REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4021 OF 2022
(ARISING OUT OF SLP(CIVIL) NO. 12277 OF 2021)

SWAMI SAMARTH SUGARS AND
AGRO INDUSTRIES LTD. .....APPELLANT(S)

VERSUS

LOKNETE MARUTRAO GHULE PATIL
DNYANESHWAR SAHAKARI SAKHAR
KARKHANA LTD & ORS. .....RESPONDENT(S)

W I T H

CIVIL APPEAL NO. 4022 OF 2022
(ARISING OUT OF SLP(CIVIL) NO. 12578 OF 2021)

A N D

CIVIL APPEAL NO. 4023 OF 2022
(ARISING OUT OF SLP(CIVIL) NO. 12579 OF 2021)

J U D G M E N T

HEMANT GUPTA, J.

1. The present appeals arise out of the three writ petitions which were decided by a common order dated 23.07.2021. Two of the writ petitions were filed by the respondent herein – Loknete Marutrao Ghule Patil Dnyaneshwar Sahakari Sakhar Karkhana Ltd.[1], whereas the third one

1 Existing Sugar Factory

was filed by the members of the existing sugar factory. Since the issue raised in all the three writ petitions was common, therefore, the same was decided by the High Court by a common order.

2. In the writ petitions, direction was sought that the Industrial Entrepreneur Memorandum[2] dated 8.9.2010 be de-recognised/cancelled in view of the provisions of Clause 6C of the Sugarcane (Control) Order, 1966[3]. The challenge was inter alia on the ground that the time limit for a new factory to be set up was 2 years and to commence production was within 4 years (2+4), but the appellant failed to take any effective steps to set up and commence production within such time frame contemplated by the Control Order. Another ground was that the State of Maharashtra had issued a circular on 03.12.2011 under Clause 6A of the Control Order that no sugar factory shall be set up within the radius of 25 kms of any existing sugar factory or any other new factory substituting the provisions that the minimum distance was for 15 kms existing on the date of grant of IEM, therefore, the proposed sugar factory does not meet the norm of 25 kilometers. Finally, it was contended that in the absence of steps for setting up of a sugar factory and commencement of the commercial production, the IEM stands de-recognised by operation of the provision of the Control Order. Therefore, the grant of extensions to set up the sugar factory issued on 14.11.2018 followed by another extension of

2 For short, 'IEM'
3 For short, 'Control Order'

time and to change the location on 17.10.2019 by the Central Government was contrary to the Control Order.

3. The brief facts leading to the present appeals are that the existing sugar factory was set up in the year 1974, claiming to have more than 15000 members with crushing capacity as 1250 M.T. in the year 1974-75 which was increased to 7000 M.T. per day in the year 2014-15. The said sugar factory had also set up a Distillery Plant, Co-generation Plant, Ethanol Plant and enhanced its crushing capacity of 6000 M.T. per day after a fresh IEM was issued on 01.05.2012.

4. The appellant applied for IEM on 08.09.2010, the same was acknowledged by Government of India after Commissioner of Sugar, Maharashtra issued a certificate regarding aerial distance between the existing sugar factory and the nearby proposed sugar factory in Ramdoh (Warkhed), Tehsil- Newasa, District- Ahmednagar. It was reported that aerial distance between the sites of other sugar factories adjacent to the proposed sugar factory at Ramdoh (Warkhed), Tehsil-Newasa, District- Ahmednagar was more than 15 kms. On the basis of such certificate, IEM was acknowledged after the appellant furnished a bank guarantee of the sum of Rs. 1 crore which was to remain in force up to 04.04.2016.

5. However, a writ petition was filed soon thereafter on 23.09.2010, challenging the IEM granted to the appellant on the ground of aerial distance of proposed sugar factory and existing sugar factory. Another

writ petition was filed on 17.03.2011 challenging the IEM on the ground that the proposed sugar factory was not complying with the provisions of Environmental Protection Act, 1986. Both the writ petitions were decided on 27.01.2014 wherein the High Court passed the following order:

> "4. Bare perusal thereof indicates that 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. The proviso has also been inserted in the Control Order to ensure that the restriction on setting up of two sugar factories within the radius of 15 kms is complied with.
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> 5. The petitioners have pointed out, and in all fairness, that a certificate has been issued by the Commissioner of Sugar, Maharashtra State, Pune pointing out that the aerial distance between the sites of other sugar factories, adjacent to respondent No.8 is more than 15 kms.
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> 6. This certificate, dated 17.08.2010, therefore, is in compliance with the requirement in Clause 6-A reproduced above. That is the only aspect with which this Court is concerned so far as the petitioners in this petition are concerned.
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> 7. Now, the Writ petitioners and the PIL petitioners are raising another issue, namely, the proposed sugar factory not complying with the provisions of the Environmental Protection Act, 1986 and it would indicate as to how the same falls within the radius of 500 meters from the bank of river and therefore, it is falling within no development zone and hence it cannot be set up.
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> 8. After hearing the petitioners on this point, merely because Clause 6-A has been complied with, it does not mean that the sugar factory or the proposed sugar factory have not to comply with other laws. They are obliged to comply with the anti-pollution laws in the field and the laws relating to preservation of ecology and environment as well. It is only thereafter and other laws and Rules in the field being complied with that any question arises of these sugar factories becoming functional. For the present, the stand taken in the affidavit by the authorities need

not be probed further. In the event, respondent No.6 carries out construction and development, then needless to clarify that the said respondent will have to comply with all laws including the anti-pollution, environmental protection and ecology.

9. In such circumstances, the petitions need not be kept pending. They are disposed of. However, the issue of aerial distance certificate cannot be reopened at the instance of the petitioner or any other party again."

6. The sugar industry was deleted from the list of industries requiring compulsory licensing under the provisions of the Industries (Development and Regulation) Act, 1951 on 31.08.1998. However, the condition of minimum distance of 15 kms as provided by the Control Order issued under Section 3 of the Essential Commodities Act, 1955[4] was ordered to continue in order to avoid unhealthy competition amongst sugar factories.

7. The Control Order was issued in exercise of the powers conferred under Section 3 of the 1955 Act. Some of the relevant conditions, as amended on 10.11.2006, read thus:

"**6A. Restriction on setting of two sugar factories with in 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 State Government may with the prior approval of the Central Government where it considers necessary and expedient on 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.

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4 1955 Act

Explanation 4: The effective steps shall mean the following steps taken by the concerned person to implement than 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 requisite advanced and opening of irrevocable letter of credit with suppliers.
€ Commencement of civil works and construction of building for the factory.
(d) Sanction of requisite terms loans from bank or financial institutio€(e) Any others steps prescribed by the Central Government in this regard through a notification.

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6C. 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 of Industrial Entrepreneur Memorandum with the Central Government, failing which the Industrial Entrepreneur Memorandum shall stand derecognized 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 & Public Distribution, Ministry of Consumer Affairs, Food & Public Distribution, on the recommendation of the concerned State Government, may give extension of one year not exceeding six months at a time, for implementing the Industrial Entrepreneur Memorandum and commencement of commercial production thereof.

6D. Consequences of non-implementation of the provision laid down in clauses 6B and 6C:-

If an Industrial Entrepreneur Memorandum remains unimplemented within the time specified in clause 6C, the performance guarantee furnished for its implementation shall be forfeited after giving the concerned person a reasonable opportunity of being heard.”

8. The Government of Maharashtra, after approval of the Central Government, directed on 03.12.2011 that in terms of proviso to Clause 6A, no new sugar factory shall be set up within the radius of 25 kms of any existing sugar factory or any other new factory.

9. On 24.08.2016, the Control Order was amended, when Clause 6C was substituted and a proviso was inserted after Clause 6D. Such amendment reads thus:

> "**6C. Time limit for implementing Industrial Entrepreneur Memorandum**- The stipulated time for taking effective steps shall be three years and commercial production shall commence within five 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-recognised as far as provisions of this Order are concerned and the performance guarantee shall be forfeited:
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> Provided that the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution may, after the expiry of the aforesaid period, give extension of maximum two years, not exceeding more than a year at a time, in cases involving delay due to any unforeseen circumstances beyond control, such as natural calamities, drought or non-availability of sugarcane (raw material) during off season in a year wherein the extended validity period terminates, non-financing of sugar sectors, stay on permission for land use by the courts due to environmental or other reason. In all such cases extension shall be granted in consultation with respective State Governments, if necessary, either for taking effective steps or for commencement of sugar production.
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> xxx xxx xxx
>
> **6D.**
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> Provided that the performance guarantee shall be returned if-
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> (i) the commercial production is commenced within the stipulated period of seven years including two years of extension;

(ii) the commercial production is not commenced even after seven years for reasons not attributable to the project proponent and the same is fully established on merit and be recorded in writing;

(iii) the project proponent suomotu, opts to forego its Industrial Entrepreneur Memorandum within two years from the date of its filing and requests for return of performance guarantee with due justification."

10. The Control Order was subsequently amended on 12.08.2018, again substituting Clause 6C which reads as thus:

"**6C. Time limit for implementing Industrial Entrepreneur Memorandum-**

(1) The stipulated time for taking effective steps as specified in explanation 4 to clause 6A shall be three years and the commercial production of sugar shall commence within five years from the date of filing of the industrial entrepreneur memorandum with the Central Government under sub-clause (1) of clause 6B failing which the Industrial Entrepreneur Memorandum shall stand Defendant-recognized as provided in sub-clause (2) thereof, and the performance guarantee furnished thereunder shall be forfeited:

(2) The time limit specified under sub-clause (1) may be extended in the following manner, namely:-

(a) Where the delay is due to any unforeseen circumstances beyond the control of the person concerned such as natural calamities including drought, non-availability of sugarcane (raw material) during off season in the year in which the stipulated period terminates and non-financing of sugar sectors, the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution may, after the expiry of five years' period stipulated under sub-clause (1) extend the period stipulated under sub-clause (1) for a further period of two years, not exceeding more than a year at a time;

Provided that such extension may be granted for taking effective steps or for the commencement of commercial production of sugar, in consultation with the State Government concerned, if considered necessary.

Provided further that in case the commercial production does not commence within such extended period, the bank guarantee furnished under sub-clause (2) of clause 6B shall be forfeited;

(b) Where the delay is due to any court case relating to land use, environment or such other reason, that may have arisen within five year from the date of filing of Industrial Entrepreneur Memorandum, the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution may, after the expiry of five years' period stipulated under sub-clause (1), extend the period stipulated under sub-clause (1) initially for a further period of two years, not exceeding more than a year at a time;

Provided that such extension may be granted for taking effective steps or for the commencement of commercial production of sugar, in consultation with the State Government concerned and the Department of Legal Affairs in the Ministry of Law and Justice, if considered necessary.

(c) in case where such delay due to Court case relating to land use, environment or such other reason, continues beyond the period extended under item (b), the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution may grant extension of such further period, as he deems fit, no exceeding more than a year at a time, subject to furnishing of a bank guarantee of rupees fifty lakhs for each year for which the extension is sought, which shall be in addition to the bank guarantee furnished under sub-clause (2) of clause 6B;

Provided that such extension may be granted for taking effective steps or for the commencement of commercial production of sugar, in consultation with the State Government concerned and the Department of Legal Affairs in the Ministry of Law and Justice, if considered necessary;

Provided further that in case the commercial production does not commence within any such extended period of

> one year, such bank guarantee of rupees fifty lakhs so furnished for that one year of extension shall be forfeited and if commercial production does not commence within any of such extended period, the bank guarantee furnished under sub-clause 6B shall also be forfeited."

11. The appellant sought no-objection certificate on 14.04.2014 in view of the order of the High Court that if the appellant (respondent No.6 in the writ petition) wishes to carry out construction and development, then the appellant would have to comply with all laws, including anti-pollution, environmental protection and ecology but the Godawari Marathwada Irrigation Development Corporation refused to grant no objection certificate on 22.04.2014.

12. Hence, the appellant applied for extension of time and for change of location within the same taluka and same group of gram panchayat due to earlier location being no development zone, as noted by the High Court in its order dated 27.01.2014 that the proposed sugar factory falls within the radius of 500 meters from the bank of river. Such request was submitted on 16.06.2014, soon after the order of the High Court dated 27.1.2014. The appellant sought change of location inter alia on the following grounds:

> "6. ..... I state that as now the G.M.I.D.C. refused to issue N.O.C this undersigned now to take steps to search other land/location as per the earlier I.E.M and within the Aerial Distance Certificate and therefore to take search for another land which complies all the conditions and this undersigned requires more time and therefore, the time as stipulated as per the Sugarcane Control Order needs to be extended and also considering the time spent on all the legal proceeding the validity of the bank guarantee also

considering the time spent on all the legal proceeding the validity of the bank guarantee also needs to be extended.

7. I further state that the proposed location complies all the norms of the survey of India as well as Aerial Distance as prescribed all the authorities including the GNIDC Pollution Control Board and other State Authorities may take time to issue necessary permission and no objection certificates that's the reason, the time needs to be extended to set up the sugar factory as per the I.E.M."

13. Even while the matter was pending with the State/Central Government for amendment and extension of the IEM, the first writ petition was filed in 2017 after the appellant had approached State Authorities to measure aerial distance of the proposed location (Writ Petition No. 13836 of 2017). The second writ petition was filed on or about 26.2.2018 by the existing sugar factory after Aerial Distance Certificate was issued to the appellant and report dated 02.01.2018 was submitted by the State of Maharashtra to the Union recommending grant of extension and change of location. The State in its comments to the Central Government in response to the appellant's seeking extension and to change of location, stated as under:

"1. Extension of IEM

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Recently Shri Eknath Bhanudas Barge & Ors has filed writ petition no. 13836/2017 on 27.11.2017 in Hon'ble High Court Bench Aurangabad regarding location. This office has no objection for extension of IEM considering the intervening period of litigation.

2. Change in Location

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> According to your office letter dated 15 September, 2015, this office has intimated to Survey of India vide letter dated 17 October 2015 to measure the aerial/redial distance for the location Malewadi Dumala, Tal. Newasa, Dist Ahmednagar of M/s Swami Samarth Sugar & Agro Industries Ltd., the Survey of India has submitted aerial distance report between pillars of proposed sugar factory and chimney of existing sugar factories vide letter dated 01 January, 2018. The copy of this letter is also enclosed for reference. In this regard a Writ Petition No. 13836/2017 has filed on 27.11.2017 before Hon'ble High Court Bench Aurangabad. The request of factory regarding change in location may be duly considered at your level."

14. The Government of India on 14.11.2018, after considering the comments of the State Government dated 2.1.2018, allowed the extension by observing as under:

> "4. The sugar factory of M/s. Swami Samarth Sugar & Agro Industries Ltd. (M/s. SSSAIL) was taken on record as New Sugar Factory as provided in explanation 2 to clause 6A of Sugarcane (Control) Order 1966, vide order dated 14.11.2018 in reference of IEM No. 3033/SIA/IMO 2010 dated 08.09.2010 for establishment of new sugar mill at Warkhed (Ramdoh) Tal. Newasa, Distt. Ahmednagar, Maharashtra.
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> 5. M/s. SSAIL vide their letters dated 04.01.2018 and 06.11.2018 have mentioned that they could not take effective steps, primarily, due to involvement of court cases, severe drought condition and reluctance of bank/financial institutions to finance the project. Delay appears beyond the control of project proponent.
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> 6. Moreover, Commissioner of Sugar, Maharashtra State vide their letter dated 02.01.2018 have, in principal, given permission for extension of IEM No. 3033/SIA/IMO/2010 dated 08.09.2010 for establishment of new sugar mill at Warkhed (Ramdoh), Tal. Newasa, Distt. Ahmednagar, Maharashtra."

15. Further extensions were given in similar background on 15.11.2018, 12.04.2019 and 09.05.2019. The appellant submitted bank guarantees of Rs.50,00,000/- on 09.09.2019 and of Rs.37,30,000/- on 10.10.2019. Request for extension of time and for change of location was accepted on 17.10.2019 and one year further extension was granted up to 07.09.2020 to implement the IEM dated 08.09.2010. On 14.08.2020, the request for change of location was accepted and the existing location was deleted and the new location, “Gat No. 18, Malewadi Dumala, Tal. Newasa, Ahmednagar, Maharashtra” was inserted.

16. The third writ petition was filed on or about 1.10.2020 by the existing sugar factory challenging the extension granted and change of location permitted by the Central Government on 14.08.2020. It was averred in the writ petition that the area of operation of the said existing sugar factory is 92 villages in Newasa Taluka and 122 villages in Shevgaon Taluka. In the counter affidavit filed on behalf of the appellant, it was inter alia averred that the existing sugar factory is trying to create its monopoly in respect of its geographical zone while there is ample sugarcane available in the said area. The existing sugar factories are not in a position to harvest the entire sugarcane cultivated in the area on account of which the helpless farmers are forced to approach other sugar factories in the district for getting their sugarcane harvested. The existing sugar factory had even opposed the setting up of a

Gangamai Industries and Construction Limited in Taluka Shevgaon by filing a Writ Petition No. 3063 of 2009. The writ petition was dismissed on 16.11.2009. It was also pointed out that the sugarcane is being cultivated in large area in view of the back waters of Jaikwadi Major Irrigation Project and that there is a need for setting up of a unit.

17. The High Court on considering the respective contentions of the parties found that the issue involved was the interpretation of Clause 6C of the Control Order. It was observed that subsequent to the amendment in the Control Order by the State in the year 2011, the minimum aerial distance between the new sugar factory and the existing sugar factory is 25 kms, as cluster of sugar factories near each other would not be a viable proposition and may affect the survival of the existing sugar factory. Therefore, if a new sugar factory is allowed to be established on the terms of the IEM issued in the year 2010, it would render the existing sugar factory unviable and both sugar factories may not be in a position to survive.

18. The High Court further held that the appellant had not taken any effective steps within the period of two years from the date of acknowledgment of IEM. The appellant had neither purchased the land for four years in the name of the factory, nor placed confirmed orders for purchase of plant and machinery and even the civil work had not commenced. There were no effective steps even five years of IEM. The change of location was sought on 16.06.2014 whereas the land at the

changed location was purchased on or about the year 2017. The High Court found that the amendment in the Sugar Control Order dated 24.08.2016 would not be helpful to the appellant as the IEM stood de-recognized before the said amendment was carried out. The IEM stood de-recognized on 08.09.2014 as the four years for commercial production had lapsed. Thereafter, the maximum one-year extension also lapsed on 08.09.2015. Therefore, the amended provision cannot be applied to a de-recognized IEM. The High Court further found that the recommendation of the State Government was not on record for the extension of IEM. In other words, it was concluded by the High Court that the IEM stood de-recognized before the Sugar Control Order was amended on 26.08.2016. Therefore, no right accrues to the appellant. It was further held that the judgment of this Court reported as ***M/s Ojas Industries (P) Ltd*** v. ***M/s Oudh Sugar Mills Ltd***.[5] relating to retrospective effect of the amendment in the Control Order in the year 2006 would not be applicable to the present IEM which stood de-recognized prior to the said amendment.

19. The High Court found that there was no stay on IEM, nor was there any prohibition from taking effective steps, therefore, the appellant was not prevented from taking steps on account of the orders of the Court in the first round of litigation. On the other hand, in the second round, an order was passed by the High Court on 27.03.2018 on an application filed by the existing sugar factory that the appellant has started

5 AIR 2007 SC 1619

construction activity. The High Court ordered that if further construction is made, the same would be at the risk of the appellant and subject to the decision of the writ petition and that the appellant would not be entitled to any equity in case the construction is carried out, nor can seek any equity for extension of IEM on the ground that the construction is being carried out. On 10.04.2018, an order was passed that the earlier order passed on 27.03.2018 would take care of any construction that would be carried out by the appellant (Respondent No.6 in the writ petition). Therefore, the appellant could not take benefit of the investment made on the land purchased and the construction started. However, the High Court found that till November 2018, the appellant has not undertaken any construction work at the site and the stand of the appellant that it had invested in the construction activity cannot be taken into consideration for the reasons that extensions were granted in violation to the provisions of the Rules and the Statute. The High Court also found that as per the amendment, the new sugar factory had to be at a distance of not less than 25 kms.

20. With this factual background, the questions required to be examined are as follows:

(i) Whether in the absence of any interim order against the appellant in the first round of litigation, the period during which writ petitions were pending are liable to be excluded? Alternatively, whether the State/ Central Government was justified in excluding such period while granting extension of IEM.

(ii) Whether the *lis* initiated against the appellant is a sufficient reason to exclude the period spent in such litigation and was a reasonable ground for the State/Central Government to extend IEM.

(iii) Whether the amended Control Order in terms of proviso to Clause 6C as amended by the State of Maharashtra on 03.12.2011 would be applicable when the High Court in the earlier writ petition has held that the issue of Aerial Distance Certificate cannot be reopened at the instance of the appellant or any other party again. Pertinently, when the order was passed by the High Court, the amended Control Order was in force. Therefore, what is the effect of the said order?

(iv) Whether the IEM stands lapsed on the failure on the part of entrepreneur to set up the sugar factory and start production within the time specified in Clause 6C or such lapsing would be only after an order in terms of Clause 6D of the Control Order is passed?

21. The undisputed facts are that a writ petition was filed on 23.09.2010, soon after the acknowledgment of IEM on 08.09.2010. It may be mentioned that there was no interim order against the appellant, but the fact remains that the validity of IEM on the ground of aerial distance was disputed. The writ petition filed against the grant of Aerial Distance Certificate came to be dismissed on 27.01.2014 and thereafter the appellant sought extension of time on 16.06.2014 for implementation of the IEM in view of the litigation from 2010-2014.

22. A perusal of the Control Order shows that initially as per the Control Order as amended in the year 2006, the time limit for implementing the IEM was 2 + 4 years and that there was no specific Clause to

extend the period of implementation of IEM on account of delay due to any unforeseen circumstances. The subsequent amendment to the Control Order dated 24.08.2016 extended the period of implementation to 3+5 years with a further condition to grant extension for a maximum period of two years due to any unforeseen circumstances “beyond control”. However, in the further subsequent amendment on 12.08.2018, Clause 6C(2)(a) specified that where delay is due to any unforeseen circumstances “beyond the control of person concerned” such as natural calamities, the extension could be granted for a further period of two years after the expiry of five years for commencing the commercial production, not to exceed more than a year at a time. However, Clause 6C(2)(b) provided that where delay was due to any court case relating to land use, environment or “such other reason” that may have arisen within five years from the date of filing of IEM, the Ministry of Consumer Affairs may extend the period stipulated under sub-clause (1) initially for a further period of two years not to exceed more than a year at a time. Clause 6C(c) provided that where delay is due to court case relating to land use, environment or such other reason continues beyond the period extended under clause (b), the Ministry of Consumer Affairs may grant extension or such period as may deem fit, not to exceed more than a year at a time, but subject to furnishing of bank guarantee of Rs. 50 Lakhs for each year for which extension is sought, in addition to the bank guarantee

furnished under sub-clause (2) of Clause 6B of the Control Order. Such Bank Guarantee is liable to forfeiture but only in terms of Clause 6D of the Control Order.

23. With this undisputed factual and legal background, the first three questions, which are interrelated are taken up for discussion first. The latin maxim '*Actus Curiae Neminem Gravabit*' i.e., the act of the Court will not prejudice anyone, is well known, but the applicability of the same to the facts of the present circumstances need to be examined. We find that the appellant was justified in not taking any effective steps pending such *lis,* as contemplated under Explanation 4 to Clause 6A of the Control Order. The arial distance is one of the foremost requirements for a valid IEM. This Court in a judgment reported as ***South Eastern Coalfields Ltd.*** v. ***State of M.P. and Others***[6] held that injury, if any, caused by the act of the Court shall be undone and the gain which the party would have earned, unless it was interdicted by the order of the Court would be restored to or conferred on the party by suitably commanding the party liable to do so. The Court noticed that the litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is

6 (2003) 8 SCC 648

excluded from application. It was held as under:

> "28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the court and the act of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. *Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end.* This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation." *(Emphasis supplied)*

24. In the present appeal, the *lis* initiated by the writ petitioners in the first round was nothing less than gamble so as to scuttle the process of commissioning of plant. The appellant was at the receiving end of the writ petitions filed and was at the receiving end of such litigation and the period spent in such *lis* cannot be used against the appellant.

25. In another judgment reported as ***Beg Raj Singh*** v. ***State of U.P. and Others***[7], this Court held that ordinary rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and the right to relief shall be decided by reference to the date on which the petitioner entered the portals of the Court. That was a case where the appellant was granted sand mining lease for a period of one year but before the expiry of the term of lease, the appellant sought renewal of lease for another period of two years. Around the time when the appellant was allowed the extension of two years, the Government had taken a decision to hold an auction of the sand mining lease. It was in these circumstances, this Court held as under:

> "6. Having heard the learned counsel for the petitioner, as also the learned counsel for the State and the private respondent, we are satisfied that the petition deserves to be allowed. The ordinary rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and the right to relief should be decided by reference to the date on which the petitioner entered the portals of the court. A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events i.e. the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by

7 (2003) 1 SCC 726

> lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment. Third-party interests may have been created or allowing relief to the claimant may result in unjust enrichment on account of events happening in-between. Else the relief may not be denied solely on account of time lost in prosecuting proceedings in judicial or quasi-judicial forum and for no fault of the petitioner. A plaintiff or petitioner having been found entitled to a right to relief, the court would as an ordinary rule try to place the successful party in the same position in which he would have been if the wrong complained against would not have been done to him. The present one is such a case. The delay in final decision cannot, in any manner, be attributed to the appellant. No auction has taken place. No third-party interest has been created. The sand mine has remained unoperated for the period for which the period of operation falls short of three years. The operation had to be stopped because of the order of the State Government intervening which order has been found unsustainable in accordance with stipulations contained in the mining lease consistently with GO issued by the State of Uttar Pradesh. Merely because a little higher revenue can be earned by the State Government that cannot be a ground for not enforcing the obligation of the State Government which it has incurred in accordance with its own policy decision."

26. In the first round of litigation, two writ petitions were filed in public interest to dispute the Aerial Distance Certificate. Though there was no interim order passed in the writ petitions, such petitions created a cloud on the right of the appellant to set up a sugar factory at the location earmarked and to commence commercial production. The writ petitions remained pending for a period of four years. Therefore, the period spent in defending such writ petitions was validly taken into consideration by the State/Central Government to grant extension of time limit fixed in the Control Order. The Government of India granted

extension on 14.11.2018 when the Control Order as amended on 12.08.2018 was operative and effective. Since the amendments carried out in Control Order were for the benefit of the entrepreneurs, therefore, the Control Order as it is existed on the date of the extension would be applicable. It is in terms of such Clause that the appellant was called upon to furnish additional bank guarantee of Rs. 50 Lakhs. Hence, the power exercised by the Central Government is in terms of the statutory Control Order as amended on 14.11.2018.

27. In the present case, the appellant was not the writ petitioner before the High Court. Rather, he was defending the permissions granted by the State and the Central Government. It was not prudent for the appellant to proceed with the heavy investment required for installation of a sugar factory and then to suffer the consequences depending on the outcome of the litigation. The appellant opted for a safer option not to erect the plant and commence production because of the pending litigation. It was a reasonable and precautionary option exercised by the appellant. The litigation initiated in public interest or by the rival sugar factory cannot be used against the appellant when the writ petition was disposed of with the condition that there cannot be any development within 500 meters of river which necessitated the change of location. The Aerial Distance Certificate was categorically declared to be not open to challenge even though the State had amended the Control Order on 03.11.2011 to increase the distance between the

existing sugar factory and the new factory was increased to 25 kilometers. Even though the Control Order was already amended by the State, but the High Court held that the aerial distance would be as applicable on the date of IEM acknowledged by the Central Government. It is to be noted that there is no challenge to the order passed by the High Court in the first round of the litigation. Therefore, even the High Court in the second round of litigation was not within its jurisdiction to hold that the amended distance regulations would be applicable.

28. Still further, the State Government while recommending extension on 02.01.2018 did not dispute that the aerial distance between the existing sugar factory and the proposed new sugar factory was less than 25 kms, and rightly so for good reasons. The conditions provided in the IEM acknowledged on 08.09.2010 would alone be applicable, which was extended by the Central Government on 14.08.2018. The appellant has to be restituted in terms of the order passed in ***South Eastern Coalfields Ltd.*** as on the day when the *lis* was initiated, not by the appellant but by the other persons. The litigation at the behest of rival parties cannot be used against the appellants, more so when they have substantially failed in the first round of *lis*.

29. The language of the Control Order has been amended time and again with a view to enable the competent authority to grant extension of time due to “unforeseen circumstances”. The Control Order amended

on 12.08.2018 contemplates more than one unforeseen circumstance beyond the control of the person concerned. It also empowers the competent authority to extend the validity of IEM where the delay is due to any court case relating to land use, environment or “such other reason”. Sub-clause (c) of Clause 6C empowers the competent authority to grant further extension for a period of not exceeding a year at a time subject to furnishing of a bank guarantee. Therefore, the objective and purpose of such amended Control Order is that a sugar mill should commence production by excluding the period spent in the court cases. Though the appellant was the defender of the IEM granted and there was no stay in the first round of litigation, but the extension granted would fall under the category of “such other reason”. The judgment of this Court in ***South Eastern Coalfields Ltd.*** is to the effect that no one shall suffer by the act of the Court which embraces within its sweep all such acts as to which the Court may form an opinion in any legal proceedings but the Court would not have so acted had it been correctly apprised of the facts and the law. In the first round of litigation, challenge was to the Aerial Distance Certificate, the writ petitioners have failed in such challenge but the High Court rightly interdicted that the appellant is required to comply with the anti-pollution laws in the field and the laws relating to preservation of ecology and environment. Such order led to the appellant looking for alternative location in view of the denial of no-objection certificate by

Godawari Marathwada Irrigation Development Corporation. Therefore, the period spent in litigation for the years 2010-2014 has been rightly excluded by the competent authority.

30. Another question which arises for consideration is whether the decision of the Central Government based upon the recommendation of the State Government is so arbitrary, irrational, unjust which warranted interference in exercise of the power of judicial review in writ jurisdiction. The High Court has not set aside the said order on only such ground but also for the reason that the appellant has not implemented IEM within the time prescribed. This Court in ***Tata Cellular*** v. ***Union of India***[8] has held as under:

> "70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. *Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State*. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.
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> 77. The duty of the court is to confine itself to the question of legality. Its concern should be:

8 (1994) 6 SCC 651

1. Whether a decision-making authority exceeded its powers?

2. Committed an error of law,

3. committed a breach of the rules of natural justice,

4. reached a decision which no reasonable tribunal would have reached or,

5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(*i*) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(*ii*) Irrationality, namely, Wednesbury unreasonableness.

(*iii*) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R.* v. *Secretary of State for the Home Department, ex Brind* [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

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94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles."

31. In the absence of any finding by the High Court to the effect that the decision of the Central Government is so arbitrary, irrational or unjust, we find that the High Court has gravely erred in taking into consideration that appellant was remiss in not implementing IEM during the pendency of the writ petitions in the first round of litigation.

32. The second round of litigation began even before the Aerial Distance

Certificate was issued. The appellant was again the defender of the issuance of the IEM. The High Court therein found that the amendment carried out by the State of Maharashtra contemplating that no sugar factory shall be set up within the radius of 25 kms would be applicable, though it is not even the averment or objection of the State in its communication dated 02.11.2018. Still further, the scheme of the Control Order shows that once IEM is granted, the timeline has to be determined keeping in view the date of the issuance of the IEM. Therefore, subsequent amendment would be applicable in respect of new sugar factory which may be proposed to be set up. It is conceded that during the interregnum from 2010 till the hearing of the appeal before this Court, no other entrepreneur has applied for IEM in the area Taluka Newasa and Shevgaon. Since no other entrepreneur has applied for IEM to set up a sugar factory in the area in question, it is not open to the existing sugar factory to contend that the revised parameters by the State Government should be made applicable. IEM fixes the timeline from the date of issuance of the same and the subsequent amendment in the Control Order would not have any application towards the IEM already issued.

33. Mr. Chidambaram, learned Senior Advocate appearing for the existing sugar factory relies upon the judgment of this Court reported as ***Ojas Industries (P) Ltd.*** to argue that the concept of distance with regard to the availability of sugarcane and the capacity of crushing of the

existing and new factory is of utmost importance.

34. In the said referred case, this Court was considering an application filed by multiple sugar mills in the State of Uttar Pradesh. That was a case where the proliferation of IEM to block the competition was the cause of dispute. The IEM filed by the appellant for setting up of a sugar mill at Village Baisagapur, Distt. Lakhimpur was acknowledged on 13.05.2004, whereas the respondent in the said appeal filed its IEM on 17.05.2004 for setting up of a sugar mill at Village Saidpur, Khurd, Distt. Lakhimpur which was at a distance of 7.2 kms from the proposed sugar mill of the appellant. The Government of India had approved the IEM filed by the appellant on 30.06.2005 whereas IEM filed by the respondent was disapproved. The respondent filed a writ petition challenging the IEM approved in favor of the appellant and another IEM in favor of the M/s Bajaj Hindustan Ltd. for setting up of a sugar mill at Village Khambarkhera. This Court held as under:

> "30. The Sugarcane (Control) (Amendment) Order, 2006 inserts clauses 6-A to 6-E in clause 6 of the Sugarcane (Control) Order, 1966. It retains the concept of "distance". This concept of "distance" has got to be retained for economic reasons. This concept is based on demand and supply. This concept has to be retained because the resource, namely, sugarcane, is limited. Sugarcane is not an unlimited resource. "Distance" stands for available quantity of sugarcane to be supplied by the farmer to the sugar mill. On the other hand, filing of bank guarantee for Rs 1 crore is only as a matter of proof of bona fides. An entrepreneur who is genuinely interested in setting up a sugar mill has to prove his bona fides by giving bank guarantee of Rs 1 crore. Further, giving of bank guarantee is also a proof that the businessman has the financial ability to set up a sugar mill (factory). Therefore, giving of bank guarantee has nothing to do

with the distance certificate.

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34. Before concluding on this issue we may reiterate that 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."

35. This Court approved the IEM filed by M/s Balrampur Chini Mills Ltd. at Village Kumbi, where it had invested Rs.213 crores for its plant. The said sugar factory had also invested Rs. 152 crores at Village Guleria. The following observations were made by this Court:

> "37. We are of the view that out of two projects at Kumbhi and Guleria, Balrampur can be given milling permission for its factory (mill) at Kumbhi. In our present judgment we have taken the view that the Sugarcane (Control) (Amendment) Order, 2006 operates retrospectively. We have also taken the view that in applying the said 2006 Order there will be a bar on subsequent IEM-holders during the specified period when the earlier IEM-holder is taking effective steps. At the same time, we find that in the case of Kumbhi substantial investment has been made by Balrampur. Their projections are better than units proposed to be set up by Oudh. Moreover, the sugarcane crushing season ends on 15-5-2007, we do not want the cane-growers to suffer. Therefore, we grant milling permission only to Kumbhi Project. IA No. 2 of 2007 is made absolute. However, Guleria Project shall be governed by the principles laid down in this judgment, as indicated above."

36. We find that the said judgment is relevant only to examine the question as to whether the Control Orders are retrospective or not. The

finding about the distance while granting permission to Balrampur Chini Mills is in the facts of that case. In the present appeal, after the IEM was acknowledged in the year 2010, no other entrepreneur had even sought or had been granted IEM in the area in question except the existing sugar factory was permitted to enhance its crushing capacity.

37. In view of the principles laid down in the aforesaid judgment, the amendments carried out subsequently in the Control Order would also be read as retrospective as they are not creating any right for the first time. Clauses 6A to 6E were inserted by the amendment on 10.12.2006 to substitute the press notes which were found to be under cloud by this Court. Subsequent amendments on 24.08.2016 and 12.10.2018 would also be retrospective being amendments dealing with procedural aspects and clarificatory in nature in lieu of the press notes issued earlier by the Central Government. Such amendments were necessitated to take care of situation when IEM holder is not able to take effective steps because of unforeseen circumstances.

38. The judgment reported as ***Babaji Kondaji Garad*** v. ***Nasik Merchants Co-operative Bank Ltd., Nasik and Others***[9] and ***Dhananjaya Reddy*** v. ***State of Karnataka***[10] were pressed to argue that where the statute prescribes a procedure for doing a thing, it must be done accordingly, unless there is any contrary indication. The said

9 (1984) 2 SCC 50
10 (2001) 4 SCC 9

judgments have no applicability to the facts of the present case as the extension has been granted by the Central Government on the recommendation of the State Government keeping in view of the unforeseen circumstances faced by the appellant.

39. An argument has been raised that the validity of IEM was extended on 15.11.2018, 12.04.2019, 09.05.2019, 17.10.2019 and 18.02.2021. Such frequent extensions of the IEM show that the extensions were given at the asking without satisfying the pre-requisite conditions to seek extensions. We do not find any merit in such arguments. The extensions were given when the second round of litigation was pending before the High Court due to which the appellant was not able to take effective steps. The following tabular chart would show the date of extensions and the period of extensions.

Sr. No.	Central Government Letter/Date of Extension	Date till extended
1.	15.11.2018	07.09.2017
2.	12.04.2019	07.09.2018
3.	09.05.2019	07.09.2019
4.	17.10.2019	07.09.2020
5.	18.02.2021	07.09.2021

40. A perusal of the above table would show that the extensions granted on 15.11.2018 and 12.04.2019 were for a period which had already expired. The extension granted on 09.05.2019 was valid only till 07.09.2019 i.e. less than four months. All the extensions were granted when the matter was still pending before the High Court and were subject to the outcome of the writ petitions. Therefore, the objections

regarding frequent grant of extension of IEM are not of much substance.

41. Hence, we find that the decision of the competent authority to grant extension of time is proper exercise of the powers conferred on it and cannot be said to be illegal, irrational or suffering from procedural impropriety. Accordingly, in respect of Question nos. (i), (ii) and (iii), we find that the findings recorded by the High Court are not sustainable in law.

42. Learned counsel for the appellant argued that Clause 6C contemplates that if the steps are not taken within the timeline stipulated under the IEM, it shall stand de-recognized and the performance guarantee shall be forfeited. However, the performance guarantee is liable to forfeiture after giving the concerned person a reasonable opportunity of being heard. Therefore, the use of word ‘shall’ in Clause C does not make the provision mandatory but enables the competent authority to forfeit bank guarantee on failure to comply with the timeline.

43. In the second round of writ petitions, objections were raised by the existing sugar factory that the appellant has started construction. Such construction was interdicted on the ground that no equity will follow on the basis of any construction raised. The reasons which prevail with the appellant in not setting up of the sugar factory or raise construction in the first round of litigation are very well applicable in the second round as well. The IEM was amended subject to the writ petitions filed in the

second round. Therefore, having objected to the construction and the High Court passing an order that the appellant would not be entitled to claim any equity, it is a reasonable and prudent decision taken by the appellant not to proceed with the construction and set up a plant.

44. The existing sugar factory had argued that IEM stands lapsed as the appellant has failed to set up the factory and to commence the commercial production. However, we are unable to agree with such interpretation. Though Clause 6C as applicable on 10.11.2006 as well as on 24.08.2016 and 12.08.2018 contemplates the IEM shall stand de-recognised and the performance guarantee shall be forfeited, the performance guarantee is to be forfeited in terms of Clause 6D after providing the reasonable opportunity of being heard. We find that twin conditions have to be fulfilled- (i) failure to set up plant and to commence production and then (ii) the forfeiture of the performance guarantee. Second will not arise unless the first is satisfied and the second step cannot be undertaken, without complying with an opportunity of personal hearing in terms of Clause 6D of the Control Order. Unless the performance guarantee is forfeited, there is no lapsing of IEM. Thus, unless the necessary consequences of de-recognition of IEM are undertaken, there is no automatic lapsing of IEM. Such is the language in the subsequent amended Control Orders as well. The appellant had furnished a performance guarantee of Rs. 1 crore, however no steps were taken either by the State Government or

by the Central Government to forfeit such performance guarantee inasmuch as not even a show cause notice was issued. Thus, a conclusion cannot be drawn that the IEM is deemed to be lapsed automatically only on account of lapsing of time.

45. The State Government had filed an affidavit to provide information regarding the sugarcane available and the capacity of the sugar mills in the areas. It states that during the last five crushing seasons, four sugar mills i.e., the existing sugar factory and three other mills had crushed the entire cane available from Newasa and Shevgaon Talukas and also crushed from neighbouring districts of Aurangabad, Jalana and Beed. It also stated that in the years 2016-17 and 2019-20, the cane was used for fodder purpose as crushing was less than the available cane. It is stated that Newasa and Shevgaon Talukas are drought prone and there is scarcity of sugarcane with regard to the crushing capacity of four sugar mills. It submits that since sugarcane area restrictions (zoning) are removed in Maharashtra since the year 1997, the sugarcane growers are at liberty to provide sugarcane to any sugar mills as per their choice. In view of the said fact, the appellant cannot be denied the benefit of setting up of a sugar mill only on the basis of resistance from the competitor, who had only financial interest in mind. In case of a competition, it is the consumer (farmer) who is the beneficiary. In the present case, the farmers are not getting the advantage of competition which could fetch them timely payment and better services. In view of the said fact, we find that the order of the

High Court allowing the writ petition filed by the competitors is wholly unjust and unfair and is liable to be set aside.

46. It may be stated that one I.A. has been filed on behalf of the farmers of the area supporting the setting up of a sugar mill by the appellant. It is not necessary to dwell on such I.A. except to state that the farmers are also looking forward for some competition in the area.

47. We may further state that under the Chair of Dr. C. Rangarajan, the then Chairman, Economic Advisory Council to the Prime Minister, in its report dated 05.10.2012 has reported under the heading Executive Summary as under:

> "**2.** The highly perishable nature of sugarcane, the small land holdings of sugarcane farmers and the need to keep the price of sugar at a reasonably affordable level while also making it available through the Public Distribution System (PDS) have been the drivers for regulation. The principal aspects *regulated* in the sugar sector are as under:
> (i) *Cane reservation area and bonding* — Every designated mill is obligated to purchase from cane farmers within the cane reservation area, and conversely, farmers are bound to sell to the mill. As a consequence of the area requirement (distance criterion), setting up of a new mill requires approvals, notwithstanding delicensing under the Industries Development & Regulation Act.
> (ii) xxx xxx
> 3. Cane area reservation and bonding are intended to serve the twin purpose of giving a minimum assured supply of the highly-perishable raw material to a mill, while committing the mill to procure at a minimum price (FRP/SAP). However, this arrangement may reduce the bargaining power of the farmer, who is forced to sell to a mill even if there are cane arrears and also reduces the farmer's remuneration if the design mill has a lower recovery rate. Mills also lose flexibility in augmenting cane supplies, especially when there is a shortfall in sugarcane production in the cane reservation area. Moreover, mills are tied down to the quality of cane that is supplied by the farmers in the

area.....

4. The minimum distance criterion for setting up of a new mill is expected to ensure a minimum availability of cane for all mills. This can cause distortion in the market. The virtual monopoly over a large area can give the mills power over farmers, especially where landholdings are smaller.
This restriction inhibits entry and further investment, and adversely impacts competition for purchase of sugarcane as well as for improving mill efficiency. As such, it is not in the interest of development of sugarcane farmers or the sugar sector, and may be dispensed with as and when a state does away with cane reservation area and bonding."

48. In respect of cane reservation area and minimum distance criteria, it was stated in Chapter 2, while dealing with the "Cane Area Reservation and the Minimum Distance Criterion" as under:

"2.1 Central Government has been protecting the interests of sugarcane farmers and sugar mills through various policy instruments. Sugarcane farmers are assured of a minimum price for sugarcane, payable by mills. On the other hand, sugar mills have been assured regular supply of sugarcane by providing that a minimum distance be maintained between two mills and an area be earmarked for each mill for drawal of cane. The expectatons implicit in the extant system of cane area reservation and the criterion for distance between mills could be as under:

(i) ensuring adequate cane supply to mills and preventing unhealthy competition to procure sugarcane;
(ii) ensuring crushing of the entire quantity of cane grown by sugarcane farmers in the reserved area, with no cane remaining uncrushed at the end of the season; and
(iii) increasing the productivity of sugarcane cultivation so as to increase the income of farmers and enhance supplies and sugar recovery for mills.

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2.5 Those who suggest that the reservation of cane area be done on a permanent basis argue that the system facilitates sugar factories to undertake cane development work in

> their respective areas. This argument of the industry may be true in some selected pockets, but appears fallacious when one looks at the trends of sugarcane productivity in the country. Cane productivity was 68.57 tonnes/ha in 2000-01 and stood at about the same level in 2010-11 (68.59 tonnes/ha), marginally declining thereafter to 68.09 tonnes/ha in 2011-12. Thus, for the country as a whole, cane area reservation does not seem to have promoted productivity.
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> 2.7 Those in favour of scrapping the cane area reservation reiterate the views of the Thorat Committee (2009). The present system ties farmers to supply cane to a particular mill whether or not s/he is satisfied with it. The moot question is whether a farmer should remain "bonded" and supply cane to a particular mill even if it has not made payment for her/his earlier supplies. There is a case for dispensing with cane area reservation and giving freedom to the farmers to supply their cane to any mill of their choice. There is no cane area reservation system in Maharashtra and non-members of cooperative mills are free to supply cane to any mill which they like.
>
> 2.8 The system of cane area reservation and maintaining a minimum distance between mills has been shielding them from competition and has created perpetual monopolies. This policy does not allow a farmer to participate in a competitive market and get the best price for her/his cane. The farmer has no freedom to choose the buyer and is more likely to get delayed payments and unfair price for the cane than in a competitive set up. Thus, these policies have led to the continued functioning of inefficient sugar mills by giving them a guaranteed supply of cane and by not allowing market forces to work towards a viable equilibrium. For the growth of the sector and in the interest of efficiency in this industry, policy should allow the Schumpeterian "process of creative destruction" to work."

49. The Ministry of Consumer Affairs, Food and Public Distribution has referred to recommendations of Dr. C. Rangarajan Committee. The gist

of the recommendations of the Committee and Implementation of Recommendations of Dr. Rangarajan Committee, is as under:

Issues	Gist of Recommendations	Status
Cane Area Reservation:	Over a period of time, states should encourage development of such market-based long-term contractual arrangements, and phase out cane reservation area and bonding. In the interim, the current system may continue.	States have been requested to consider the recommendations for implementation as deemed fit. So far, none of the States have taken action, current system continues
Minimum Distance Criteria:	It is not in the interest of development of sugarcane farmers or the sugar sector, and may be dispensed with as and when a State does away with cane reservation area and bonding.	States have been requested to consider the recommendations for implementation as deemed fit. There is no reservation of area in Maharashtra. Rest of the States have not made any changes in the current arrangement.

50. We also note the reasoning given by the Central Government that in order to avoid unhealthy competition, the licensing under the Industries (Development and Regulation) Act, 1951 was done away with on 31.08.1998. Unhealthy competition has two major aspects- one relating to the existing and new sugar factory, and second in the context of the farmers. On account of competition between the existing and new sugar factory, it would be the farmers who will be the beneficiary as they would have an option to select the sugar mill which provides better service in the manner of payment of price. Keeping in

view the recommendations of the Rangarajan Committee and the fact that the Central Government has exercised its jurisdiction to grant extension in time, the ultimate beneficiary would be the farmer and not the existing or the new sugar factory.

51. Thus, we find the order of the High Court to be unsustainable. Consequently, the appeals are allowed and the writ petitions are dismissed. The period spent in the second round of litigation shall also be excluded while determining the period during which the plant had to be set up and to commence commercial production.

.....J.
(HEMANT GUPTA)

.....J.
(V. RAMASUBRAMANIAN)

NEW DELHI;
JULY 13, 2022.