

HIGH COURT OF GUJARAT

ROPA SUGAR & ALLIED INDUSTRIES PVT LTD

Versus

STATE OF GUJARAT

Date of Decision: 09 January 2008

Citation: 2008 LawSuit(Guj) 62

Hon'ble Judges: [D A Mehta](#)

Case Type: Special Civil Application

Case No: 17414 of 2006

Final Decision: Petition dismissed

Advocates: [Hasmukh C Patel](#), [Shivgar P Gosai](#), [Hemang H Parikh](#), [Sunil L Mehta](#), [Nanavati Associates](#), [Tushar Mehta](#)

Cases Referred in (+): 1

[1] The petitioner, a Private Limited Company, has challenged order dated 12.05.2006 rendered by Additional Secretary (Appeals), respondent No.2 with the following prayers :

"[39] The petitioner therefore prays that :

[A] Your Lordships may be pleased to admit this petition.

[B] That by a writ of mandamus and/or by a writ in the nature of mandamus and/or by any other appropriate writ, order or direction, Your Lordships may be pleased to quash and set aside the order dated 12th May, 2006 rendered by the respondent no.2 in revision application filed by the petitioner.

[C] That by a writ of mandamus and/or by a writ in the nature of mandamus and/or by any other appropriate writ, order or direction, directing the respondents no.2 and 3 to grant necessary permission as envisaged by law for establishing a sugar factory as per the proposal of the petitioner.

[D] That by a writ of mandamus and/or by a writ in the nature of mandamus and/or by any other appropriate writ, order or direction, directing the respondent

no.4-Board to grant and/or issue no objection certificate to the petitioner for commencement of the sugar factory.

[E] Pending the admission hearing and final hearing of this writ petition, Your Lordships may be pleased to stay and execution, operation and implementation of the order dated 12th May,2006 rendered by the respondent no.2 in revision application filed by the petitioner and direct the respondents to issue direction to the Gujarat Pollution Control Board to issue No Objection Certificate to the petitioner for commencing the sugar factory.

[F] That ex-parte ad-interim relief in terms of prayer [E] above may kindly be granted and the same may be confirmed after notice to the respondents herein.

[F] Your Lordships may be pleased to grant such other and further reliefs as the nature and circumstances of the case may require.

[G] That the costs of the petition may be provided for."

[2] As required by Government of India the petitioner filed an Industrial Entrepreneur Memorandum (IEM) with the Secretariat for industrial assistance on 30/07/2002 as reflected by acknowledgment No. 1780/SIA/IMO/2002 dated 30/07/2002 (Annexure-B). It is the case of the petitioner that the order made by Director (Sugarcane), Gujarat State was carried in appeal but as the petitioner did not succeed, the petitioner made a representation and pursuant to the directions issued by this Court vide order dated 13/04/2006 in Special Civil Application No. 7818 of 2006 respondent No.2 granted hearing to the petitioner on 10/05/2006.

[3] The case of the petitioner is that Government of India having delicensed Sugarcane Industry as per Press Note No.12 the petitioner was entitled to establish a Sugarcane Crushing Factory without obtaining any licence. That for this purpose the petitioner purchased land and also obtained permission for Non-agricultural use of the said land. The petitioner obtained registration number from the Sales Tax Authorities. By investing about Rs.9 crores and odd the petitioner completed 90% of installation of the factory. That two other factories are located at a distance of 33 Kms. and 69 Kms. from the point at which the petitioner intends to establish the factory, and therefore, even as per guidelines of Government of India vide Press Note No.12, the only requirement is that there should be no existing factory within a minimum distance of 15 Kms. between an existing Sugarcane Mill and a new Mill in exercise of powers under Sugarcane Control Order, 1965. That as the Director had passed the order without hearing, the said order should not be upheld. It was further contended that in the district of Vadodara out of 12 Talukas, 3 Talukas have not been declared to be reserved under the Sugarcane Control Order. It was therefore urged that the impugned order

dated 12/05/2006 made by respondent No.2 authority was required to be quashed and set aside. In support of the submissions strong reliance has been placed on decision of the Apex Court in the case of Ojas Industries (P) Ltd. Vs. Oudh Sugar Mills Ltd. and others (2007) 4 SCC 723 and the learned Advocate read extensively from the said judgment.

[4] The Apex Court decision in the case of Ojas Industries (P) Ltd. (supra) has not only referred to Press Note No.12 on which reliance has been placed by the petitioner but also the Notification issued pursuant to Sugarcane (Control) (Amendment) Order 2006 dated 10.11.2006 and considered the rationale for imposing the requirement of 15 kms. distance between an existing factory and a new unit proposed to be set up. It has been held : "The rationale is that if sugar mills are allowed to be set up in close proximity then the demand of sugarcane will be much higher than supply and in which event the existing sugar mills will be starved of the sugarcane and will become unviable; consequently, the farmers will also suffer". It has further been held that : "Sugarcane is not an unlimited resource. "Distance" stands for available quantity of sugarcane to be supplied by the farmer to the sugar mill" "Raising of resources and application of resources by a unit is different from the condition of distance. The concept of 'distance' is different from the concept of 'setting up of unit' in the sense that setting up of a unit is the main concern of the businessman whereas a concept of 'distance' is an economic concept which has to be taken into account by the Government because it is the Government which has to frame economic policies and which has to take into account factors such as demand and supply".

[5] If the aforesaid legal position is applied to the facts of the case and the impugned order dated 12.05.2006 made by the Revisional Authority is tested not only is there no legal infirmity in the impugned order, but in fact the ratio of the Apex Court decision has been correctly applied after appreciating the facts and evidence on record.

[6] The petitioner has been emphasizing that there are two existing sugar mills viz. (1) Vadodara District Sugarcane Growers Union Ltd. Village Gandhara, Taluika Karjan, District Vadodara, (2) Sardar Co.operative Sugar Industries Limited, Ladhava which are respectively at a distance of 33 kms. and 69 kms., but the Revisoinal Authority has found as a matter of fact that there is a third existing sugar factory i.e. Shri Narmada Khand Udyog Sahakari Mandali at Dharikheda, Post Timbali, Taluka Nandol, District Narmada which is situated at a distance of 13 kms. viz. within the radial distance of 15 kms. This statement of fact has been recorded on the basis of certificate dated 01.10.2005 issued by Executive Engineer, Rajpipla (Road & Buildings). The second finding is that in relation to the three existing sugar factories there is already a gap of demand and supply of sugarcane : (a) in case of Narmada Khand Udyog Sahakari Mandali Ltd. the existing capacity for crushing is 4.50 lac. MT, as against which during

2004-05 the said factory has been able to crush only 3.69 lac MT of sugarcane; (b) in case of Vadodara District Co-operative Sugarcane against capacity of 4.50 lac MT actual crushing is reflecting only 3.77 lac MT; and (c) in case of Sardar Co-operative Sugar Industries Ltd. against existing capacity of 4.50 lac MT only 0.34 MT sugarcane has been crushed. On the basis of the aforesaid figures the authority has recorded a finding that even the existing mills are finding it difficult to obtain the requisite quantum of raw material viz. sugarcane. Thus, according to the authority if any new unit is permitted to be set up within the same area it would create further difficulties and have an adverse impact on the three existing sugarcane mills in the same area.

[7] In light of the aforesaid factual findings, which the petitioner has not been able to dislodge, it is not possible to state that the impugned order suffers from any legal infirmity so as to warrant interference. It is also not a case where the vice of perversity can be made applicable in the facts and circumstances of the case. Hence, it is not possible to accept the petition.

[8] The learned Advocate for the petitioner had during course of hearing strenuously assailed the order made by the Director. It is not necessary to deal with those contentions for the simple reason that the said order made by the Director has no independent existence once the matter has been carried in revision and decided by the Revisional Authority. In fact, as noted at the outset even in the prayer clause the challenge is only to the order dated 12.05.2006 made by the Revisional Authority. The other reliefs prayed for cannot be granted in light of what is stated hereinbefore.

[9] The petition is accordingly rejected. Rule discharged. There shall be no order as to costs.

Sd/-