

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12607 OF 2022**

Shree Siddheshwar Sahakari Sakhar Karkhana ...Petitioner
Maryadit
Versus
Ministry of Environment, Forest and Climate ...Respondents
Change, Impact Assessment Division, Mantralaya
& Ors

Mr Shriram Kulkarni, *with Pranjal Khatawkar, i/b Sujay S
Palshikar, for the Petitioner.*
Ms Jaya Bagwe, *for Respondents Nos. 3&4.*
Mr PG Sawant, AGP, *for Respondent No.5-State.*
Mr Parag Vyas, *with Karuna Yadav, for Respondent No. 6-UOI.*
Mr Joy S Thakur, *Scientist-II, Environment and Clearance
Department, Representative of Respondent No. 2.*

**CORAM G.S. Patel &
 Gauri Godse, JJ.**
DATED: 20th October 2022

PC:-

1. There is absolutely no urgency to this Petition. The Petitioner is a sugar factory. Axiomatically, this means that it knows well in advance and perhaps several years in advance what the annual crushing season is. The Petitioner had an installed capacity of 2500 “TCD” (‘Tons of Cane per Day’). The applicable regulations are

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that below 5000 TCD an Environment Clearance (“EC”) from the 2nd Respondent, the State Expert Appraisal Committee (“SEAC”), is not required. It is, however, required for a capacity of 5000 TCD or more.

2. On 7th December 2021, this very Petitioner approached this Court in Writ Petition No. 8597 of 2021. Reference was made there to another Writ Petition No. 7877 of 2021. The impugned order of 29th November 2021 by the Maharashtra Pollution Control Board (“MPCB”) in Writ Petition No. 8597 of 2021 had directed a closure of the sugar factory. Contending that the two cases were identical, and that the Petitioner had not been granted a hearing, the Petitioner assailed the shut down or closure notice. The impugned order of 29th November 2021 was set aside with a direction to the competent authority to take an appropriate decision after considering the Petitioner’s reply and affording it to the opportunity of a hearing. This was to be done within eight weeks. The contesting Respondent was at liberty to issue an additional show-cause notice. Finally, the direction of the Division Bench was also that the SEAC (the present 2nd Respondent), would take an expeditious decision on the Petitioner’s proposal for an environment clearance.

3. The Petitioner today challenges before us *inter alia* a 1st September 2022 notice by the MPCB. This has effectively directed that the Petitioner should not resume production activity until it obtains EC and Consent to Operate. This is said to be required (page 99) for its ‘expansion’. The expansion itself is not in dispute. The Petitioner’s own letter of 13th October 2022 to the 2nd

Respondent, (Exhibit “W” page 135) shows that in anticipation of the environment clearance, the Petitioner expanded its TCD capacity from 2500 TCD to 7500 TCD.

4. It is abundantly clear that the present expanded capacity of 7500 TCD *does* require an environment clearance. Nothing is shown to us to indicate that such a condition can be waived or dispensed with. It is also not possible to accept the submission that until the EC is granted, the Petitioner can confine itself to manufacturing and processing activity below 5000 TCD. We are not also shown that the 2nd Respondent or the MPCB have any powers to permit a relaxation.

5. Clearly, therefore two things are required. The first is the EC. Then the MPCB is required to issue a Consent to Operate. The EC from the 2nd Respondent is one of the requirements, but not the only requirement, demanded by the MPCB.

6. As to Mr Kulkarni’s submission that the application for an EC has been pending since 2013, we have nothing to say except that the Petitioner had several opportunities earlier and it cannot come at the last minute, and especially not to seek a waiver of that condition.

7. The Petition has been amended. Mr Kulkarni presses prayer clause (e-1). It reads thus:

“(e-1) that this Hon’ble court be pleased to direct the respondent no. 3 and 4 to decide the application for seeking consent to operate dated 25.05.2022 for crushing season of 2022-23 for 2500 TCD at Exhibit-X and decide the

application for seeking consent to operate dated 06.07.2022 for crushing season of 2022-23 for 2400 TCD at Exhibit-Z without insisting for EC in teeth of clause 5(j) of schedule appended to EC notification dated 14.09.2006 forthwith after hearing the Petitioner.”

8. On a plain reading, we cannot grant such a relief. It would be directly contrary to the statute and the applicable regulations.

9. However, prayer clause (a-1) reads thus:

“(a-1) that this Hon’ble court be pleased to direct the respondent no.1 and 2 to consider the representation dated 13.10.2022 at Exhibit-W in accordance with law and pass the order after hearing the petitioner and communicate its decision as expeditiously as possible preferred within a period of 2 weeks or such time as deemed fit to this Hon’ble court.”

10. We are told by the representative of the 2nd Respondent who is present in Court through learned counsel appearing for the 2nd, 3rd and 4th Respondents that the SEAC is scheduled to meet in the second week of November 2022. We accept the statement that the Petitioner’s application for an EC will be taken up and included in the agenda for that SEAC meeting and the application will be processed as expeditiously as possible and, in any case, before 28th November 2022.

11. It goes without saying that the Petitioner’s application will be considered on merits.

12. In this order we have only dealt with requirement of the mandatory environment clearance and nothing further.

13. Mr Kulkarni does not press prayer clause (a-2) in regard to the MPCB order of 18th September 2022. However, he seeks liberty to adopt appropriate proceedings in accordance with law. Liberty granted.

14. With these directions, the Petition is disposed of. No costs.

(Gauri Godse, J)

(G. S. Patel, J)