petitioner assailed the order dated 14.11.2018, 15.11.2018, 12.04.2019, 09.05.2019 and 17.10.2019 granting yearly extensions to IEM dated 08.09.2010 till 07.09.2020. By filing Civil Application No.3484/2021 in Writ

Petition No.2405/2018 the petitioner assailed the extensions granted to IEM dated 08.09.2010 from 08.09.2020 to 07.09.2021.

6. The petitioner in Writ Petition No.6754/2020 assails the order dated 14/08/2020 and 30/09/2020 of the authority amending the IEM dated 08/09/2010 and changing the location of the new sugar factory.

7. The petitioner is an existing registered Co-operative Sugar Factory since the year 1973.

8. The respondent-Swami Samarth Sugars and Agro Industries Ltd. (hereinafter referred to as 'new sugar factory') filed an application for getting the Aerial Distance Certificate for establishing new sugar factory at site Gat No.48 and 40 at village Warkhed, Tq. Newasa. The Aerial Distance Certificate was issued to the new sugar factory after measuring the distance of the proposed site in Gat No.48 at village Warkhed. On or about 08.09.2010, the Central Government (Industries Department) issued I.E.M. in favour of respondent-new sugar factory mentioning the location is village Warkhed (Ramdoh), Tq. Newasa, Dist. Ahmednagar. On or about 16.06.2014 new sugar factory made an application to the Chief Director (Sugar), New Delhi for granting extension to the I.E.M. and for change of location. The extension of I.E.M. was granted to the new sugar factory under letters dated 14.11.2018 from 2015-2016,

15.11.2018 from 2016-2017, 12.04.2019 from 2017-2018, 09.05.2019 from 2018-2019 and lastly the same is granted up to 07.09.2021. The petitioners are basically contended that, in view of Clause 6-C of the Order, 1966, the I.E.M. stands de-recognized, as no effective steps are taken within the period stipulated and no commercial production has commenced as yet. The change of location is not permissible. The change of location is sought in the year 2014. As per Notification dated 03.12.2011, the minimum aerial distance of new sugar factory from the existing sugar factory shall be 25 kms. The aerial distance in this case of the new sugar factory from its changed location is less than 16 kms. The extensions granted are illegal.

9. We have heard Mr. Dhorde, learned Senior Advocate for petitioner, learned A.S.G. for Union of India and its Authorities, Mr. Sakhre and Mr. Hon, learned Senior Advocates for new sugar factory and learned A.G.P.

10. The following chronology of events seem to be a matter of record:

Sr. No.	Date	Particulars
1	2008	new sugar factory desirous of setting up sugar factory approached Survey of India for aerial distance certificate qua property at Warkhed, Tal. Newasa.
2	9/5/2008	Objection by Petitioner for grant of aerial distance certificate to new sugar factory sugar factory.

3	12/03/2010	Aerial Distance Certificate granted by Survey of India in favour of new sugar factory for Warkhed, Tal. Newasa, Distance. Ahmednagar.
4	29/03/2010	Application by new sugar factory to Commissioner of sugar, Maharashtra to issue distance certificate in accordance with certificate issued by Survey of India.
5	17/08/2010	Aerial Distance Certificate issued by Commissioner, Sugar Maharashtra to Chief Director (Sugar), Govt. of India for new sugar factory.
6	08/09/2010	IEM filed by new sugar factory – for new sugar factory acknowledged – Performance Bank Guarantee of 1 Crore was submitted in accordance with Sugarcane Control Order.
7	23/09/2010	Writ Petition 9341 of 2010 was filed before this Court challenging IEM issued to new sugar factory on ground that 6-A was not complied with & breach of environmental laws.
8	17/03/2011	PIL No.23 of 2011 was filed challenging the IEM of new sugar factory.
9	27/01/2014	Order of this Court in WP 9341 of 2010 suggesting all environmental laws would have to be complied with. Issue of aerial distance certificate of 15 km decided.
10	16/06/2014	Application by new sugar factory to Chief Director (Sugar), Union of India for extension of IEM and change of location.
11	July 2014	Chief Director, Sugar, Govt. of India to Commissioner, Sugar, Maharashtra – Distance certificate

		that was issued does not mention Survey number – therefore, issue fresh certificate.
12	16/10/2014	Commissioner, Sugar, Maharashtra to Survey of India – Letter of Govt. of India regarding survey no. in distance certificate forwarded for necessary action.
13	17/12/2014	Government of India notice to new sugar factory – for personal hearing with all documents.
14	31/3/2015	Reply of new sugar factory to Chief Director, Sugar, Govt. of India – from 2010 to 2014 pendency of litigation and Irrigation NOC – fresh land will have to be identified and all permissions will be taken. Request made not to de-recognize IEM, grant extension of the IEM as well as permission for change of location.
15	04/08/2015	Application by new sugar factory to Chief Director, Sugar, Govt. of India – – extension sought for further four years – Performance Bank Guarantee of 1 Crore extended.
16	10/09/2015	Chief Director, sugar, Govt. of India to new sugar factory – submit proposal for extension of time through the State Government.
17	11/09/2015	Government of India to Commissioner, Sugar, Maharashtra to give its recommendations on request for extension.
18	14/09/2015	Application by new sugar factory to Chief Director, Sugar, Govt. of India – request for grant of extension of IEM and permission for change of location.

19	15/09/2015	Letter by Government of India to Commissioner, Sugar, Maharashtra seeking views / recommendations on request for change of location by new sugar factory.
20	21/09/2015	Application by new sugar factory to Commissioner, Sugar, Maharashtra in furtherance of Govt. of India letter dated 15.09.2015 – pendency of litigation – IEM acknowledged for factory with Aerial Distance Certificate of 15 kms – performance guarantee of 1 Crore extended to keep IEM alive required to issue letter to Survey of India for Malewadi Dhumala, Tal. Newasa.
21	17/10/2015	Commissioner, Sugar, Maharashtra to Survey of India carry out measurement of aerial distance qua proposed location at Malewadi, Tal. Newasa.
22	17/10/2015	Commissioner, Sugar, Maharashtra to Regional Director – states that Central Govt. is competent authority to take decision regarding de-recognition of IEM – In view of letter of Central Govt. report sought on effective steps taken by new sugar factory.
23	17/12/2015	Report of Regional Director to Commissioner, Sugar, Maharashtra – no effective steps taken by new sugar factory.
24	18/01/2016	Commissioner, Sugar, Maharashtra to Govt. of India – no effective steps taken – therefore, extension cannot be recommended.
25	2016-2017	Land at Malewadi, Dhumala, Tal. Newasa were acquired by new sugar factory in furtherance of proposal

		for amendment in IEM qua location.
26	27/11/2017	Commissioner, Sugar, Maharashtra to Survey of India – aerial distance qua Malewadi Dhumala (in continuation of letter dated 17.10.2015.
27	27/11/2017	Writ Petition No.13836 of 2017 filed against new sugar factory.
28	16/12/2017	Letter by new sugar factory to Survey of India for distance certificate qua Malewadi-Dhumala, Tal. Newasa.
29	01/01/2018	Distance Certificate issued by Survey of India in pursuance of application for amendment of IEM – addressed to Commissioner, Sugar (Maharashtra) – more than 15 km.
30	02/01/2018	Letter of Commissioner, Sugar (Maharashtra) – ON EXTENSION OF IEM – stated that in view of intervening litigation that has spanned from 2010-2014 and 2016-2017 as well as subsequent petition filed in 2017 – no objection for granting extension of IEM ON CHANGE OF LOCATION – Survey of India has measured aerial distance for proposed location sought to be amended – copy of the said certificate forwarded to Chief Director, Sugar for appropriate action.
31	26/02/2018 **Khandoba Prasanna Sakhar Karkhana Ltd. Vs. Union of India & Ors.**	1st W.P. i.e. Writ Petition No.2405 of 2018 filed against new sugar factory.
32	27/03/2018	Order of this Court – statement of

		Govt. of India recorded – decision on extension of IEM pending – construction at risk of new sugar factory.
33	02/05/2018	Order of this Court – decision on extension not yet taken – new sugar factory if it carries out construction shall be at its risk. It shall not create equity.
34	14/11/2018 to 09/05/2019	Extension was granted in favour of of the Petitioner up to 07/09/2019 14.11.2018 – Extension from 2015-2016 15.11.2018 – Extension from 2016-2017 12.04.2019 – Extension from 2017-2018 09.05.2019 – Extension from 2018-2019
35	25/06/2019	Letter of Government of India, Department for Promotion of Industry and Internal Trade ("DPII") to Department of Food and Public Distribution – sought comments regarding amendment in IEM.
36	26/08/2019	Letter of Government of India, Department of Food and Public Distribution – NOC for amendment communicated to DPII.
37	17/10/2019	Order passed granting extension of IEM up to 07.09.2020 Bank Guarantee of 50 lakhs given by new sugar factory.
38	28/07/2020	Letter of Secretary, Food and Public Distribution Department, Government of India to Secretary, DPII – application for amendment – change is minor and in same Taluka – therefore, necessary action may be taken.
39	14/08/2020	Acknowledgment for amendment in IEM – location updated to

		Malewadi-Dhumala.
40	16/09/2020	Office memorandum of GOI, Food and Public Distribution Department – NOC for change in office address of new sugar factory (Application was made by new sugar factory for change in office address on or about 24/05/2020)
41	30/09/2020	Acknowledgment for amendment in IEM change in office address.
42	01/10/2020	The 2nd W.P. was filed – amended subsequently – challenge to letters dated 14/08/2020 and 30/09/2020.
43	18/02/2021	Order passed granting extension up to 07.09.2021.

11. The case of the petitioner rests on the premise that after issuance of IEM, effective steps are not taken within a period of two years, nor production commenced within four years. The IEM stands de-recognized by operation of Clause 6-C of the Order, 1966. The change of location is not permissible under the Order, 1966 and at the time of request of change in location, the Sugarcane Control Order was already amended and aerial distance between existing sugar factory and new sugar factory ought to be 25 kms. In the present case, from the changed location the distance of new sugar factory of the respondent is within 25 KM of the petitioner's sugar factory.

12. Mr. Dhorde, the learned senior advocate for the petitioner in his usual lucid manner submits that, the IEM is acknowledged on 08.09.2010. As per Order, 1966 and more

particularly Clause 6-A, the aerial distance to be maintained as on the date the IEM was issued between new sugar factory and existing sugar factory was 15 KM. Admittedly from 08.09.2010 for a period of two years no effective steps were taken by the respondent/new sugar factory, nor within a period of four years the commercial production had commenced. As per Clause 6-C of the Order 1966, the IEM stood de-recognized. The subsequent amendment extending the period for effective steps and commercial production would not apply. The IEM stood lapsed before the amendment in the year 2016 extending the period for effective steps and/or commercial production. The land was also not purchased by the respondent/new sugar factory at the location shown in the IEM. For the first time on or about 16.06.2014, an application was made by the respondent for extension of IEM and change of location. The change of location is also not permissible as there was no provision under Order 1966. According to the learned senior advocate, the application given for extension of IEM on 16.06.2014 was not granted and for the first time on or about 14.11.2018 extension was granted upto 07.09.2016 and subsequent extensions are granted after the said date. The same are illegal. It is further submitted that, even the Commissioner of Sugar under his communication dated 17.10.2015 raised an objection for change of location and represented to the Survey of India that the distance between the new sugar factory and existing sugar factory is less than 25 KM and same is not in tune with the 2011 notification requiring distance of 25 KM to be maintained between the new sugar factory and existing sugar factory.

13. It is further submitted that, reliance of the respondent on the press note issued in the year 1997 and 1998 would be of no relevance. Those press notes were before the Statute was introduced. In the year 2006 provisions were incorporated in the Order, 1966 governing the IEM. As the Statute does not provide for change of location, the press note not in confirmity with the statute would not apply. At any rate till 08.09.2015 no steps were taken by the respondent sugar factory in view of the report of the Commissioner of Sugar. The report of the Commissioner of Sugar indicates that IEM is obtained fraudulently indicating some land which is not purchased in the name of the sugar factory. The learned senior advocate further contends that, the litigation was pending since 2010 between the parties. No stay was operating at any point of time. Pendency of litigation would not be sufficient for extension of period. Amendments of the year 2016 and 2018 are not made retrospectively applicable and hence back dated extensions granted are totally illegal.

14. Per contra Mr. Sakhare, the learned senior advocate for the respondent/ new sugar factory laculently would submit that, the amendments to the Order, 1966 are clarificatory and procedural in

nature and hence would operate retrospectively. To buttress his submissions, the learned senior Advocate places reliance on the judgments of the Apex Court in the cases of **Nani Gopal Mitra vs. The State of Bihar** reported in **AIR 1970 SC 1636, Sudhir G. Angur and Ors. vs. M. Sanjeev and Ors.** reported in **(2006) 1 SCC 141, State of Bihar and Ors. vs. Ramesh Prasad Verma (Dead) thr. L.Rs.** Reported in **(2017) 5 SCC 665** and **M/s Ojas Industries (P) Ltd Vs. M/s Oudh Sugar Mills Ltd. and others** reported in **(2007) 4 SCC 723.**

15. The extensions granted are valid. There cannot be automatic de-recognization of the IEM. The IEM dated 08.09.2010 was alive. The application for extension of IEM was filed prior to expiry of four years. No order of de-recognition was passed. The bank guarantee was never forfeited. Clause 6-D of the Order, 1966 contemplates personal hearing. As such, no question of automatic de-recognition. Reliance is placed in a case of **Lokshakti Group matters** in Writ Petition No. 135 of 2013. The application for extension of IEM was pending since 16.06.2014. The decision was taken by the authority after clarificatory amendment in the year 2018 and extension orders were passed. In view of Press Note III validity would be considered from the date of final order in Court proceedings or date of decision by the Government authorities. The Court proceedings went on from the year 2010 to 2014 and then from the year 2017 till this date. The

decision of extension was taken in the year 2018 and decision on application for amendment i. e. change of location is taken in the year 2020. Therefore, IEM could not be said to be de-recognized and more particularly when litigation between the parties was pending and also applications to the Government for extension of IEM were pending and under consideration. The performance guarantee of One crore was extended from time to time. The orders granting extension are not challenged.

16. It is further submitted by Mr. Sakhare, the learned senior Advocate that change in location is necessitated due to environmental laws and also the irrigation NOC was refused. The change in location is within the same taluka and same group gram pachayat. The amendment to IEM qua location is permissible as per Press Note III read with Press Note No. IV with Press Note of the year 1998. The amendment in IEM does not amount to fresh IEM. Reliance is placed by the learned Senior Advocate on the judgment of this Court in a case of **Khandoba Prasanna Sakhar Karkhana Ltd. Vs. Union of India & Ors.** reported in **2011 (5) Bom.C.R. 104.** In the said case also it is held that, change in location was permissible and the amendment to the IEM qua location would be retrospective viz from the date of IEM. The IEM is dated 08.09.2010, as such criteria of 25 KM distance is not applicable. The respondent No. 7 is not a new sugar factory, but will have to be considered as existing sugar

factory because all steps were taken. Substantial investment has been made. Expenses of about Rs. 34.23 crores were incurred. The funds to the tune of Rs. 75 crores were mobilized and the civil work of the factory to the extent of 85% is complete. The order is placed for plant and machinery against the bank guarantee of Rs. 15 crores and letter of credit of Rs. 05 crores.

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

18. The matter would revolve around interpretation of Clause 6-C of the Order, 1966.

19. Undisputedly the petitioner is an existing sugar factory. It is functioning since the year 1973. From the material on record, it is manifest that, the IEM of respondent/new sugar factory is acknowledged on 08.09.2010 after obtaining aerial distance certificate. The acknowledgment of IEM is as per Clause 6-B of the Order, 1966. Clause 6-C of the Order, 1966 mandates the time within which the new sugar factory shall take effective steps and start commercial production. The stipulated time for taking effective steps shall be two years and commercial production shall commence within four years with effect from the date of filing the Industrial Entrepreneur Memorandum with the Central Government.

20. Clause 6-C of the Order, 1966 provides for further consequences upon failure to take effective steps within two years and commencement of

commercial production within four years. The consequences contemplated under Clause 6-C of the Order, 1966 are de-recognition of the IEM and forfeiture of the performance guarantee. Proviso to Clause 6-C of the Order, 1966 gives discretion to the Chief Director (Sugar) to grant extension of one year not exceeding six months at a time for implementing the Industrial Entrepreneur Memorandum and commencement of commercial production thereof.

Clause 6-D of the Order, 1966 clarifies that, the performance guarantee furnished for its implementation shall be forfeited after giving the concerned person a reasonable opportunity of being heard.

21. Under Explanation 4 to Clause 6-A of the Order, 1966, the "effective steps" are clarified and explained. Effective steps as detailed under Explanation 4 of Clause 6-A of the Order, 1966 reads as under :

> *Explanation 4.* - The effective steps shall mean the following steps taken by the concerned person to implement the Industrial Entrepreneur Memorandum for setting up of sugar factory :
>
> (a) purchase of required land in the name of the factory;
>
> (b) placement of firm order for purchase of plant and machinery for the factory and payment of requisite advance or opening of irrevocable letter of credit with suppliers;
>
> (C) commencement of civil work and construction of building for the factory;

(d) sanction of requisite term loans from banks or financial instructions;

(e) any other steps prescribed by the Central Government, in this regard through a notification.

22. The purpose for providing the minimum distance is the necessity and viability of a new sugar factory near the existing sugar factory. The quantity of sugarcane produce may change or that the viability will have to be considered depending upon the existing scenario, so time limit is also prescribed. In 2011 the State Legislature amended the Order, 1966 providing minimum aerial distance between new sugar factory and existing sugar factory as 25 kms, probably because as cluster of sugar factories near each other would not be viable proposition and may affect the survival of existing sugar factory. So today if a new sugar factory is allowed to be established on the terms of IEM of 2010 within the aerial distance of 15/16 kms that would render existing sugar factory unviable and both sugar factories may not be in a position to survive. The public money borrowed from the bank would not be repaid causing erosion of public funds. If fresh IEM is sought in 2011 i.e. after amendment, the minimum aerial distance required from existing sugar factory is 25 kms.

23. Admittedly, within a period of two years from the acknowledgment of IEM the respondent/new sugar factory had not taken effective steps. For four years the new sugar factory had not purchased

the land in the name of factory and nor placed confirmed orders for purchase of plant and machinery, nor the civil work had commenced. None of the steps as contemplated under Explanation 4 of Clause 6-A of the Order, 1966 were under taken by the respondent/sugar factory within four years. Even within five years of IEM, no effective steps were undertaken for purchase of land, muchless start of commercial production. For the first time, change of location was sought by the respondent on 16.06.2014 and the land at the place of changed location was purchased on or about the year 2017.

24. The amendment to Clause 6-C of the Order, 1966 viz extending the maximum time limit to implement Industrial Entrepreneur Memorandum is dated 24th August, 2016. The question would be whether the amendment dated 24th August, 2016 in the Order, 1966 would apply to the IEM of the respondent issued on 08.09.2010. Admittedly up to 24th August, 2016, the respondent existing sugar factory had not purchased the land, nor any construction of civil work had commenced, nor it appears that, confirmed order for purchase of plant and machinery was placed. The civil work and the construction of building of the factory had also not commenced. The respondents are harping on the fact that, the amendment to the Order, 1966 is retrospective. The retrospective operation of the amendment would mean that if IEM is in existence, the amendment would apply, but if the IEM stood

de-recognized before amendment of 24th August, 2016, the amended provisions would not apply to a de-recognized IEM.

25. Clause 6-C of the Order, 1966 is self explanatory. If effective steps are not taken within two years and commercial production does not commence within four years from the date of filing of IEM, the IEM stands de-recognized. Clause 6-D would not apply so far as de-recognition of IEM is concerned. Clause 6-D only provides that the forfeiture of performance guarantee would be after giving reasonable opportunity of being heard. Clause 6-D does not speak about the de-recognition of IEM after opportunity of hearing to the person. Even invoking proviso to Clause 6-C, wherein discretionary powers are given to the Chief Director (Sugar) to grant extension of one year not exceeding six months at a time is held in favour of the respondent/new sugar factory, still the IEM would stand de-recognized on 08/09/2015 and does not survive as on the date of amendment dated 24th August, 2016 whereby the period for taking effective steps and commencing commercial production was extended. The four years as contemplated for commercial production would lapse on 08/09/2014 and maximum one year extension as per the proviso to Clause 6-C would also lapse on 08.09.2015. The amendment extending the time limit for taking effective steps and commencing commercial production is for the first time

introduced on 24th August, 2016.

26. The language of Clause 6-C does not admit of any ambiguity. Upon failure to take effective steps within two years and commence commercial production within four years, the IEM stands de-recognized. Clause 6-C as it stood prior to amendment dated 24.08.2016 gave power to the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs to extend IEM upto maximum of one year on recommendation of the concerned State Government. We do not find the recommendations of the State Government on record. If Commissioner of Sugar, Maharashtra is accepted to represent State Government for recommendation within the meaning of proviso to Clause 6-C of Order, 1966, then under letter dated 18.01.2016, the Commissioner of Sugar, Maharashtra State refused recommendation for extension of IEM and affirmed that respondent New Sugar Factory has not taken effective steps. In the present case no such discretion was exercised and even assuming benefit of extension for one year is granted to respondent sugar factory that lapsed on 08/09/2015. The Authority did not possess jurisdiction to grant extension beyond one year. The provisions as stood before amendment of 24.08.2016 did not provide for extension beyond one year. None of the authorities nor even the Central Government had the authority to grant extension of IEM beyond one year. Once the IEM is not operative and in existence, the amendment on 24/08/2016 even

if held to be retrospective would not enure to the benefit of respondent-new sugar factory. On 24.08.2016, the IEM was a dead letter. No rights would flow from such an IEM inter alia attract amended provision.

27. Clause 6-C providing de-recognition of IEM upon failure to comply the conditions referred to therein is self operative. The consequence of de-recognition of IEM upon failure to take effective steps and commence commercial production within the time stipulated therein is provided in Clause 6-C. When consequence of de-recognition of IEM upon failure to take effective steps and commence commercial production is provided by the Rules, there can be no manner of doubt that the statutory requirement must be interpreted as imperative and mandatory.

28. Once the IEM stands de-recognized by operation of statute and/or Rules question of applicability of amendment would not arise. One cannot infuse a life in a dead person. The IEM stood de-recognized axiomatically upon failure to take effective steps and commence commercial production as per Clause 6-C of the Order, 1966. No separate procedure is prescribed for de-recognition. Reliance on upon failure to take effective steps and commence commercial production 6-D of the Order, 1966 of personal hearing to be given before de-recognition by the respondent appears to be misplaced. The same would be limited to the

forfeiture of performance guarantee. Subsequent extensions granted in the year 2018 would not be of any avail. The extension granted in the year 2018 for the year 2015-2016 is also for the location where the respondent sugar factory had not taken effective steps. It had not even purchased the land at the said location for which extension was granted. On 31.03.2015 also the respondent/new sugar factory replied to the Chief Director (Sugar) that fresh land will have to be identified. It appears that the respondent-new sugar factory purchased the land at the changed location viz Maliwadi Dhumala, Tq. Newasa in the year 2017. The IEM was issued on 08.09.2010. The changed location was not approved by the respondent-authority upto the year 2020. Effective steps were not taken for almost seven years from the date of issuance of IEM in the year 2010. Even as per amendment dated 24th August, 2016 effective steps are required within two years from the date of issuance of IEM and commercial production ought to commence within five years. No effective steps were taken even upto to the year 2017.

29. In the case of **M/s Ojas Industries (P) Ltd Vs. M/s Oudh Sugar Mills Ltd. and others** reported in **AIR 2007 SC 1619**, the Apex Court had observed that, the Sugarcane Control Amendment Order 2006 shall apply retrospectively. It was held to be retrospective for those IEM which were pending. In the present case, the amendment dated 24th August,

2016 extending the period for effective steps and commercial production would apply if the IEM would have been operative. By virtue of operation of upon failure to take effective steps and commence commercial production 6-C of the Order, 1966, IEM stood de-recognized before amendment, no question would arise of applicability of amendment to a de-recognized IEM.

30. The reliance on the Press Notes of the years 1997 and 1998 would not be of any avail to the respondent. The Press Notes were issued when the IEM, the amendment to IEM, the power to grant extension to IEM were not regulated by Legislative provisions. With effect from 10.11.2006, the Sugarcane (Control) Order, 1966 is amended. By exercising power under Section 3 of Essential Commodities Act Clause 6-A to 6-E are introduced governing the IEM, its acknowledgment, de-recognition of IEM, grant of extension and the circumstances for grant of extension. As grant of extension of IEM is governed by Legislative provisions, the Press Notes purportedly issued under executive powers prior to the Legislative provision may not hold the field and would not apply.

31. The Writ Petition was pending from 2010 to 2014 and 2017 onwards, but at no point of time the Court had stayed the IEM, nor had prohibited the respondent-new sugar factory from taking effective steps. Clause 6-C as amended on 24.08.2016 details

the circumstances for extension. One of the circumstance is stay by the Court. Mere pendency of Writ Petition or Court proceeding is not a ground for extension of IEM. The reliance on the judgment of this Court in case of **Grampanchayat Ashti Vs. State of Maharashtra and ors.** in **Writ Petition No.135/2013 and connected writ petitions** dated **16.03.2018** would not enure to the benefit of the respondent/New Sugar Factory. In the said case IEM was acknowledged in favour the party on 25.02.2010. The stay was granted by the Court on 09.04.2013 and was subsequently revived on 14.08.2013. Because of the order of stay the party could not commence construction work. The new sugar factory in the said case was prevented from taking steps by the order of this Court, moreover in the said case report was submitted by the authority that construction work commenced before stay was granted by the Court.

32. The Court observed that change of location would relate back to the date of issuance of IEM. In said case immediately after acknowledgment of IEM on 25.02.2010, on 03.05.2010 intimation was given regarding change of location. In the present case, change of location was sought after four years and same was acceded after ten years of the IEM. At no material point of time the new sugar factory was refrained from taking effective steps. Prohibitory orders were never passed against new sugar factory even for a day.

33. In case of **Khandoba Prasanna Sakhar Karkhana Ltd. Vs. Union of India & Ors.** (supra) it was held that change of location is permissible. In that case the name of village was wrongly named. In the present case, the village mentioned in the IEM is village Warkhed. The location is sought to be changed to village Malewadi Dhumala village. In case of **Khandoba Prasanna Sakhar Karkhana Ltd. Vs. Union of India & Ors.** IEM was issued on 12.10.1998 and change in location was sought on 20.03.2006. The Order, 1966 is amended on 10.11.2006 incorporating Clauses 6-A to 6-E dealing with IEM its extension and de-recognition.

34. It appears that, extensions of IEM to respondent-new sugar factory are granted in casual manner. On 16.06.2014 respondent-new sugar factory filed an application for extension of IEM and change of location. It was apparent that, the petitioner did not possess land at the location for which the IEM was issued, still on 14.11.2018 extension is granted upto 07.09.2016. On 15.11.2018 extension is granted upto 07.09.2017. On 12.04.2019 extension of IEM is granted upto 07.09.2018 and on 09.05.2019 extension is granted upto 07.09.2019. All these extensions are granted at the location where the petitioner had not even purchased the land, nor had taken effective steps till this day. For the first time, amendment for change of location is accepted by the Central Government on

30.09.2020. For the changed location respondent-new sugar factory did not possess IEM till 30.09.2020 i.e. for 10 years from the date of issuance of IEM. Long rope is given to respondent-new sugar factory. Even after 11 years of issuance of IEM commercial production is nowhere in sight.

35. It is pertinent to observe that while granting extension of IEM to the respondent-new sugar factory upto 07.09.2016 under order dated 14.11.2018, the Authority has relied upon Clause 6-C of the Sugarcane (Control) (Amendment) Order dated 12.10.2018. While granting extension upto 07.09.2016 in paragraph 5 of the Order dated 14.11.2018 reference is made to the letters dated 04.01.2018 and 06.11.2018 issued by new sugar factory that the new sugar factory could not undertake effective steps due to the involvement of the Court cases, severe drought condition and reluctance of bank/financial institutions to finance the project. This shows that upto 06.11.2018 effective steps were not undertaken nor construction at the site had begun and while granting extension upto 07.09.2016 reliance is placed on the letters of the new sugar factory dated 04.01.2018 and 06.11.2018. In fact, if the extension is granted upto 07.09.2016, the facts and circumstances as on the date that is upto 07.09.2016 only ought to be considered. Similar and for the same reasons the extension is granted upto 07.09.2017 under order dated 15.11.2018. Same letters are relied. In fact the orders of granting

extension dated 14.11.2018, 15.11.2018 and 12.04.2019 ad-verbatim appear to be same. This would demonstrate that the extensions are granted without application of mind by the Authorities.

36. The respondent-new sugar factory is making capital of the investments made by it. This Court under order dated 27.03.2018 had observed that if the further construction is made, same would be at the risk of the respondent and subject to the decision in the petition. It is also worthwhile to note that under letter dated 04.01.2018 and 06.11.2018 the new sugar factory intimated that it could not undertake effective steps due to involvement of the Court cases, drought condition and reluctance of bank/financial institutions to finance the project. This would demonstrate that even upto November-2018, the respondent has not undertaken any construction work at the site. It is no gain saying on the part of the new sugar factory that, now it has invested in the construction activity. The same cannot be a ground to ignore the extensions granted in violation to the provisions of the Rules and Statute.

37. The learned Senior Advocate for the respondent/new sugar factory challenged the *locus standi* of the petitioner to file the writ petition and assail the I.E.M. issued in favour of the new sugar factory. According to the learned Senior Advocate, the petitioners are rivals in business and cannot maintain the writ petition. The learned

Senior Advocate relied on the judgment of the Apex Court in the case of **Jashbhai Motibhai Desaid Vs. roshan Kumar, Haji Bashir Ahmed and Others** reported in **(1970) 1 SCC 671**, the judgment of the Bombay High Court in the case of **Manju Ramesh Jaiswal Vs. State of Maharashtra and Ors.** in **Writ Petition (L) No.2331 of 2019** and on the judgment in the case of **Khandoba Prasanna Sakhar Karkhana Ltd. Vs. Union of India & Ors.** reported in (**2011) 5 Bombay C R 104** and contends that factory beyond 15 kms would not have locus to challenge on the ground that there would be unhealthy competition or supply of the sugarcane would be adversely affected. The learned Senior Advocate for the petitioner submits that the reliance on the judgment of the Apex Court in a case of **Nagar Rice and Flour Mills and others Vs. N. Teekappa Gowda and Bros. and Others** reported in **1970 (1) SCC 575** would not be applicable in the said case. There was no statutory provision for keeping the minimum distance. In the present case, in view of the amendment in the year 2011 to the Order, 1966 minimum distance of 25 kms has to be maintained and the existing sugar factory of the petitioner is within the statutory distance of 25 kms from the new sugar factory. The learned Senior Advocate for the petitioner submits that, if the license is granted in violation of statutory provision, then the petitioner has locus. The reliance is placed by the learned Senior Advocate on the judgment in the case of **Sai Chaltitra Vs. Commissioner, Meerut Mandal and Ors** reported in

2005(5) All M.R. (SC) 632. Admittedly the distance between the existing sugar factory of the petitioner and the respondent-new factory is less than 25 kms.

38. The new sugar factory was issued with the I.E.M. in the year 2010. At the relevant time minimum distance to be maintained was 15 kms. The distance between the existing sugar factory and the new sugar factory is more than 15 kms. Subsequently, the new sugar factory sought change of location in the year 2014. At the time, the change of location was sought, the minimum distance to be maintained as per the Order, 1966 between existing sugar factory and new sugar factory was mandatorily more than 25 kms. The distance between the petitioner's existing sugar factory and respondent-new sugar factory is less than 25 kms. The IEM stands de-recognized axiomatically upon not taking effective steps within stipulated period. The new sugar factory failed to take effective steps within stipulated period. The members of the sugar factory are the agriculturist of that region. To protect the interest of farmers, the Order, 1966 is amended in 2006 introducing Clause 6-A to 6-E. The stakeholders in the Sugar Factory are the agriculturists/sugarcane growers. The viability of sugar factory is paramount to the interest of agriculturists. It is with said view the Clauses of Order, 1966 provides for time frame to take effective steps, commence commercial production,

maintain minimum aerial distance between existing sugar factory and new sugar factory. If the effective steps are not taken for a long time, then new sugar factory cannot claim right to get extension in perpetuity. The question raised by the petitioner is regarding the violation of the Statutory provisions. In view of the judgment of the Apex Court in the case of **Sai Chaltitra Vs. Commissioner, Meerut Mandal and Ors** (supra) the petitioner would possess the *locus standi* to maintain the present writ petition.

39. Considering all the facts cumulatively, the irresistible conclusion can be drawn that unnecessary indulgence is demonstrated by the authorities in favour of new sugar factory.

40. In view of the foregoing discussions, we hold that the IEM dated 08.09.2010 issued in favour of respondent-new sugar factory viz. Swami Samarth Sugars and Agro Industries Ltd. stands de-recognized and is inoperative. The extensions granted from time to time are also set aside. No right subsists in favour of the new sugar factory pursuant to the IEM dated 08.09.2010. The respondent-Swami Samarth Sugars and Agro Industries Ltd. is refrained from carrying out its work and all further activities pursuant to the IEM dated 08.09.2010.

41. Rule made absolute in above term. No costs.

42. In view of disposal of writ petitions, civil applications stand disposed of.

(SHRIKANT D. KULKARNI) **(S. V. GANGAPURWALA)**
JUDGE **JUDGE**

43. At this stage, the learned counsel for the new sugar factory seeks stay of the operation of the present judgment and order for a period of four (04) weeks from today.

44. The learned counsel for the petitioner opposes the request and submits that this Court under order dated 27.03.2018 had observed that, if the further construction is made, the same shall be at the risk of the respondents and subject to the decision in the petition.

45. Considering the request made by the respondents, the operation of the present judgment is stayed for the period of four (04) weeks from today.

46. Needless to state, further activity would not create equity in favour of the respondents. After lapse of four (04) weeks, the present order granting stay to the operation of the judgment shall axiomatically stand vacated.

(SHRIKANT D. KULKARNI) **(S. V. GANGAPURWALA)**
JUDGE **JUDGE**