



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 21<sup>ST</sup> DAY OF SEPTEMBER, 2023**



**PRESENT**

**THE HON'BLE MR PRASANNA B. VARALE, CHIEF JUSTICE**

**AND**

**THE HON'BLE MR JUSTICE KRISHNA S DIXIT**

**WRIT PETITION NO. 21140 OF 2023 (GM-POL)**

**BETWEEN:**

1. M/S ASKINS BIOFUELS PRIVATE LIMITED  
150/6, GOKAK ROAD, ALAGAVADI, HARUGERI,  
RAIBAG TALUK, BELGAVI DISTRICT  
REPRESENTED BY ITS MANAGING DIRECTOR  
MR. ASHOK J ASKI.
2. M/S SHRI BHARAMANANDASAGAR  
JAGGERY INDUSTRIES  
A PARTNERSHIP FIRM HAVING ITS  
OFFICE AT 150/6, GOKAK ROAD,  
ALAGAVADI, HARUGERI,  
RAIBAG TALUK, BELGAVI DISTRICT.  
REPRESENTED BY ITS PARTNER  
MR. MAHAVEER J ASKI.

...PETITIONERS

(BY SRI. ANIRUDHA R NAYAK.,ADVOCATE)

**AND:**

1. THE UNION OF INDIA  
REPRESENTED BY ITS SECRETARY  
MINISTRY OF CONSUMER AFFAIRS  
FOOD AND PD, DIRECTORATE OF SUGAR  
KRISHI BHAVAN, NEW DELHI - 110 001.





2. THE GOVERNMENT OF KARNATAKA  
REPRESENTED BY ITS PRINCIPAL SECRETARY,  
VIDHAN SOUDHA, BENGALURU - 560 001.
3. THE SECRETARY,  
DEPARTMENT OF PROMOTION OF INDUSTRY  
AND INTERNAL TRADE,  
MINISTRY OF COMMERCE AND INDUSTRY,  
UDYOG BHAVAN, NEW DELHI - 110 001.
4. THE CHIEF DIRECTOR (SUGAR)  
MINISTRY OF CONSUMER AFFAIRS FOOD AND  
PUBLIC DISTRIBUTION ROOM NO.581,  
KRISHI BHAVAN, RP ROAD, NEW DELHI - 110 001.
5. THE COMMISSIONER FOR CANE DEVELOPMENT AND  
DIRECTOR OF SUGAR,  
GOVERNMENT OF KARNATAKA,  
HOUSING BOARD BUILDING, CBAB COMPLEX,  
F BLOCK, V FLOOR, CAUVERY BHAVAN, K.G.ROAD,  
BENGALURU - 560 008. KARNATAKA.
6. JOINT DIRECTOR,  
DEPT OF COMMERCE AND INDUSTRY,  
UDYAMBAG, BELAGAVI - 590 008.  
KARNATAKA.
7. JOINT DIRECTOR,  
FOOD CIVIL DISTRIBUTION, DC OFFICE,  
DC COMPOUND, BELAGAVI - 590 001.  
KARNATAKA.
8. DEPUTY COMMISSIONER OF EXCISE,  
NIPPANI ROAD, CHIKKODI - 591 201.  
KARNATAKA
9. DEPUTY DIRECTOR OF FACTORIES & BOILERS  
BELAGAVI - 590 016, KARNATAKA.
10. ASSISTANT COMMISSIONER(REVENUE)  
CHIKODI - 591 201. BELGAUM DISTRICT.  
KARNATAKA.



11. TAHASHILDAR RAIBAG - 591317  
BELGAUM DISTRICT, KARNATAKA.
  12. THE MANAGING DIRECTOR  
HESCOM, P.B.ROAD, NAVANAGAR,  
HUBBALLI - 580 025.
  13. THE DEPUTY COMMISSIONER,  
DC COMPOUND, BELGAVI - 590 001.
  14. THE MEMBER SECRETARY,  
STATE LEVEL ENVIRONMENT IMPACT  
ASSESSMENT AUTHORITY (SEIAA)  
ROOM NO. 706, 7<sup>TH</sup> FLOOR, 4<sup>TH</sup> GATE,  
M S BUILDING, BENGALURU - 560 001.
  15. THE CHAIRMAN,  
KARNATAKA STATE POLLUTION  
CONTROL BOARD,  
PARISARA BHAVAN, NO.49, CHURCH STREET,  
BENGALURU - 560 001.
  16. THE MEMBER SECRETARY,  
KARNATAKA STATE POLLUTION  
CONTROL BOARD, PARISARA BHAVAN,  
No. 49, CHURCH STREET, BENGALURU - 560 001.
  17. ALAGAWADI BIRESHWAR SUGARS PRIVATE LIMITED  
KALLESHWAR INDUSTRIES,  
REGULATED MARKET ROAD,  
BAMBOO BAZAR, DAVANGERE - 577 001.
- ...RESPONDENTS
- (BY MS.KRISHIKA., ADVOCATE FOR  
SRI.A MAHESH CHOWDHARY.,ADVOCATE FOR R15 & R16;  
SRI.S S MAHENDRA.,PRINCIPAL GOVERNMENT ADVOCATE  
FOR R2, R5 TO R11)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO A)ISSUE A WRIT IN THE NATURE OF A PROHIBITION PROHIBITING ALL THE RESPONDENT AUTHORITIES NO.1 TO NO.16 TO CEASE AND DESIST FROM CREATING ANY IMPEDIMENT BY ISSUANCE OF ANY SORT OF NOTICE, SHOW CAUSE OR OTHERWISE ON THE GROUND OF PRODUCTION OF SUGARCANE JUICE AND SYRUP BY PETITIONER NO.2 AND



PRODUCTION OF ETHANOL BY PETITIONER NO.1 TILL THE FINAL DISPOSAL OF THE SLP (C) NO.8046/2023 BY THE HON'BLE SUPREME COURT OF INDIA AND ETC.,

THIS PETITION COMING ON FOR ORDERS THIS DAY, **CHIEF JUSTICE** MADE THE FOLLOWING:

### **ORDER**

First Petitioner is a Private Limited Company incorporated under the provisions of the Companies Act and the Second Petitioner is a registered Partnership Firm. They are in the field of sugar, sugarcane and allied industrial activity. They are knocking at the doors of Writ Court with the following principal prayer:

*"Issue a writ in the nature of a prohibition prohibiting all the Respondent authorities no.1 to no.16 to cease and desist from creating any impediment by issuance of any sort of notice, show cause or otherwise on the ground of production of sugarcane juice and syrup by Petitioner no.2 and production of ethanol by Petitioner no.1 till the final disposal of the SLP (C)No.8046/2023 by the Hon'ble Supreme Court of India"*

2. Learned counsel for the Petitioners vehemently argues that his clients are being troubled unjustifiably by the Respondents herein with a series of unsustainable notices & orders, despite in a catena of their cases the



action of the Respondents have been faltered. He draws our attention to a set of Court orders made by Coordinate Benches & Single Judges Benches of this Court. He also notifies to us of SLP Nos. 4167- 4168/2023 disposed off vide order dated 27.02.2023 by the Apex Court and about another pending SLP No.8046/2023 filed by 17th Respondent herein assailing the Division Bench decision dated 31.03.2023 whereby Petitioners' W.A.No.100075/2023 has been allowed. Learned Additional Government Advocate appearing for Respondent Nos. 2,5 to 11 & learned Panel Counsel appearing for Respondent Nos. 15 & 16 make submission resisting the Writ Petition.

3. Having heard the learned counsel for the parties and having perused the Petition papers, we decline indulgence in the matter for the following reasons:

a) Firstly, we cannot refrain ourselves from observing that the text of the prayer in the Petition and its gamut are unusually wide and if granted, that would render the



statutory functionaries virtually dysfunctional if not *functus officio*. Petitioners have structured their pleadings in an anticipatory way, of course arguably on the basis of their bad experience at the hands of the official Respondents. It is also true that the action of some of these Respondents were called in question by the Petitioners and at times they were faltered by a Coordinate Bench of this Court and learned Single Judges, as well. Such an impression can be gathered from the reading of certain orders copies whereof are produced as Annexures. That being said, we are of a considered opinion that no writs can be issued to hinder the discharge of public duties by the statutory functionaries.

b) Strangely enough the Petitioners want the relief at the hands of this Court "*till the final disposal of the SLP (C) No.8046/2023 by the Hon'ble Supreme Court of India.*" This SLP admittedly is preferred by Respondent No.17 against a Coordinate Bench order dated 31.03.2023 and the same has been pending. During such pendency, if



Petitioners apprehend and anticipate some action at the hands of the official Respondents, arguably because manufacturing of ethanol using sugarcane juice, sugar or sugar syrup is not subject to the regulation of Cane Commissioner, they can move an appropriate application in the pending SLP and seek direction at the hands of the Apex Court itself. No explanation is offered by the Petitioners as to why such a course cannot be adopted.

c) True it is that the language employed in Article 226 & 227 of the Constitution of India is very wide and that "*...in view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English Law, nor feel oppressed by any difference or change on opinion expressed in particular cases by English Judges...*" vide **T C BASAPPA vs T NAGAPPA, (1955) 1 SCR 250**. It is also true that where action is sought to be taken under a provision of law, which is ultravires, it is open to a person to move the Court for a Writ of Prohibition without he



being obliged to wait until those proceedings run their full course, vide **CARLSTILL CO. vs STATE OF BIHAR (1962) 2 SCR 81**. However, these are all cases where some action is generated at the hands of the officials, whatever be their arguable extent of injury or its potential. In the absolute absence of any action, one cannot say that some action is contemplated at the hands of the official Respondents discharging public duties and that action may injure the citizens and therefore, a Writ of Prohibition should issue in anticipation, almost on par with the criminal courts granting anticipatory bail.

d) In treating the submission advanced on behalf of the petitioners, we can draw wisdom from the treatise 'Writ Jurisdiction' by Justice B L Hansaria, Third Edition, Universal Law Publishing Company. What is written at page 437 being pertinent is reproduced below:

*"The Taxation Bar Association, Agra started an agitation to seek transfer of the Deputy Commissioner, Sales Tax. The State Government declined the demand. The Bar Association filed a writ petition and the High Court passed an interim order which was the*





*main relief sought for in the writ petition. The interim order was in following terms:-*

*"Until further orders of this court, Respondent 3 Satti Din is restrained from discharging his function as Deputy Commissioner (Appeals) Sales Tax, Agra under Section 9 of the U.P. Sales Tax Act. However, it will be open to the Commissioner, Sales Tax, U.P. to transfer the cases pending before Respondent 3 to some other court."*

*The Supreme Court set aside the order and made the following observations:-*

*"In this case, the respondent association and the advocates resorted to boycott the courts on the specious plea of non-transfer of Satti Din, the appellate authority, who seems to be honest and willing to discharge his duties diligently. When the government stuck to its stand and did not yield to the pressure despite the strike, the Bar Association filed writ petition in the High Court. Question is whether the High Court was justified in entertaining the writ petition and issuing the directions quoted above. The High Court has power to issue a writ of prohibition to prevent a court or tribunal from proceeding further when the inferior court or tribunal:*

*(a) proceeds to act without or in excess of jurisdiction;*



*(b) proceeds to act in violation of the rules of natural justice;*

*(c) proceeds to act under law which is itself ultra vires or unconstitutional; or*

*(d) proceeds to act in contravention of the fundamental rights.*

*None of these situations indisputably arises in this case. As noted above, Section 9 of the Act is a complete code in itself for conferment of jurisdiction on the appellate authority, the procedure for dispensation and the power to pass orders thereon. The appellate authority was acting in furtherance thereof. It has, therefore, to be seen whether the High Court was justified in issuing orders restraining the authority from exercising those statutory powers and further to deprive the authority to exercise those powers by transferring the same to any other jurisdiction".*

*[UP SALES TAX SERVICE ASSN. vs. TAXATION BAR ASSOCIATION, (1995) 5 SCC 716]*

(e) Broadly stated, a Writ of Prohibition is to the field of public law what an order of injunction is to the realm of private law. There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement; at least a clear & unequivocal 'threat to infringe' that right by the defendant, needs to be



substantiated. The starting point thus must be taken to be not a mere accrual of the right namely right not to be troubled by the officials, but the infringement thereof or at least a well founded apprehension of infringement. Viewed thus, a 'right to sue' is a *sine qua non* for maintaining an injunctive suit. This view gains some support from the Privy Council decision in **BOLO vs. KOKLAN, 1930 SCC OnLine PC 62 .**

(f) In other words, no suit can be founded on an *inchoate* cause of action. On the same analogy, no Writ of Prohibition can be asked for in the absence of title facts and the minimum evidentiary material to *prima facie* vouch the same. An argument to the contrary is preposterous. Constitutional jurisdiction can not be invoked as a matter of course. Added, we are of a considered opinion that there cannot be a Writ of Prohibition against the discharge of official functions enjoined under statutes. It hardly needs to be stated that if some action is initiated by the answering respondents, it is open for the petitioners to



complain to the writ court or to the appropriate authorities. In the absence of that, case of the petitioners is premature & pre-emptive.

In the above circumstances, the Writ Petition being devoid of merits is liable to be and accordingly dismissed. However, liberty is reserved to the Petitioners to avail appropriate remedy if and when some wrong action is taken or initiated by the official Respondents and in that connection, all contentions are kept open.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**

Snb/  
List No.: 1 Sl No.: 16