



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

WRIT PETITION NO.2274 OF 2023 (GM-RES)

C/W

WRIT PETITION NO.16674 OF 2023 (GM-RES)

IN WP NO.2274 OF 2023

BETWEEN:

M/S. SHARADA SUGARS PVT. LTD.
HAVING OFFICE AT NO.301
SAPTEGRUHA APARTMENT
2ND FLOOR, 16TH CROSS
SAMPIGE ROAD
MALLESHWARAM
BENGALURU - 560003.
REPRESENTED BY ITS
DIRECTOR & AUTHORISED SIGNATORY
SRI. PARAKASH BELAGALLI
AGED ABOUT 43 YEARS.

....PETITIONER

(BY SRI. K.G. RAGHAVAN, SENIOR ADVOCATE FOR
SRI. SWAROOP SRINIVAS, ADVOCATE)

AND

1. THE STATE OF KARNATAKA
BY DEPARTMENT OF SUGAR
VIDHANA SOUDHA
BENGALURU - 560001
REPRESENTED BY ITS SECRETARY.



2. THE CHIEF DIRECTOR (SUGAR)
GOVERNMENT OF INDIA
MINISTRY OF CONSUMERS AFFAIRS
FOOD AND PUBLIC DISTRIBUTION
DIRECTORATE OF SUGAR
KRISHI BHAVAN
NEW DELHI - 110 001.
3. THE COMMISSIONER OF CANE
DEVELOPMENT & DIRECTOR OF SUGAR
5TH FLOOR, 'F' BLOCK, CBAB COMPLEX
KHB BUILDING, CAUVERY BHAVAN
K.G. ROAD,
BENGALURU - 560009.
4. M/S. NADAHALLI ETHANOL AND ALLIED INDUSTRIES LTD
HAVING OFFICE AT
DASOHA NILAYA
VIJAYAPURA ROAD
MUDDEVIHAL
VIJAYAPURA - 586 212.
REPRESENTED BY ITS
MANAGING DIRECTOR
SRI. A.S. PATIL.

...RESPONDENTS

(BY SRI. MAHANTESH SHETTAR, AGA FOR R1 AND R3;
SRI. UDAY HOLLA, SENIOR ADVOCATE FOR
SRI. R.B. SADASIVAPPA, ADVOCATE FOR R4;
SRI. ARAVIND KAMATH, ASG A/W
SRI. B.M. KUSHALAPPA, CGC FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE
THE ORDER DATED 21.09.2022 IN FILE NO.DSK/LGL/01/2021
PASSED BY REPRESENTED NO.3 AT ANNEXURE-A AS THE SAME
IS ARBITRARY AND WITHOUT AUTHORITY OF LAW; AND ETC.



NC: 2025:KHC:43575
WP No. 2274 of 2023
C/W WP No. 16674 of 2023

IN WP NO.16674 OF 2023

BETWEEN:

M/S. SHARADA SUGARS PVT. LTD.
HAVING OFFICE AT NO.301
SAPTEGRUHA APARTMENT
2ND FLOOR, 16TH CROSS
SAMPIGE ROAD
MALLESHWARAM
BENGALURU - 560003.
REPRESENTED BY ITS
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SRI. PARAKASH BELAGALLI
AGED ABOUT 43 YEARS.

....PETITIONER

(BY SRI.K.G. RAGHAVAN, SENIOR ADVOCATE FOR
SRI. SWAROOP SRINIVAS, ADVOCATE)

AND

1. UNION OF INDIA
BY DEPARTMENT FOR PROMOTION
OF INDUSTRY AND INTERNAL TRADE
INDUSTRIAL ENTREPRENEURS
MEMORANDUM SECTION
VANIJYA BHAVAN
NEW DELHI - 110 011
REPRESENTED BY ITS SECRETARY.
2. THE STATE OF KARNATAKA
BY DEPARTMENT OF SUGAR
VIDHANA SOUDHA
BENGALURU - 560001
REPRESENTED BY ITS SECRETARY.



HC-KAR

3. THE CHIEF DIRECTOR (SUGAR)
GOVERNMENT OF INDIA
MINISTRY OF CONSUMERS AFFAIRS
FOOD AND PUBLIC DISTRIBUTION
DIRECTORATE OF SUGAR
KRISHI BHAVAN
NEW DELHI - 110 001.
4. THE COMMISSIONER OF CANE
DEVELOPMENT & DIRECTOR OF SUGAR
5TH FLOOR, 'F' BLOCK, CBAB COMPLEX
KHB BUILDING, CAUVERY BHAVAN
K.G. ROAD,
BENGALURU - 560009.
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VIJAYAPURA ROAD
MUDDEVIHAL
VIJAYAPURA - 586 212.
REPRESENTED BY ITS
MANAGING DIRECTOR
SRI. A.S. PATIL.

...RESPONDENTS

(BY SRI. MAHANTESH SHETTAR, AGA FOR R1 AND R3;
SRI. UDAY HOLLA, SENIOR ADVOCATE FOR
SRI. R.B. SADASIVAPPA, ADVOCATE FOR R4;
SRI. ARAVIND KAMATH, ASG A/W
SRI. B.M. KUSHALAPPA, CGC FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE
THE DISTANCE CERTIFICATE DATED 09.08.2021 BEARING
No.DSK/MK/HCGP/14/2020-21/283 ISSUED BY RESPONDENT
NO.4 IN FAVOUR OF RESPONDENT NO.5 FOR ESTABLISHMENT OF
SUGAR FACTORY IN BASARKOD VILLAGE, MUDDEBIHAL TALUK,



NC: 2025:KHC:43575
WP No. 2274 of 2023
C/W WP No. 16674 of 2023

VIJAYAPURA DISTRICT. AS HIGHLY ARBITRARY, ILLEGAL AND WITHOUT AUTHORITY OF LAW AT ANNEXURE-A; AND ETC.

THESE WRIT PETITIONS HAVING BEEN RESERVED FOR ORDERS, COMING FOR PRONOUNCEMENT THIS DAY, **E.S. INDIRESH J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE E.S. INDIRESH

CAV ORDER

In W.P.No.2274 of 2023, the petitioner-Company is assailing the order dated 21.09.2022 (Annexure-A) passed by the respondent No.3, order dated 23.03.2022 (Annexure-AA) passed by the respondent No.2, communication dated 21.02.2024, issued by the respondent No.2, *inter-alia* sought for direction to the respondent No.3, to issue Distance Certificate to the petitioner-Company by considering the representation dated 02.01.2019 (Annexure-B).

2. In W.P.No.16674 of 2023, the petitioner-Company is assailing the Distance Certificate dated 09.08.2021 (Annexure-A) issued by the respondent



No.4 in favour of respondent No.5, order dated 25.10.2021 passed by the respondent No.4, in favour of respondent No.5 (Annexure-B), order dated 30.06.2021 (Annexure-C) passed by the respondent No.1, IEM (hereinafter referred to as 'IEM') dated 10.12.2021 (Annexure-D) issued by the respondent No.1 in favour of the respondent No.5, order dated 23.03.2022 (Annexure-E) passed by the respondent No.3 *inter-alia* sought for direction to the respondent No.5, to obtain fresh Distance Certificate as per Annexure-F and further sought for direction to the respondent No.4 not to issue Distance Certificate to any other person as per Annexure-F.

3. Since the question of law involved in these writ petitions are common with regard to the issuance of Distance Certificate in favour of the rival sugar factory-M/s. Nadahalli Ethanol and Allied Industries Ltd., the petitions were clubbed, heard together and disposed of



by this common order, by consent of the learned counsel appearing for the parties.

4. For the sake of convenience, the rank of the parties are referred to as per their status and ranking in W.P.No.2274 of 2023.

Facts of the case:

5. In W.P.No.2274 of 2023, the petitioner-Company, was incorporated for the purpose of establishment of Sugar Factory and for carrying out other allied activities. The petitioner-Company had proposed to establish a Sugar Factory at Kodaganur Village, Basavana Bagewadi Taluk, Vijayapura District. In this regard, the petitioner-Company has made an application to the State Government, seeking issuance of Distance Certificate as required under the provisions of Sugarcane (Control) Order, 1966 (hereinafter referred to as 'SCO, 1966'). In furtherance of the same,



the closest Sugar Factory from the proposed area of establishment by the petitioner, situate at the distance of 16.7 kms (Annexure-D) and as such, the petitioner-Company was issued with IEM dated 13.08.2010 (Annexure-F in W.P.No. 16674 of 2023).

6. The petitioner-Company in compliance with the statutory requirement had issued a Bank Guarantee for sum of Rs.1 Crore, in favour of respondent No.2 and same was extended periodically. It is further stated that, the respondent No.2, by order dated 20.12.2018, (Annexure-J), derecognised the IEM issued in favour of petitioner and the Bank Guarantee was forfeited. Being aggrieved by the same, the petitioner-Company has preferred W.P.No.440 of 2019 before this Court and this Court vide order dated 14.08.2019, (Annexure-L), allowed the writ petition by quashing the order dated 20.12.2018 (Annexure-J) passed by the respondent No.2 (Government of India) and directed the



respondents therein to re-consider the case of the petitioner-Company as per the notification dated 24.08.2016. It is contended by the petitioner-Company that, no date has been fixed by the respondents to hear the application/representation, as per Annexure-M to M4. In the meanwhile, the respondent No.4 (M/s. Nadahalli Ethanol and Allied Industries Ltd.), had applied for issuance of Distance Certificate to establish a new Sugar Factory, and in this regard, the petitioner-Company has addressed letter dated 03.11.2020 (Annexure-N) to the respondent No.3 to comply with the order dated 14.08.2019 in W.P.No.440 of 2019. It is further contended in W.P.No.2274 of 2023 that, respondent No.3, by order dated 09.08.2021, (Annexure-W) issued Distance Certificate to the respondent No.4, by relying on the distance furnished by Karnataka Geo-Spatial Data Centre, Survey of India, Bangalore. It is the contention of the petitioner-



Company that, as the respondents have already issued IEM in favour of the petitioner-Company to set up Sugar Factory, and as such, there is no necessity for the respondents to issue IEM to the respondent No.4, to set up new Sugar Factory within the vicinity of 15 kms from the proposed place of Sugar Factory by the petitioner-Company and as such, the petitioner has made a representation dated 02.01.2019 (Annexure-B) to the respondent-Government. In view of not taking further action in the matter, by the respondents, the petitioner-Company has filed W.P.No.2413 of 2021 before this Court, and this Court by order dated 29.06.2022 (Annexure-AB), directed the respondent-authorities to consider the grievance of both, the petitioner-Company and respondent No.4, in accordance with law. Pursuant to the same, the respondent No.2, has passed impugned order dated 21.09.2022 (Annexure-A) rejecting the claim made by the petitioner-Company,



and permitted the respondent No.4, to take further steps for establishment of new Sugar Factory. Being aggrieved by the same, the petitioner-Company has presented W.P.No.2274 of 2023.

7. In W.P.No.16674 of 2023, the petitioner-Company has challenged the Distance Certificate dated 09.08.2021 issued in favour of the respondent No.5 herein, for establishment of new Sugar Factory at Basarkod Village, Muddebihal Taluk, Vijayapura District, as per Annexure-A and B. The petitioner-Company is also assailing the IEM, dated 30.06.2021 and 10.12.2021 issued by respondent No.1, in favour of respondent No.5 herein, (Annexure-C and D), as well as accepting the Bank Guarantee furnished by the respondent No.5 herein, (Annexure-E). Hence, being aggrieved by the inaction on the part of the respondent-authorities for having not considered the claim made by the petitioner-Company to set up new Sugar Factory,



and on the other hand, the action of the respondent-authorities, according permission to the respondent No.5 to set up new Sugar Factory as well as issuance of IEM, the petitioner-Company has presented W.P.No.16674 of 2023.

8. I have heard learned Senior Counsel, Sri. K.G. Raghavan, appearing on behalf of the learned counsel, Sri. Swaroop Srinivas for the petitioner- Company in both writ petitions; Sri. Uday Holla, learned Senior Counsel appearing on behalf of learned counsel, Sri. R.B. Sadasivappa, for the respondent- M/s Nadahalli Ethanol and Allied Industries Ltd in both the petitions; Sri. Arvind Kamath, learned ASG along with Sri. B.M. Kushalappa, learned CGC for the respondent-Union of India and Sri. Mahantesh Shettar, learned Additional Government Advocate for the respondent-State.



9. Sri. K. G. Raghavan, learned Senior Counsel appearing for the petitioner-Company referred to the judgment of this Court in W.P.No.440 of 2019 (Annexure-L) and contended that, this Court by order dated 14.08.2019, set aside the order dated 20.12.2018 and further the respondent-competent authority was directed to re-consider the case of the petitioner afresh in the light of the SCO, 1966, particularly, with reference to Clause 6C of Sugarcane (Control) (amendment) Order, 2016 by passing a speaking order. It is further argued that, interim order granted by this Court shall enure to the benefit of the petitioner-Company till the conclusion of the proceedings before the respondent-competent authority and therefore, the action of the respondents accepting the IEM and according permission to the rival Sugar Factory i.e. respondent-M/s. Nadahalli Ethanol and Allied Industries Ltd., to set up new Sugar Factory is incorrect and liable



to be set aside. It is further argued by the learned Senior Counsel that, the order dated 20.12.2018, derecognising the petitioner-Company was contrary to law and as such, this Court set aside the same and remanded the matter to the respondent -competent authority for fresh consideration. Emphasising on these aspects, learned Senior Counsel for the petitioner-Company invited the attention to paragraph 19 of the impugned order produced at Annexure- A, and argued that, the finding recorded by the respondent No.3, is contrary to the tenor of the order passed in W.P.No.440 of 2019 and therefore, it is contended that, the impugned order at Annexure-A, is unsustainable in law and extraneous consideration has been made by respondent No.3 while passing the impugned order and therefore, sought for interference of this Court.



10. It is further argued by the learned Senior Counsel for the petitioner-Company by referring to the order dated 29.06.2022, in W.P.No.2413 of 2021, (Annexure-AB) that, this court, directed the respondent-Commissioner therein to consider the representation dated 02.01.2019 made by the petitioner-Company, and the representation /objection filed by the rival industry-M/s. Nadahalli Ethanol and Allied Industries Ltd., and to pass appropriate orders, and in this regard, the reasons assigned by the respondent No.3, is contrary to Clause 6C of the Sugarcane (Control) (Amendment) Order, 2016 and accordingly, sought for interference of this Court. By referring to the impugned order, it is argued by the learned Senior Counsel that, this Court has already quashed the order dated 20.12.2018 (Annexure-J), in W.P.No.440 of 2019 and therefore, there was no occasion for the respondent-authorities to quash the same thereafter and as such, it is contended



that, there is a non-application of mind by the respondent No.3. It is further argued by the learned Senior Counsel for the petitioner-Company that the petitioner-Company herein has intended to put up Sugar Factory and in furtherance of the same, the respondent-authorities have issued Distance Certificate as per Annexure-D, way back in the year 2010 and thereafter, though IEM was issued in favour of petitioner as per Annexure-F, and further the petitioner has complied with the conditions stipulated by furnishing the requisite Bank Guarantee as per Annexure-G, and same was extended periodically and therefore, derecognising the IEM by the respondent No.3, as per Annexure-A, is contrary to the order passed by this Court referred above as well as Clause 6C of Sugarcane (Control) (Amendment) Order, 2016 and accordingly, sought for setting aside the impugned order.



11. It is further argued by the learned Senior Counsel for the petitioner-Company that, though the petitioner-Company has approached the respondent No.3, in compliance of the order passed by this court in W.P.No.440 of 2019, however, during the interregnum period, the respondent No.3, has eagerly issued IEM in favour of respondent No.4, which makes it clear that the respondents have acted arbitrarily and therefore, sought for interference of this Court. Further, Sri. K.G. Raghavan, learned Senior Counsel for the petitioner-Company places the reliance on the judgment of the Hon'ble Supreme Court in the case of **Swamy Samarth Sugars and Agro Industries Ltd., vs. Loknete Marutrao Ghule Patil Dnyaneshwar Sahakari Sakhar Karkhana Ltd., and Others** reported in **(2022) 14 SCC 1**. By referring to paragraph 56 of the said judgment, it is argued that, there is no automatic



lapsing of IEM and as such, sought for setting aside the impugned order at Annexure-A.

12. Per contra, Sri. Uday Holla, learned Senior Counsel for the respondent- M/s. Nadahalli Ethanol and Allied Industries Ltd., and Sri. Arvind Kamath, learned ASG appearing for respondent-Union of India, brought to the notice of the court with regard to Communication dated 21.02.2024 and contented that, the respondent-competent authority has derecognised the IEM of the petitioner-Company and therefore, sought for dismissal of the writ petitions.

13. It is further argued by learned ASG that, as per the order passed by this Court in W.P.No.440 of 2019, personal hearing was held on 15.01.2021, in which, the representative of the petitioner-Company, had appeared for the meeting and fair opportunity has been extended to the petitioner-Company and also



during the personal hearing, the petitioner was directed to furnish the additional Bank Guarantee of Rs.50 lakhs for extension of their IEM and the said commitment was not met by the petitioner-Company and therefore, sought for dismissal of the writ petitions. In this regard, learned ASG refers to order dated 30.12.2020 (Annexure-R3 in W.P.No.2274 of 2023) and contended that since the petitioner-Company has not complied with the statutory provisions and therefore, sought for dismissal of the writ petitions. It is also argued by the learned ASG that, the draft of minutes of the meeting dated 15.01.2021 was prepared however, same was not communicated to the petitioner and therefore, it is contended by learned ASG that as the representative of the petitioner-Company was presented in the personal hearing extended pursuant to the order passed by this court and involved in the deliberation with regard to setting up of new Sugar Factory and further, the draft of



minutes of meeting was prepared at the instance of representative of the petitioner-Company and as such, the impugned order at Annexure- A requires to be confirmed.

14. Sri. Uday Holla, learned Senior Counsel appearing for the respondent-M/s. Nadahalli Ethanol and Allied Industries Ltd., invited the attention of the court to the order passed by this court in W.P.No.440 of 2019, and in W.P.No.2413 of 2021, and argued that, though the petitioner-Company has made an application, for establishment of new Sugar Factory during the year, 2010, till date no efforts have been made by the petitioner-Company to establish the Sugar Factory and that apart, such inaction on the part of the petitioner-Company would jeopardise the sugar cane growers in Vijayapura District and in this regard, learned Senior Counsel appearing for respondent- M/s. Nadahalli Ethanol and Allied Industries Ltd., refers to the finding



recorded by the respondent No.3 in paragraph 21 to 25 of the impugned order at Annexure-A and argued that, the respondent No.3 has arrived at a conclusion that, the petitioner-Company has failed to fulfil its objective for which the IEM was granted for more than a decade ago and as a party to cause damage to the rural economy for more than 15 years and the said aspect has been considered by the respondent No.3 and therefore, sought for dismissal of the writ petitions. It is further argued by Sri. Uday Holla, learned Senior Counsel appearing for the respondent- M/s. Nadahalli Ethanol and Allied Industries Ltd., that since, the petitioner-Company has not furnished the Bank Guarantee for additional sum of Rs. 50 lakhs as required under Clause 3 and 6C of the Sugarcane (Control) (Amendment) Order, 2016, the writ petitions itself are not maintainable.



15. It is further argued by Sri. Udaya Holla, learned Senior Counsel appearing for respondent-M/s. Nadahalli Ethanol and Allied Industries Ltd. that, the respondent-authorities having taken note of the interest shown by the respondent No.4 to set up new Sugar Factory, have issued Distance Certificate in favour of respondent No.4, as per Annexures-W and Y and further, the Central Government has issued IEM in favour of respondent No.4 as per Annexure-Z to the writ petition. By referring to the order dated 23.03.2022, (Annexure-AA), it is argued that the Central Government having accorded permission for setting up the Sugar Factory to the respondent No.4, with a direction to take effective steps within a period of three years, and to commence production within a period of five years from the date of issuance of IEM, the respondent No.4 had taken steps in this regard and accordingly, sought for dismissal of the writ petitions. In



order to counter the submission of the learned Senior Counsel for the petitioner-Company, Sri. Uday Holla, learned Senior Counsel for respondent No.4- M/s. Nadahalli Ethanol and Allied Industries Ltd., argued that, SCO, 1966 itself stipulates that IEM could be extended up to 7 years only from the date of its issuance and as the said IEM issued on 13.08.2010 in favour of the petitioner-Company, which came to be expired by end of August 2017 and therefore, learned Senior Counsel for the respondent No.4, supports the finding recorded by the respondent No.3. In order to buttress his arguments as the IEM of the petitioner-Company lapsed automatically, Sri. Uday Holla, learned Senior Counsel appearing for respondent No.4 refers to the judgment of the Hon'ble Supreme Court in the case of ***T.N.Rugmani and Another vs. C. Achutha Menon and Others*** reported in ***1991 Supp. (1) SCC 520*** and argued that, the right of the petitioner is to be considered as on the



date of the filing of the application seeking IEM and not on subsequent events and therefore, the petitions lack bonafides and as such, sought for dismissal of the writ petitions.

16. In the light of the submission made by the learned counsel appearing for the parties, the facts are that the petitioner-Company has made an application seeking, issuance of IEM for the purpose of establishment of a new Sugar Factory at Kodaganur Village, Basavana Bagewadi Taluk, Vijayapura District. The Director of Karnataka Geo-Spatial Data Centre by letter dated 18.06.2010 (Annexure-D) issued Distance Certificate to the petitioner-Company. Pursuant to the same, the respondent-Government forwarded the Distance Certificate issued in favour of the petitioner-Company, to the Government of India as required under Clause 6(A) of the SCO, 1966. The Government of India by its letter dated 13.08.2010 issued IEM, in



favour of petitioner (Annexure-F). The petitioner-Company has furnished the Bank Guarantee to the respondent No.3, on 09.09.2010, as per Annexure-G. It is forthcoming from the recitals in Annexure- G and H that, the Bank Guarantee furnished by the petitioner-Company was extended till 07.03.2020. The Government of India, by its order dated 20.12.2018 (Annexure-J), derecognised the IEM issued in favour of the petitioner-Company and forfeited the Bank Guarantee. Feeling aggrieved by the same, the petitioner-Company has approached this court in W.P.No.440 of 2019 and this Court, by order dated 14.08.2019, set aside the order at Annexure-J, and directed the respondent No.3 to re-consider the case afresh, in the light of the provisions Clause 6C of the Sugarcane (Control) (Amendment) Order, 2016. Paragraphs 5 and 6 of the order passed by this court reads as under:



"5. Learned counsel for the petitioner while inviting the attention of this Court to the notification dated 24.08.2016 submitted that in exercise of powers under Section 3 of the Essential Commodities Act, 1995, Sugarcane (Control) Order was amended, which came into force on 24.08.201. Clause 6C of the amended Sugarcane (Control) Order, 2016 provides that the time limit for setting up of industrial unit including extension in seven years and if the industrial unit could not be set up due to reasons beyond the control of entrepreneur, then the performance guarantee shall be forfeited. It is further submitted that the impugned order be quashed and the competent authority be directed to consider the case of the petitioner in the light of the notification date 20.08.2016. The aforesaid prayer has not been fairly opposed by learned counsel for the respondent.

6. In view of the submissions made and taking into account the fact that while passing the impugned order dated 20.12.2018, the effect and impact of the Sugarcane (Control) (Amendment) Order, 2016 has not been taken into account by the competent authority, the impugned order is hereby quashed and set aside and the competent authority is directed to consider the case of the petitioner afresh in the light of the notification dated 24.08.2016 by which the Sugarcane (Control) Order was amended and in particular, in the light of the provisions of Clause 6C of the Sugarcane (Control) (Amendment) Order, 2016 by a Speaking order within a period of six weeks from today."

(Underlined by me)



17. It is also relevant to extract the separate order dated 25.09.2019 in W.P.No.440 of 2019, which reads as under:

"After hearing learned counsel for the parties, it is directed that in the order dated 14.08.2019 passed in W.P.No.440/2019 in paragraph No.5, the word 'forfeited' shall be read as 'returned'."

This order shall be read in conjunction with the order dated 14.08.2019 passed in W.P.No.440/2019.

Accordingly, I.A.No.3/2019 is disposed of."

(Underlined by me)

18. Pursuant to the same, the petitioner-Company has made an application dated 06.06.2019 (Annexure-K), seeking issuance of Distance Certificate. The respondent No.4, has filed an application on 05.10.2020 seeking issuance of Distance Certificate for establishment of new Sugar Factory, and as such, the petitioner-Company has made representation dated 02.01.2019, to the respondent No.3, and as the said representation was not considered by the competent



authority, the petitioner-Company has filed W.P.No.2413 of 2021 before this Court, and this court vide order dated 29.06.2022 (Annexure- AB), directed the respondent No.3-authority to consider the representation made by the petitioner along with the representation/objection raised by respondent No.4. Perusal of paragraph 3 of the order passed by this court in the above writ petition makes it clear that the respondent No.3-authority has to consider the both the applications/objections filed by the petitioner-Company and respondent No.4 and to pass appropriate orders. Learned Senior Counsel representing the respondent No.4, brought to the notice of the Court in respect of the order dated 23.03.2022, according permission to respondent No.4 to set up new Sugar Factory at Basarkod village, Muddebihal Taluk, Vijayapura District. In the backdrop of these aspects, though the learned Senior Counsel appearing for the petitioner-Company



submitted that, there is no automatic lapsing of the IEM, unless the necessary consequences of de-recognition of IEM are under taken, by the respondent-authorities. In the light of the Scheme of the SCO, 1966, it is relevant to extract, Clause 6A to 6D of the SCO, 1966, which reads as under:

"6-A. Restriction on setting up of two sugar factories within the radius of 15 kms.—*Notwithstanding anything contained in Clause 6, no new sugar factory shall be set up within the radius of 15 kms of any existing sugar factory or another new sugar factory in a State or two or more States:*

Provided that the State Government may with the prior approval of the Central Government, where it considers necessary and expedient in public interest, notify such minimum distance higher than 15 kms or different minimum distances not less than 15 kms for different regions in their respective States.

Explanation 1.—*An existing sugar factory shall mean a sugar factory in operation and shall also include a sugar factory that has taken all effective steps as specified in Explanation 4 to set up a sugar factory but excludes a sugar factory that has not carried out its crushing operations for last five sugar seasons.*

Explanation 2.—*A new sugar factory shall mean a sugar factory, which is not an existing sugar factory, but has filed the Industrial Entrepreneur Memorandum as prescribed by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry in the Central Government and has*



submitted a performance guarantee of rupees one crore to the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution for implementation of the Industrial Entrepreneur Memorandum within the stipulated time or extended time as specified in Clause 6-C.

Explanation 3.—The minimum distance shall be determined as measured by the Survey of India.

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 institutions;
- (e) any other step prescribed by the Central Government, in this regard through a notification.

6-B. Requirements for filing the Industrial Entrepreneur Memorandum.—(1) Before filing the Industrial Entrepreneur Memorandum with the Central Government, the concerned person shall obtain a certificate from the Cane Commissioner or Director (Sugar) or Specified Authority of the concerned State Government that the distance between the site where he proposes to set up sugar factory and adjacent existing



sugar factories and new sugar factories is not less than the minimum distance prescribed by the Central Government or the State Government, as the case may be, and the concerned person shall file the Industrial Entrepreneur Memorandum with the Central Government within one month of issue of such certificate failing which validity of the certificate shall expire.

(2) After filing the Industrial Entrepreneur Memorandum, the concerned person shall submit a performance guarantee of rupees one crore to Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution within thirty days of filing the Industrial Entrepreneur Memorandum as a surety for implementation of the Industrial Entrepreneur Memorandum within the stipulated time or extended time as specified in Clause 6-C failing which Industrial Entrepreneur Memorandum shall stand de-recognized as far as provisions of this Order are concerned.

6-C. Time limit to implement Industrial Entrepreneur Memorandum.—*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, failing which the Industrial Entrepreneur Memorandum shall stand de-recognized as far as provisions of this Order are concerned and the performance guarantee shall be forfeited:*

Provided that the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution on the recommendation of the concerned State Government, may give extension of one year not exceeding six months at a time, the implementing the Industrial Entrepreneur Memorandum and commencement of commercial production thereof.



6-D. Consequences of non-implementation of the provisions laid down in Clauses 6-B and 6-C.—If an Industrial Entrepreneur Memorandum remains unimplemented within the time specified in Clause 6-C, the performance guarantee furnished for its implementation shall be forfeited after giving the concerned person a reasonable opportunity of being heard."

(Underlined by me)

19. Clause 6A of the SCO, 1966, provides that, no new Sugar Factory shall be set up within the radius of 15 km of any existing Sugar Factory. Explanation IV to Clause 6A provides for effective steps shall be taken by the Sugar Factory to implement the IEM. Clause 6B of the SCO, 1966 provides for filing of IEM before the Central Government and permission to be accorded by the Central Government based on the report of the State Government including minimum distance prescribed therein. Clause 6B(2) provides for pre-requisite deposit of Rs. One Crore, with the State Government within 30 days of filing IEM as a security for implementation of IEM. Clause 6C of SCO, 1966



stipulates that, if no steps are taken to commence the production in the Sugar Factory within four years, from the date of filing of IEM, with the Central Government, the IEM shall stand derecognised. Perusal of Clause 6C makes it clear that, the said Clause does not provide for any specific order being made declaring the derecognition of IEM and derecognition of IEM would takes place through operation of law. In this regard, it is relevant to extract paragraphs 85 to 90 in the case of ***M/s. Harsha Sugars Ltd., vs. The Director (Sugar) and others*** in W.P.No.102585 of 2022 disposed of 16.12.2022 which reads as under:

"85. The event which attracts the de-recognition is the failure to commence commercial production of sugar and this is obviously possible only if a sugar factory is established. In fact, even if a sugar factory is half complete or almost complete, the event of de-recognition cannot be avoided and it is automatic. The one and only way to escape de-recognition of the IEM is to ensure commercial production has commenced.

86. To put it in simple terms, the de-recognition of an IEM is an irreversible event and the forfeiture of the performance guarantee would also follow automatically in the normal course.



87. *However, Clause 6-D stipulates that the project prominent is required to be heard before the performance grantee is forfeited. This is obviously because the legislature wanted to afford an opportunity to the project proponent to establish that he had already lost the substantial investments that he had made as a result of the de-recognition of the IEM and he should not be made to suffer a further loss by an order of forfeiture. Thus, a small window of opportunity to prevent further losses by way of forfeiture is granted to the project proponent under Clause 6-D.*

88. It is to be noticed here that there is no provision made for hearing a project proponent before de-recognising the IEM, obviously, because the de-recognition of an IEM is automatic which cannot be avoided if commercial production is not commenced.

89. *However, a forfeiture of the performance guarantee can be avoided if the project proponent is able to establish at the hearing statutorily provided that his failure to implement was for some justifiable reason.*

90. *In this process of considering whether the project proponent deserves the return of the performance guarantee for non implementation of the IEM, the authority cannot entertain a plea for nullifying the de-recognition by granting extensions of time for implementing the IEM."*

(Underlined by me)

20. The entire object of Clause 6A to 6D of the SCO, 1966 embodies that, the Sugar Plant has to be established within the time frame specified therein. In



that view of the matter, though there is no automatic lapsing of IEM, however, if the condition precedent for establishing the factory as mentioned in the aforesaid provisions, are not complied within the time frame of 4 years as contemplated under Clause 6A to 6C of the SCO,1966, then, it has to be held that, there is automatic lapsing of IEM. In this regard, it is relevant to quote the judgment of the Hon'ble Supreme Court in the case of ***M/s. Ojas Industries (P) Ltd., vs. M/s Oudh Sugar Mills Ltd.,*** reported in ***(2007) 4 SCC 723,*** wherein the Hon'ble Supreme Court upheld the validity of amendment to SCO, 1966. The aforementioned judgment was reiterated by the Division Bench of the Bombay High Court in the case of ***Sahyadri Sahakari Sakhar Karkhana Ltd vs. Union of India and Others*** in W.P.No.13816 of 2023 disposed of on 06.06.2025. Paragraph 30 reads as under:



"30. It is next contended that in view of such judicial pronouncement, the expert opinion of the Department of Legal Affairs was sought in the matter 1 Civil Writ Petition No.31199 of 2005, Judgement dated 01.2.2006 was rendered to the effect that since there was no provision to provide the limits in regard to a minimum distance between the two existing or proposed sugar mills in the SCO 1966, the same be amended suitably, and it is in such context the process was initiated to amend the SCO 1966. It is stated that also an order passed by the Supreme Court in M/s. Balrampur Chini Mills Ltd. Vs. Ojas Industries Pvt. Ltd. & Ors.³ wherein the Supreme Court opined that the difficulties highlighted in the context of SCO 1966 are required to be ironed out by the GOI, and it is in such context by an order dated 10 November 2006, GOI brought about the amendments to SCO 1966 by incorporating Clauses 6A to 6E. It is next contended that the Supreme Court in its order dated 2 April 2007 in M/s. Ojas Industries (P) Ltd. Vs. M/s. Oudh Sugar Mills Ltd., & Ors. has upheld the validity of the SCO 2006 Amendment. The following observations of the Supreme Court are highlighted by the Government of India:

"We hold that the Sugarcane (Control) (Amendment) Order, 2006 imposes a bar on the subsequent IEM holders in the matter of setting up of new sugar factories during the stipulated period given to the earlier IEM holders to take effective steps enumerated in Explanation 4 to 6A of Sugarcane (Control) (Amendment) Order, 2006 dated 10.11.2006. We further hold that the said 2006 order operates retrospectively".

".....if the first IEM holder or the earlier IEM holder takes effective steps to implement its IEM then the subsequent IEM holder cannot proceed with his IEM. If the first IEM or earlier IEM holder completes its projects successfully then the



remaining IEMs for that area shall become non est. They shall, however, remain in suspense during stipulated period when the earlier IEM holder takes effective steps for implementing its IEM."

21. Following the aforementioned dictum of the Bombay High Court and the Hon'ble Supreme Court, referred to above, I am of the opinion that, the judgment referred to by the learned Senior Counsel for the petitioner-Company is not applicable to the facts and circumstances of the present case. It is not in dispute that the personal hearing was extended to the representative of the petitioner-Company on 15.01.2021, pursuant to the judgment of this court, in W.P.No.440 of 2019 and W.P.No.2413 of 2021. It is also pertinent to mention herein that, the respondent No.4- M/s. Nadahalli Ethanol and Allied Industries Ltd., has produced the letter dated 31.01.2024 issued by the Karnataka State Pollution Control Board, with regard to efforts made by the respondent No.4 to establish the



New Sugar Factory *inter-alia* acquisition of land for the purpose of setting up of Sugar Factory, reflects the ground work undertaken by the respondent No.4 to establish a new Sugar Factory, which undoubtedly, sofar not done by the petitioner-Company for more than 15 years. It is also forthcoming from the Communication dated 21.02.2024, issued by Central Government/Government of India, wherein, the petitioner-Company was advised to give written submission regarding, furnishing of additional Bank Guarantee of Rs.50 lakhs for extension of IEM, and in this regard, no reply has been given by the petitioner-Company. Though it is argued by the learned ASG that, it is only a draft of minutes of the meeting, however, the said meeting was attended by the representative of the petitioner-Company and same was not disputed by either of the parties and further, even if there is no written communication to the petitioner-Company,



however, the said aspect of the matter was within the knowledge of the petitioner-Company as the representative of the petitioner-Company attended the meeting and therefore, the reasons assigned in the Communication dated 21.02.2024 by the respondent No.2 is to be accepted. It is also pertinent to mention here that the order passed by this Court in W.P.No.440 of 2019 quashing the order dated 20.12.2018 is merged with the order passed by this Court in W.P.No.2413 of 2021 wherein, this Court directed the respondent-competent authority to consider the claim made by both the petitioner and respondent No.4 and take decision in the matter in accordance with law, and therefore, the petitioner-Company cannot claim preference over respondent No.4 with regard to establishment of Sugar Factory and therefore, the arguments advanced by the learned Senior Counsel appearing for the petitioner cannot be accepted.



22. Nextly, on careful consideration of Annexure-A, wherein, the respondent No.3, after considering the entire material on record, as well as the direction issued by this Court, as culled out at paragraph 10 of the impugned order and also taking into consideration the lack of interest on the part of the petitioner-Company to implement in establishing the factory since, 2010, a detailed discussion with regard to the economic viability of the State to provide facilities to the sugarcane farmers who have been, eking out their livelihood in the District of Vijayapura, as per paragraphs 21 to 25, rightly, passed the impugned order dated 21.09.2022, which requires to be confirmed in these petitions. The entire, pleadings and arguments of the petitioner-Company is with regard to establish the Sugar Factory since, 2010 however, same has not been materialised till date and on the other hand, the efforts made by the respondent No.4, to establish factory in the interest of



farmers in the district has been rightly analysed by the respondent No.3 in the impugned order at Annexure-A and therefore, no interference is required in these writ petitions. It is also to be noted from Annexure-AA that, the Central Government passed an order with a direction to the respondent No.4 to take effective steps to establish new Sugar Factory within a period of 3 years and to commence production within a period of 5 years from the date of issuance of IEM and pursuant to the same, respondent No.4 produced the relevant documents and made efforts to establish Sugar Factory in Vijayapura District as stated above. Therefore, I am of the opinion that, the contention raised by the learned Senior Counsel for the petitioner-Company cannot be accepted by considering the scope and ambit of Clause 6A to 6D to SCO, 1966 which mandates on establishment of the proposed Sugar Factory at the earliest possible time to procure sugarcane in the



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locality and therefore, these writ petitions requires to be dismissed as devoid of merits. Accordingly, the writ petitions are ***dismissed***.

**SD/-
(E.S.INDIRESH)
JUDGE**

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