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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO. 579 OF 2024

YEDESHWARI AGRO PRODUCTS LTD., THR ITS CHAIRMAN
VERSUS
THE GOVERNMENT OF INDIA THR ITS SECRETARY AND OTHERS
WITH
903 WRIT PETITION NO. 1112 OF 2024

SAHAKAR MAHARSHI SHANKARRAO KOLHE SAHAKARI SAKHAR
KARKHANA LIMITED THROUGH ITS MANAGING DIRECTOR
VERSUS
THE GOVERNMENT OF INDIA THROUGH THE SECRETARY AND
OTHERS
WITH
904 WRIT PETITION NO. 1627 OF 2024

GANGAMAI INDUSTRIES AND CONSTRUCTION LTD THROUGH VICE
VISHNU SHRIPATRAO KHEDEKAR
VERSUS
THE GOVERNMENT OF INDIA THROUGH THE SECRETARY AND
OTHERS
WITH
905 WRIT PETITION NO. 1864 OF 2024

NATURAL SUGAR AND ALLIED INDUSTRIES LTD THROUGH ITS
AUTHORIZED OFFICER ASHOK PRABHUAPPA DAMA
VERSUS
THE GOVERNMENT OF INDIA THROUGH THE SECRETARY AND
OTHERS
WITH
906 CIVIL APPLICATION NO. 1725 OF 2024
IN WP/155/2024

KARMAYOGI ANKUSHRAO TOPE SAMARTH SAHAKARI SAKHAR
KARKHANA LTD.
VERSUS
GOVERNMENT OF INDIA THROUGH THE SECRETARY AND OTHERS

Mr.R.N.Dhorde, Sr.Advocate i/b Mr.S.S.Tope, Mr.V.D.Hon, Sr.Advocate i/b Mr.A.V.Hon, Advocates for the Petitioners in respective Petitions.
Mr.A.B.Girase, Govt.Pleader for the Respondent/State.
Mr.A.G.Talhar, DSGI a/w Mr.S.W.Munde, for the Respondent/Union of India.
Mr.A.P.Bhandari, Advocate for the OMCs'

(CORAM : RAVINDRA V. GHUGE AND
R.M. JOSHI, JJ.)

DATE : FEBRUARY 22, 2024

PER COURT :

1. We have considered the extensive submissions of the learned Senior Advocates, the learned DSGI and the learned Advocates for the appearing parties, yesterday, for several hours. Considering the paucity of time as the Court rose at around 6.30 p.m., we have listed these matters today for dictating orders.

2. On 04.01.2024, while issuing notice, we have passed an extensive order in WP no. 155/2024, considering the contentions of the parties and listing out reasons for granting ad-interim protection by 'Staying' the impugned order dated 07.12.2023. We do not wish to enlarge this order by reproducing the entire order dated 04.01.2024. Suffice it to say, this order being passed today, in view of the filing of

the Civil Applications, is in the backdrop of the order dated 04.01.2024.

3. These Petitioners are before us praying for directions to the Oil Marketing Companies (Hereinafter referred to as OMCs'). In each of these matters, the OMC are the Bharat Petroleum Corporation Limited, the Indian Oil Corporation Limited and Hindustan Petroleum Corporation Limited. The request of the Petitioners is that the ethanol manufactured by the Petitioner/manufacturing factory, was continued by virtue of our order dated 04.01.2024 and should be purchased / the stock should be lifted, by the OMC.

4. There is no dispute between the parties that each of these Petitioners has entered into an agreement with the OMC. The terms of the agreement are to last till 30.04.2025, for a particular ethanol supply year (ESY). By the said agreement, more specifically set out at clause 2(iii) under the notification dated 14.01.2021, interest subvention would be available to only those distilleries which will supply at least 75% of ethanol produced from the added distillation capacity to OMCs' for blending with petrol. Based on this condition, the learned Advocates have canvassed that the OMCs are under an obligation to

receive at least 75% of the manufactured ethanol. In fact, if supply is less than 75%, the manufacturing factory is liable to suffer penalty.

5. The learned Senior Advocate Mr.Dhorde has canvassed on behalf of the Petitioners, that it was the Government of India which was after various sugar factories in the country to set up new distilleries or venture into expansion of existing distilleries to produce ethanol from other feed stocks producing 1G ethanol such as sugar beet, sorghum, cereals etc. The Union of India also promoted conversion of the existing molasses based distilleries (whether attached to sugar mills or standalone distilleries) to dual feed (molasses and grain/or any other feed stock producing 1G Ethanol) and also convert grain based distilleries to dual feed. The Companies were also encouraged to set up grain based distilleries / expand existing grain based distilleries to produce ethanol. However, benefits of interest subvention scheme is to be extended only to those distilleries which are using or will be using drying miling techniques to produce Dry Distillers Grain Soluble (DDGS) and for installing Central Pollution Control Board for achieving Zero Liquid Discharge (ZLD).

6. The learned Senior Advocate further canvassed that the promotion of such distilleries was to such an extent that assistance under the scheme was also offered in terms of clause 2 of the notification dated 14.01.2021, which reads as under :-

“(2) Assistance under the Scheme

(i) Interest subvention @ 6% per annum or 50% of rate of interest charged by banks/National Cooperative Development Corporation (NCDC) Indian Renewable Energy Development Agency Limited (IREDA)/ Non-Banking Financial Companies (NBFCs)/any other financial institutions which are eligible for re-finance from NABARD, whichever is lower, on the loans to be extended by banks/NCDC/IREDA/NBFCs/ any other financial institutions which are eligible for re-finance from NABARD, shall be borne by the Central Government for five years including one year moratorium against the loan availed by project proponents.

(ii) Interest subvention under the scheme shall be provided on loan amount sanctioned and disbursed in respect of each project based on the proposed capacity, limited to the in principle approval by Department of Food and Public Distribution (DFPD).

(iii) Interest subvention would be available to only those distilleries which will supply at least 75% of ethanol produced from the added distillation capacity to OMCs for blending with petrol.

(iv) Assistance shall not be available to sugar mills and distilleries which have availed benefits under any other scheme of Central Government for the same project.

(v) In case of grain based distilleries, interest subvention would be applicable only if they are using or will be using dry milling technique to produce DDGS.”

7. In view of the above submissions, the OMCs’ have vehemently opposed any further relief to be granted by this Court. Each one of the OMC have filed their affidavits in reply in the lead Writ Petition, to be considered in all the matters. Contention is that the revised quantity of supply of ethanol has been conveyed to the Petitioners’ factories through e-mails and they have been informed that they would have to supply as per the new norms and as per the quantity that is prescribed. It is further pleaded that in matters of contractual agreements, this Court should not issue directions to the OMCs to accept the entire production of the Petitioners.

8. 3 statements pertaining to the 3 OMCs are tendered before us, which are collectively marked as ‘X-1’ for identification. We see from the said chart that the original contracted quantity (In kilo liters) are much higher than the revised quantity. The difference is approximately 50%. However, we have also noted that the actual quantity received until 21.02.2024, from the Petitioners is hardly 30%

of the original contracted quantity and 2/3rd of the revised quantity. These charts are indicative of a uniform policy adopted by the OMCs under instructions of the Union of India to maintain around 40% to 50% of the original contracted quantity, as the revised quantity.

9. The learned Senior Advocate has relied upon certain orders passed by the Karnataka High Court wherein the manufactured quantity was directed to be received by the OMCs.

10. Mr.Bhandari, the learned Advocate representing the OMCs submits on instructions that the OMCs' are opposing even the maintainability of this Petition. According to the OMCs, a plain and simple contractual arrangement exists between the parties. If there is any violation of the contractual terms, the Petitioners will have to move the Arbitrator as is provided in the agreement or the appropriate Civil Court for seeking appropriate reliefs. It is further pointed out through the affidavits filed that there is an arbitration clause and the Petitioners deserve to be relegated to the Arbitrator.

11. The present situation before us and the circumstances

emerging from the record indicate that on the one hand, the ethanol manufacturing factories are proceeding with their production activities, and on the other hand, the OMCs' are under a mandate of the Union of India to receive only the revised quantity and not the original contracted quantity. So also, the issue of maintainability of the Petitions has been raised, which will have to be considered by this Court.

12. However, the emergent situation is, as stated by the learned Senior Advocates Mr.Dhorde and Mr.Hon that, the tankers filled with ethanol to be supplied to the OMCs, are now parked before the factories. The stocks/tankers are to be protected and the OMCs' are not willing to accept the stock beyond the revised quantities. The liquid is susceptible to fire as it is inflammable. Leakage in even a single tanker will lead to disastrous consequences. Per contra, the OMCs have huge storage capacities and they be ordered to receive the entire manufactured quantity of ethanol. We are of the view that equities will have to be balanced while keeping in focus the revised quantity norms settled by the OMCs.

13. Mr.Bhandari is right in submitting that the dispute between

the parties as on date, on account of the impugned order dated 07.12.2023 issued by the Union of India, is of purely contractual nature with an arbitration clause. However, the worrisome factor is as to whether the Petitioners could be relegated at this stage to a statutory remedy, as time is ticking with regard to their ethanol stocks that have been filled into the tankers. Some matters have been entertained by the Bombay High Court as well as by the Karnataka High Court, while the manufacturing of ethanol is still going on. The present situation will have to be tided over by passing an equitable order.

14. Having duly considered the submissions of the litigating parties and taking into account the factors placed before us, we direct that until the date when the revised quantity was conveyed by the OMCs to the manufacturing companies, 75% of the originally contracted quantity shall be received by the OMCs'. From the date the revised quantity norms were communicated, the Petitioners are at liberty to supply 100% of the revised quantity and the OMCs would receive the same the revised quantity, even today, is almost 40% to 50% more than the actual quantity supplied by these Petitioners to the OMCs prior to the impugned order dated 07.12.2023.

15. The learned Advocate for the OMCs submits that the revised quantity norms were conveyed to the Petitioners in the last week of December 2023. Until then, whatever has been supplied by the Manufacturers considering the original contracted quantity, has already been received by the OMCs. It shall, therefore, be noted that from the date of the communication of the revised quantity, the ethanol manufactured by these Petitioners will be received by the OMCs up to the revised quantity norms.

16. The earlier direction of this Court, by which the Petitioners were under a mandate to maintain date-wise inventory of the ethanol manufactured, would continue and they would have to file their returns in this Court as per the directions of this Court, as well as deliver copies to the OMCs.

17. With the above directions, **the Civil Application No.1725/2024 stands disposed off.** These directions would apply to all the Petitioners who have filed such similar Writ Petitions before us and including those who have not filed Civil Applications

18. Since this order has been dictated in open Court, Parties shall act upon the same without waiting for uploading the order on the official website of this Court.

(R.M.JOSHI, J.)

(RAVINDRA V. GHUGE, J.)