SHIVASHAKTI SUGARS LIMITED

v.

SHREE RENUKA SUGAR LIMITED & ORS.

(Civil Appeal No. 5040 of 2014)

MAY 09, 2017

[A. K. SIKRI AND ABHAY MANOHAR SAPRE, JJ.]

Sugar/Sugarcane:

Sugarcane (Control) Amendment Order, 1966: Cl.6A – Restriction on setting up of two sugar factories within the radius of 15 km – Establishment of sugar factory – Permission for – Sought by the appellant – Appellant granted permission to establish sugar factory – In the writ petitions, the High Court held that RS was an existing factory within the meaning of Cl. 6A; that the distance between the factory of the appellant and RS is less than 15 kms, thus, setting up of the factory by the appellant was in violation of Cl. 6A; and that since effective steps were not taken, extension could not be given – On appeal, held: On facts, since M/s. RS would not be treated as 'existing sugar factory' within the meaning of Cl. 6A, the necessity of distance requirement between M/s. RS factory and the appellant's factory as contained in Cl. 6A was not attracted – Furthermore, appellant has established sugar mill and it is continuing to crush sugarcane since the year 2011 – Keeping in mind all the given factors cumulatively, no purpose would be served in getting the unit of the appellant closed – Public purpose demands that the appellant's factory remain in operation and continue to function – Apart from these equitable considerations on the side of the appellant, economic factors like bank loans, employment, generation and production at the factory serving useful public purpose tilt the balance totally in favour of the appellant – These cannot be overlooked, where there is hardly any statutory violation – Directions contained in the judgment of the High Court set aside – Appellant's factory to continue its operation subject to the condition given.

Jurisprudence – Economic approach to law – Held: Firstly, the Court is to decide the case by applying the statutory provisions – However, while interpreting a particular provision, economic

A *impact/effect of a decision, wherever warranted, has to be kept in mind – Equally, in a situation where two views are possible or there is a discretion given to the court by law, Court needs to lean in favour of a view which subserves the economic interest of the nation – Conversely, the Court to avoid that particular outcome which has a potential to create an adverse affect on employment, growth of infrastructure or economy or revenue of the State.*

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Allowing the appeals, the Court

HELD: 1.1 As regards the issue as to whether M/s. RS would be treated as 'existing sugar factory' within the meaning of Clause 6A of the Sugarcane Control Order, 1966 (as amended in 2006), the submission that if a sugar factory, is not 'in operation' on the date when a new sugar mill applies for an Industrial Entrepreneurs Memoranda (IEM), the old sugar factory, shall not be considered as an existing sugar mill, is accepted. [Para 27] [973-F; 974-B]

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D **1.2 The requirement of Explanation 1 to Cl 6A is that in order to qualify as an existing sugar mill, it needs to crush for five consecutive years. The High Court wrongly recorded that the requirement is of crushing for any of the one season out of five and this led to error on the part of High Court in holding that M/s. RS was an existing sugar factory. [Para 28] [974-C]**

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1.3 The case of the appellant for setting up of the factory was processed keeping in view the fact that M/s. RS was not in operation. Further, in one case way back in the year 1995, it had even granted 'no objection' certificate for setting up of the factory by the appellant. Another significant aspect to be borne in mind F **is that the State Government had passed order of liquidation of M/s. RS in exercise of its power under Section 72 of the Karnataka Co-operative Societies Act, 1951. Even a liquidator was appointed to undertake the liquidation process. From this scenario, everybody would get a bonafide impression that such a** G **factory which is non-operational, is going to be liquidated in due course of time. No doubt, subsequently the State Government decided to revive this factory and steps in this behalf were taken in the year 2008. However, much before that IEM of the appellant got acknowledged on June 08, 2006. As on that date, there was no 'existing' sugar factory within the meaning of Clause 6A of** H **the Sugarcane Control Order. Therefore, the requirement of**

distance as prescribed in Clause 6A would be inapplicable. [Para 29] [974-D-G]

1.4 As regards M/s. DS factory, as per the certificate of Survey of India given on June 05, 2006, distance between the said factory and the then proposed factory of the appellant is shown to be 15 km; secondly, M/s. DS had given their no objection to the setting up of the factory by the appellant on the basis of which matter was processed further. The requirement of distance mentioned in the Amendment Order was inserted keeping in mind the benefit of the existing sugar factories. In a situation like this, when such a factory itself gave 'no objection' certificate, thereby waived the requirement, the bonafides of the appellant cannot be doubted. The purpose of distance requirement is that there is sufficient availability of sugarcane in the area so that it could easily cater to all the sugar factories. It is not disputed that appellant's factory has not adversely affected the utilisation of crushing capacity of either M/s. DS factory or M/s. RS factory. It was pointed out by the appellant during arguments, that for last three years, M/s. DS factory had crushed more sugarcane than their target. Thus, in the facts of the instant case, the necessity of distance requirement between M/s. RS factory and the appellant's factory as contained in Clause 6A was not attracted. [Paras 30-33] [974-H; 975-A-B; 976-D-F]

1.5 The High Court held that the various steps taken by the appellant for setting up its factory, were not "effective steps" in terms of Sugarcane Control Amendment Order. However, whether such steps would constitute as 'effective' steps as required by amended provisions contained in Clauses 6A, 6B and 6C of the Sugarcane Control Order or not need not even be gone into. Important aspects which need to be highlighted are the following:

(i) IEM of the appellant was acknowledged on June 08, 2006. It had time till June 08, 2010 to commence commercial production as per the Sugarcane Control Order.

(ii) Extension was applied first on January 27, 2010 which was granted and thereafter second extension was granted by the Union of India till June, 2011. Commercial production commenced on May 25, 2011. These extensions were given after considering replies of the appellant to the show cause notice that was issued.

A **Even Government of Karnataka had recommended the appellant's case for extension. State government had also highlighted the public purpose behind this project, which was for the welfare of the farmers as well.**

(iii) The appellant took various steps for setting up of this
B **factory from time to time which have been taken note of above. These include purchase of land, placement of firm order for plant and machinery and payment of advance in that behalf, commencement of civil construction, taking term loans from the Banks etc.**

(iv) These steps were taken along with due permissions
C **which were required under different laws, duly accorded by the various Governmental Authorities, thus, showing its bona fides.**

(v) The appellant has incurred an expenditure of Rs.299.05 crores as per its audited balance sheet for 2015-2016. The expenditure on land and building as well as machinery is Rs.142.26
D **crores.**

(vi) The total loans for the running unit till year 2013 were to the tune of Rs. 237 crores.

(vii) The operational cost for running the factory in the year 2012-2013 was Rs.149.29 crores.

E **(viii) The appellant's unit is having 377 persons as employees on its rolls that are in regular employment. In addition, indirect employment of approximately 7150 persons during each crushing season is facilitated by the running of the appellant's factory.**

F **(ix) The appellant has also set up a co-generation plant for production of electricity which was initially 15 megawatt and, at present, is giving supply of 37 megawatt electricity.**

(x) There is ample sugarcane supply in the State of Karnataka and, in particular, in 'R' region and, therefore, there
G **is no adverse effect on the operation of any other sugar mills including M/s. RS and M/s. DS. [Para 34] [976-G-H; 977-A-H; 978-A]**

1.6 Keeping in mind all the said factors cumulatively, no purpose is going to be served in getting the unit of the appellant
H **closed. On the contrary, public purpose demands that the**

appellant's factory remain in operation and continue to function. Apart from equitable considerations on the side of the appellant, there are certain economic factors as well which tilt the balance totally in favour of the appellant. These include expenditure of approximately Rs.300 crores by the appellant in establishing the factory (including expenditure on land and building to the tune of Rs.142.26 crores); loans raised to the tune of Rs.237 crores; operational cost of Rs.150 crores; generation of employment of 377 persons on regular basis and indirect employment of more than 7000 persons; and setting up of co-generation plant for production of electricity which is giving supply of 37 mw of electricity. These factors, particularly, bank loans, employment, generation and production at the factory serve useful public purpose and such economic considerations cannot be overlooked, in the context where there is hardly any statutory violation. [Paras 35, 36] [978-B-E]

1.7 Interface between law and economics is much more relevant in today's time when the country has ushered into the era of economic liberalisation, which is also termed as 'globalisation' of economy. India is on the road of economic growth. It has been a developing economy and all efforts are made, at all levels, to ensure that it becomes a fully developed economy. Various measures are taken in this behalf by the policy makers. The judicial wing, while undertaking the task of performing its judicial function, is also required to perform its role in this direction. It called for an economic analysis of law approach, most commonly referred to as Law and Economics'. There is a growing role of economics in contract, labour, tax, corporate and other laws. Courts are increasingly receptive to economic arguments while deciding these issues. In such an environment it becomes the bounden duty of the Court to have the economic analysis and economic impact of its decisions. It is by no means suggested that while taking into account these considerations specific provisions of law are to be ignored. First duty of the Court is to decide the case by applying the statutory provisions. However, on the application of law and while interpreting a particular provision, economic impact/effect of a decision, wherever warranted, has to be kept in mind. Likewise, in a situation where two views are possible or wherever there is a discretion given to

A **the Court by law, the Court needs to lean in favour of a particular view which subserves the economic interest of the nation. Conversely, the Court needs to avoid that particular outcome which has a potential to create an adverse affect on employment, growth of infrastructure or economy or the revenue of the State. It is in this context that economic analysis of the impact of the** B **decision becomes imperative. [Para 37] [978-F-H; 979-A; 980-C-F]**

1.8 Even in those cases where economic interest competes with the rights of other persons, need is to strike a balance between the two competing interests and have a balanced approach. That C **is the aspect which has been duly taken care of in the instant case. Indian judiciary has resorted to economic analysis of law on *ad hoc* basis. Time has come to consider the inter-discipline between law and economics as a profound movement on sustainable basis. These are the additional relevant considerations which have weighed in the mind in adopting a particular course** D **of action in the instant case. [Paras 38, 39] [983-B-D]**

1.9 The said factors demand this Court to exercise its power under Article 142 of the Constitution. This Court would be inclined to do so in the instant case keeping in view the equitable considerations and moulding the relief. [Para 40] [983-D-E]

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1.10 The directions contained in the judgment of the High Court are set aside and the appellant's factory is allowed to continue its operation subject to the condition that 14 villages which were originally assigned to respondent No.1 would be re-allotted to it after taking these villages from the appellant. [Para F **41] [983-F-G]**

***M/s. Ojas Industries Pvt. Ltd.* v. *Oudh Sugar Mills Ltd. & Ors.* [2007] 4 SCR 661 : (2007) 4 SCC 723; *Rajendra Singh* v. *State of M.P. & Ors.* [1996] 4 Suppl. SCR 393 : (1996) 5 SCC 460; *Raunaq International Limited* v. *I. V. R. Construction Ltd. & Ors.* [1998] 3 Suppl. SCR** G **421 : (1999) 1 SCC 492 – referred to.**

***'Frontiers of Legal Theory' by Richard A. Posner* – referred to.**

Case Law Reference

H	[2007] 4 SCR 661	referred to	Para 16

[1996] 4 Suppl. SCR 393	**referred to**	**Para 31**	A
[1998] 3 Suppl. SCR 421	**referred to**	**Para 37**	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5040 of 2014.

From the Judgment and Order dated 29.03.2011 of the High Court B of Karnataka in Writ Petition Nos. 64254 of 2010

WITH

C. A. Nos. 5041, 5042, 5043 of 2014.

P. Chidambaram, Kavin Gulati, Basava Prabhu Patil, Ms. Indu C Malhotra, Sr. Advs., Ms. Ruby Singh Ahuja, Vishal Gehrana, Nakul Gandhi, Ms. Manik Karanjawala (for M/s. Karanjawala & Co.), Gopal Sankarnarayan, Ms. Ranjeeta Rohtagi, Ms. Kaveeta Wadia, Shashank Tripathi, Ms. Liz Mathew, Dipak Kumar Jena, Rupesh Kumar, Anish Kr. Gupta, Vikas Bansal, D. S. Mahra, Ms. Vimla Sinha, T. C. Sharma, Karan Seth, Shashank Dewan, Shubhranshu Padhi, Kush Chaturvedi, D Amjid Maqbool, Rameshwar Prasad Goyal, Ms. Anitha Shenoy, Tara Chandra Sharma, Vimal Sinha, G. S. Makker, Ms. Sushma Suri, Aman Varma, Ms. Anshula Grover, Naresh Kumar, Venkita Subramoniam T. R., Raghavendra S. Srivatsa, Ashok Kumar Sharma, Joseph Aristotle S., Ms. Priya Aristotle, K. Priyadarshini, Advs. for the appearing parties. E

The Judgment of the Court was delivered by

A. K. SIKRI, J. 1. The Industries (Development and Regulation) Act, 1951 (for short, the 'Act') contains the provisions whereby certain industries mentioned in the First Schedule to the said Act are brought under the control of the Union Government. It mentions, vide Entry 25 F of the First Schedule, "sugar industry" as well, to be 'scheduled industry'. The effect thereof is that by virtue of Sections 11 and 12 of the Act, compulsory licensing is required in respect of sugar industry. Sugar is also one of the essential commodities covered by Essential Commodities Act, 1955. In respect of such essential commodities, Union Government G is empowered to fix the prices of the product and also to regulate the distribution and supply of such products. In exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955, the Union Government promulgated the Sugarcane Control Order, 1966 which, inter alia, provided for the minimum price of sugarcane to be fixed, power to

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A regulate the distribution and movement of sugarcane and power to issue licenses to cane crushers etc. Clause 11 provides that the Central Government may delegate to the State Government or any Officer of the State to perform any of the functions of the Central Government.

2. The Government of India, periodically issued guidelines, under
B the Act, in respect of the sugar industry through 'press notes'. These press notes, inter alia, provided that lincenses for new sugar factories would be granted subject to a minimum distance requirement (which was varied from time to time). A Press Note no. 16 dated November 08, 1991 provided for a 25 km distance which could however be relaxed to
C 15 km in deserving cases where cane availability so justified. Clauses 2 and 3 are important as they provided that the basic criteria would be the availability of the cane and the potential for development of sugarcane. These clauses read as follows :

"Industrial Policy Highlights

D EXHIBIT NO. 12

PRESS NOTE NO. 16[1991 SERIES]

GUIDELINES FOR LICENSING OF SUGAR FACTORIES

A. A Government of India have reviewed the guidelines for licensing of
E new and expansion of existing sugar factories issued vide this Ministry's Press Note No. 4[1990 Series] dated 23.7.1990. In sup-0ersession of the aforesaid Press Note, Government have formulated the following revised guidelines:

"1. New sugar factories will continue to be licensed for a minimum
F economic capacity of 2500 tones cane crush per day [TCD]. There will not be any maximum limit on such capacity. However, in area specified as industrially backward areas by the Government of India and certified by the Indian Council of Agricultural Research to be agro-climatically suited for development of sugarcane, licensing of new sugar factories in the co-operative and public sectors would be allowed for an initial capacity
G of 1750 TCD subject to the condition that the units would expand their capacity to 2500 TCD within a period of 5 years of going into production.

2. Licenses for new sugar factories will be issued subject to the condition that the distance between the proposed new sugar factory and an existing/ already licensed sugar factory should be 25 kms. This distance criterion

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of 25 kms could, however be relaxed to 15 kms in special cases, where can availability so justifies.

3. The basic criterion for grant of licenses for new sugar units would be their viability, mainly from the point of view of cane availability and potential for development of sugarcane.

4. All new licenses wil be issued with the stipulation that cane price will be payable on the basis of sucrose content of sugarcane.

5. Other things being equal, preference in licensing will be given to proposals from the co-operative sector and the public sector, in that order, as compared to the private sector. In case more than on application is received from any zone of operation, priority will be given to the application received earlier.

6. Priority will continue to be given to sugar factories with capacity less than 2500 TCD to expand to the aforesaid minimum economic capacity.

7. While granting licenses for new units and expansion projects, the additional capacity to be created up to the end of the English Plan, i.e., 1996-97, will be kept in view.

8. While granting licenses for new sugar factories, industrial licenses in respect of down-stream units for the use of molasses, i.e., industrial alcohol, etc. will be given readily.

B. Applications for licenses will be initially screened by the Screening Committee of the Ministry of Food. While considering such applications, the comments of the State Government/Union Territory Administration concerned would also be obtained. The State Government/Union Territory Administration concerned would also be obtained. The State Government/ Union Territory Administration would be required to furnish their comments within 3 months of the receipt of communication from the Ministry of Food.

C. Applications for grant of industrial licenses for the establishment of new sugar factories as well as expansion of existing units should be submitted directly to the Secretariat for Industrial Approvals in the Department of Industrial Development in Form IL along with the prescribed fee of Rs. 2500/-. A copy of the application may also be sent to the Ministry of Food.

A D. The procedure and guidelines, as given above, are brought to be notice of the entrepreneurs for their information and guidance.

No. 10[74]/91-LP New Delhi, the 8th November, 1991

B Forwarded to Press Information Bureau for wide publicity to the contents of the above Press Note.

SD/-

[S.BHAVANI]

C DEPUTY SECRETARY TO THE GOVERNMENT OF INDIA

PRINCIPAL INFORMATION OFFICER, PRESS INFORMATION BUREAU, SHASTRI BHAWAN, NEW DELHI-110 001."

This Press Note was amended from time to time by Press Notes dated January 10, 1996, June 15, 1998 and August 31, 1998.

D 3. Press Note-12 dated August 31, 1998 is of some relevance in the present case. This was the result of liberalization policy of the Central Government. After embarking on liberalization and globalization, in order to ease the doing of business, the Government decided to relax the control over various types of industries. By the aforesaid Notification dated E August 31, 1998, the Government exempted persons from taking licenses to set up a sugar factory. This was done in exercise of power contained under Section 29(b) of the Act subject to the condition that a minimum distance of 15 km would continue to be observed between an existing sugar mill and a new mill. Pertinently, insofar as Sugarcane Control Order, 1966 is concerned, there was no provision of minimum distance F between the two sugar mills. For this reason, the aforesaid Press Notes were held to be administrative guidelines, not having statutory character by Allahabad High Court.

4. The appellant herein had made an application for permission to establish a new sugar factory. One, M/s. Raibagh Sahakari, which was G in the same vicinity where the appellant was seeking to establish its factory, gave a 'no objection' certificate to the appellant for establishing a sugar factory in the year 1995. The application of the appellant was processed and the Government of India issued a Letter of Intent (LOI) to the appellant on July 03, 1996 permitting it to establish a sugar factory H at Village Saundatti, Tehsil Raibagh, District Belgaum. This was done

before the new policy was announced vide Press Note-12 dated August 31, 1998, i.e., during the Licence Raj . After the aforesaid Press Note, there was paradigm shift in the approach as no licence was now required and instead requirement was to file an Industrial Entrepreneurs Memoranda (IEM) only. Accordingly, only condition which was to be fulfilled by the appellant was that there was no sugar factory existing within the radius of 15 km from the appellant's proposed site which was so stipulated in Press Note dated August 31 1988, i.e., by administrative decision. On June 05, 2006, the Commissioner of Cane Development/ Director of Sugar issued a certificate to this effect certifying that there was no such sugar factory within the radius of 15 km from the appellant's site. After the issuance of this certificate, the appellant filed its IEM which was duly acknowledged by the Ministry of Commerce and Industries.

5. We may point out, at this stage, that the present dispute is about the existence of Raibagh Sahakari Factory, i.e., whether it is within the radius of 15 km from the appellant's factory or not? Pertinently, on January 24, 2004, the Government of Karnataka had passed an order of liquidation of Raibagh Sahakari in exercise of its power under Section 72 of the Karnataka Co-operative Societies Act, 1951. Certain developments took place qua Raibagh Sahakari thereafter. We would like to state those events and developments subsequently, though these events were taking place simultaneously with the process of setting up of the factory by the appellant. It would be apposite to first take note of the manner in which the appellant has set up its factory at the proposed site.

6. As pointed out above, the appellant filed its IEM on August 08, 2006, supported by the certificate issued by the Cane Development Commissioner that there was no existing sugar factory within the radius of 15 km. Thereafter, on October 20, 2006, the Government of Karnataka granted permission to the appellant for purchase of agricultural lands for industrial purposes in Raibagh Taluk in village Yadrav. Similar permission was granted under Section 109(1) of the Karnataka Land Reforms Act, 1961. Similar permission under Section 109(1) on November 20, 2006 for land admeasuring a total of 38 acres and 11 guntas for setting up a sugar factory in village Yadrav and Saundutti was also granted by the Deputy Commissioner, Belgaum.

7. The Karnataka Udyog Mitra set up under the Karnataka

A Industrial Facilitation Act, 2002 forwarded a proposal to the Commissioner for Cane Development, for setting up a sugar factory by the appellant. It was placed before the State High Level Clearance Committee, inviting comments from Commissioner.

8. On November 03, 2006, the Karnataka Udyog Mitra, acting as
B a single window for clearance of projects in the State invited comments from the Deputy Cane Commissioner with regard to specific survey numbers in villages Saundutti and Yadrav, describing the type of land which was required to be sued. While this process was on, another significant development took place with which this case is directly
C concerned.

9. While the IEM of the appellant was being processed, a significant step was taken by the Government of India, which has turned out to be very crucial for the appellant's factory. The Sugarcane (Control) Amendment Order, 2006 was brought into force on November 10, 2006. Clauses 6A to 6E were inserted. Now by Clause 6A, a minimum distance
D requirement of 15 kms was brought into force. This requirement, which was hitherto administrative in nature, has, become a statutory requirement. However, only Clauses 6B(1) to 6D were made applicable by virtue of Clause 6E to industries whose IEM stood acknowledged till this date. Thereafter, following steps were undertaken for establishment
E of the factory by the appellant:

(a) The Karnataka Pollution Control Board inspected the site at village Yadrav and Saundutti and gave its opinion on December 15, 2006 with regard to the viability of the project to the Karnataka Udyog Mitra.

(b) Another factory, known as Doodhganga Sugar Factory also
F issued its No Objection Certificate for establishment of the sugar factory at village Saundutti.

(c) The Director of Industries informed the appellant on May 03, 2007 that its project of establishing a 3000 TCD plant, 12 MW Co-generation Plant and 30 KLPD Molasses to Ethanol Plant with an
G investment of Rs. 106.840 Crores in Saundutti and Yadrav villages had been cleared by the High Level Committee of the State.

(d) The Canara Bank granted a performance guarantee for Rs. 1 Crores as per the requirement of Clause 6A Explanation 2 r/w clause 6E(2) of the Order, 2006.

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(e) The Survey of India on an application by the appellant issued a Distance Certificate certifying that the distance between the appellant's factory and that of M/s. Raibagh and Shree Doodhganga was not less than 15 Kms.

(f) The Cane Commissioner, issued a Certificate stating that the crushing operations of M/s. Raibagh had stopped from 2001-2002.

(g) The Government of Karnataka allotted 14 villages of Raibagh and six of Doodhganga to the appellant.

(h) The Commissioner, Cane Development/ Director of Sugar certified that the distance of the two factories in question from the appellant's unit was more than 15 kms vide its letter dated August 17, 2007.

(i) Appellant was granted permission under the Karnataka Industries (Facilitation) Act, 2002 on November 07, 2007.

(j) After obtaining all requisite permissions, various steps were taken by the appellant such as, purchasing land, placing an order for machinery, placing an order for setting up civil works and applications and approvals for financial assistance.

(k) The Government of India accepted the performance guarantee submitted by the appellant on April 15, 2008 and directed it to file the progress report of the project.

(l) The Gram Panchayat Diggiwadi granted and NOC for establishment for factory at village Yadrav.

(m) The Gram Panchayat Diggiwadi granted an NOC for establishment of factory at Village Saundutti.

(n) The appellant submitted progress reports to the Chief Director, Sugar for the month of September, 2008. Further, progress reports dated October 31, 2008, July 30, 2009, January 27, 2010 were also submitted.

(o) NOC was issued by the Pollution Control Board for setting up the appellant unit. As the Raibagh factory stood closed, the Government took steps to restart the factory and after a tender process Shree Renuka Sugar was allowed to restart the factory, for which a lease deed was executed.

Even the grant of this lease was challenged in a bunch of writ

petitions bearing no. 31661 of 2008 and connected matters. These writ petitions were dismissed by an order dated February 10, 2010 wherein, in para 4 of that order, it was noticed that the sugar factory had stopped crushing since 2001-2002.

(p) The appellant filed an application dated January 27, 2010 before the State Government with the request to make a recommendation for permission to extend time for implementing the project.

(q) In view of the progress reports submitted by the appellant on March 09, 2010, the Government of Karnataka referred the appellant's case for extension of time for taking effective steps and commencement of production. The appellant also requested for extension of time.

(r) First show cause notice dated April 29, 2010 was issued by the Government of India requiring the appellant to state why its performance guarantee not be forfeited for not taking effective steps.

(s) A detailed reply dated May 06, 2010 was submitted by the appellant, detailing the effective steps taken.

(t) The appellant wrote letter dated June 21, 2010 to the Chief Director, Sugar, detailing the steps taken and requesting for extension of time. It was followed by another letter dated July 22, 2010 to the Chief Director, Sugar, detailing the steps taken and requesting for extension of time bringing to its notice that 7.17 acres of land had been purchased and loan had been sanctioned. It was pointed out that the Director had been shot at and was in hospital for a year leading to delay.

(u) Considering the reply filed by the appellant, the Government of India dropped the show cause notice and granted an extension to the appellant to commence production by December 07, 2010.

(v) The Labour Commissioner granted registration to the appellant.

(w) Government of Karnataka, on November 16, 2010, requested GOI for a further extension. The Government of India granted the second extension of time to the appellant till June 07, 2011. It is an admitted case that factory was duly set up and production started before June 07, 2011. The appellant has also been given the environmental clearance. Government of India even granted licence dated March 24, 2011 for crushing for the season 2010-2011.

10. After recapitulating the aforesaid background leading to the

establishment of factory and start of production in the said factory by the appellant herein, we now advert to the contentious issue of setting up of this factory within 15 km from the sugar factory, Raibagh Sahakari. As pointed out above, on November 06, 1995, M/s. Raibagh Sahakari had issued 'no objection' certificate to the appellant. In any case, on January 24, 1995, order of liquidation in respect of Raibagh Sahakari was passed by the Government of Karnataka. On September 14, 2006, the Cane Commissioner had written to the Secretary, Government of Karnataka bringing to its notice the fact that in Raibagh Taluk, the total production of sugarcane was 23.32 lakh tonnes as on that date Raibagh Sahakari factory was lying closed. According to the appellant, because of this reason there was excess cane available which was being taken to Maharashtra from Karnataka, thus, causing the loss to the exchequer. In this backdrop, another factory Doodhganga Krishna Sahakari which was in the same vicinity (though more than 15 kms away) had given 'no objection' dated August 12, 2006 for allocating six villages to the appellant's proposed factory.

11. Insofar Raibagh Sahakari Factory is concerned, a liquidator had been appointed by the State Government. The State Government, however, made endeavour thereafter to revive this sugar mill. For this purpose on July 19, 2007 the Government notified tenders for giving this factory by way of lease. This Notification inviting tender was challenged by certain persons in the form of writ petition filed in the High Court. The High Court dismissed the writ petition, thereby upholding the action of the Government to invite tenders. In this order dated January 10, 2008 passed by the High Court, it was categorically noted as a fact that this Raibagh factory was lying closed from the year 2001-2002. Be as it may, the tender process went on and ultimately tender of Respondent No. 1 herein, i.e., Shree Renuka Sugar Limited was accepted and lease deed dated October 16, 2008 was executed in favour of Respondent – 1 thereby allowing it to restart the said factory. Even this grant of lease was challenged in a bunch of writ petitions which were dismissed by the High Court on February 10, 2010. In this order as well, the High Court again noticed that since the factory had been lying closed since 2001-2002, it needed a restart which was in public interest. In this manner, it is Respondent no. 1 which is now running Raibagh Sahakari factory and has now taken a position that since Raibagh Sahakari is within the radius of 15 kms from the place where appellant had set up its factory, as per

A the provisions of clause 6A of Sugarcane (Control) Amendment Order, 2006, no permission could have been given to the appellant to start its factory.

12. It may be noted here that between June, 2010 and November, 2010, four writ petitions, in quick succession, came to be filed against B the appellant for stalling its project, at the stages when substantial work had been accomplished by the appellant for setting up of the factory. The details of these writ petitions are as under:-

1. On June 17, 2010: W.P. No. 64254 of 2010 filed by Renukaat Dharwad for declaring the IEM dated June 08, 2006 to have C lapsed. No interim Order passed in this case.

2. On September 14, 2010 : W.P. Nos. 66903-907/2010, W.P. Nos. 66926-35/2010, purportedly filed through some members of M/s. Raibagh Sahakari. No interim order passed in this case also.

D 3. On October 18, 2010: W.P. No. 66920/2010 and W.P. No. 66972-990/2010 filed by certain members of Doodhganga Krishna Sahakari of Nandi. In this case, an interim order was passed to the effect that all steps taken by the appellant would abide by the result of the writ petitions.

E 4. On November 26, 2010: W.P. No. 37143 of 2010 filed as PIL.

13. These writ petitions were finally heard together and have been decided by the High Court vide impugned judgment dated March 29, 2011. The High Court has held that the distance between the factory of the appellant and Raibagh Sahakari is less than 15 kms and, therefore, F the setting up of the factory is in violation of clause 6A of the Sugarcane (Control) Amendment Order, 2006. As a consequence, the IEM of the appellant is held to be derecognized. The High Court has also held that extensions dated August 18, 2010 and December 01, 2010 were without jurisdiction as "effective steps" in terms of Sugarcane Control Amendment Order were not taken and, therefore, no extension could be G given.

14. It has already been pointed out that the Survey of India had issued the certificate dated July 16, 2007 certifying that distance between the appellant's proposed factory and Raibagh Sahakari factory as well as Doodhganga was more than 15 kms. Before the High Court, Survey H

of India had filed an affidavit stating that such certificate was issued as per the prevailing procedure which was prevalent till December 31, 2007. It was further pointed out that the Survey of India had notified new rules for measuring distance on September 02, 2007. The measurement of distance, as per new Rules, showed that distance between the two factories was less than 15 kms. Such a clarification was given by the Survey of India in the High Court in the aforesaid writ petitions. Significantly, the Survey of India had not recalled its certificate dated July 16, 2007 on the basis of which the case of the appellant for setting up the factory was processed and all due permissions accorded to it.

15. The appellant filed Special Leave Petition against the impugned judgment in which notice was issued on May 13, 2011 and operation of the factory was stayed till further orders. Thereafter, leave was granted and this stay has continued. As a result, the factory of the appellant is still operational. Certain further events which have taken place after filing of the said Special Leave Petition, in which leave was granted thereby converting it into civil appeal, may also be noted at this stage:

(i) The Government grants Factories Act approval.

(ii) RTI information from Raibagh stating that there was no crushing from 2002-03.

(iii) Statement issued by Joint Collector, Agriculture showing the total availability of sugarcane for the Belgaun District. As per this, a sufficient quantity of sugarcane is available to take care of the needs of all the factories in that area.

(iv) The Pollution Control Board indicates that M/s. Raibagh did not have air and water pollution clearances between 2002-08.

(v) The Government informs that there was no license obtained by Raibagh Sahakari for the years 2003-2008 for crushing.

(vi) Cane Commissioner under RTI informs that there is no application by Raibag Sahkari for crushing from 2001-208.

(vii) Najilingappa Sugar Institute issues a report giving details of sugarcane available, crushed and uncrushed till 2011.

(viii) While the present appeals were pending, this Court directed the Survey of India to undertake fresh measurements as per

A the policy of measurements now formulated from January 01, 2008.

16. A perusal of the order of the High Court would reveal that all the official respondents, viz., the Union of India, the Commissioner for Cane Development and Director for Sugar (Government of Karnataka), B the Government of Karnataka as well as the Survey of India had supported the appellant herein, by filing their detailed responses-cum-statement of objections in the writ petitions filed in the High Court. The Union of India had, *inter alia*, pointed out that the minimum distance criteria of 15 km as mentioned in Press Note dated August 31, 1998 was directive in nature and not mandatory and in this behalf reference was C made to the judgment of Allahabad High Court. At the same time, Delhi High Court had decided otherwise. In view of these developments, expert advice of Department of Legal Affairs was sought which opined that Sugarcane (Control) Order, 1966 may be amended suitably. In the meantime, even this Court vide its order dated September 05, 2006 in D the case of ***M/s. Ojas Industries Pvt. Ltd.*** v. ***Oudh Sugar Mills Ltd. & Ors. [(2007) 4 SCC 723]*** granted eight weeks time to the Union of India to iron out some of the difficulties highlighted by the parties in the said case. This led to the amendment in the Sugarcane (Control) Order, 1966 vide amendment dated November 10, 2006 giving statutory backing to the concept of minimum distance. This order was made applicable to E the date of issuance of the order i.e. November 10, 2006. The Union of India also pointed out in its counter affidavit that in the case of ***M/s. Ojas Industries Pvt. Ltd.***, this Court held that the said amendment was retrospective in operation and also highlighted the consequence of non-implementation of IEM within the period stipulated. Since four years F time to commence the commercial production was provided in the Amendment Order, 2006 and this amendment was held to be retrospective by this Court, advice of the Additional Solicitor General of India was sought as to whether the Bank Guarantees given by such persons should be accepted or not. The Additional Solicitor General of India in his letter dated June 18, 2007 advised the Government that the Department should G not accept the Bank Guarantees from the first or earlier persons whose IEMs were acknowledged in the years 1998/1999/2000 i.e. prior to June, 2003 and who had not taken effective steps. He further advised that Bank Guarantees can only be accepted from the first or earlier IEM holders in terms of Clause 6E of the Control Order, 2006 if the time limit

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of four years, as prescribed in Clause 6C has not expired. The Union of India further stated that the matter of the appellant was examined in the light of the aforesaid opinion and that the extension of time for completing the project and to commence the project was given. Insofar as issue of distance is concerned, as per the Union of India, since the certificate issued by the Survey of India was on record, which was valid and since it disclosed that the sugar factory was beyond 15 km from the existing factory, the appellant was allowed to go up with the setting up of the said factory.

17. The Sugarcane Commissioner in his statement of objections to the writ petitions mentioned that the State Government had, vide its order dated November 07, 2007, granted 'in-principle clearance' for establishment of the sugar factory. It was found that Raibag Sahakari factory was lying close for several years and the order of liquidation has been passed by the State Government. From the year 2001-2002 itself, the crushing activity of the said Raibag Sahakari factory came to be stopped. It was also pointed out that in the year 1995 itself, Raibag Sahakari had conveyed a 'No Objection Certificate' for establishment of factory by the appellant. Apart from this, on a recommendation made by the Deputy Commissioner regarding the viability and availability of the cane in the area concerned, respondent-Authority has passed an order known as 'The Karnataka Sugarcane (Regulation of Distribution) M/s. Shivashakti Sugars, Saudatti Village, Raibag Taluk, Order 2007'. The said order admittedly is not called into question by the appellant nor by Raibag Sahakari Sakkare Karkhane. They have accepted the said order. According to the Cane Commissioner, the allocation of cane area made in favour of M/s. Shivashakti Sugars (the appellant) is an informed decision. It is a decision made on the basis of relevant materials. It is a decision made eminently in public interest, that is to say, in the interest of sugarcane farmers growing sugarcane in and around Raibag Taluk. The Cane Commissioner also emphasised in his affidavit filed in the High Court, that Deputy Commissioner, Belgaum vide its communication dated August 25, 2006 has made a recommendation for allocation of 16 villages situated in Raibag Taluk and 7 villages situated in Chikodi Taluk to be allocated in favour of the appellant and on receipt of this communication, a meeting was convened under the Chairmanship of the Secretary, Commerce & Industries Department, on May 12, 2006. It was noticed that the Taluk Agricultural Officer had reported that the total potential of

A sugarcane growth is 23.22 lakh tones per year and that the necessity of the appellant was merely 5 lakh tone per year. It was also noticed that in view of the closure of Raibag Sahakari Sakkare Karkhane, sugarcane growers of the said area were forced to supply sugarcane to Doodhganga Sahakari Sakkare Karkhane and Halasiddanatha Sahakara Sakkare Karkhane. Those two factories also were unable to receive the sugarcane so grown, resulting in the sugarcane farmers being forced to carry their sugarcane to the neighbouring State of Maharashtra, which has counter productive of the interest of the farmers in general. It was also pointed out that thereafter notices were issued to Doodhganga Sahakari Sakkare Karkhane as well as Raibag Sahakari Sakkare Karkhane for another meeting which was held on 04.06.2007 wherein the Managing Director of Raibag Sahakari Sakkare Karkhane concurred with the recommendation made by the Deputy Commissioner and Doodhganga Sahakari Sakkare Karkhane also issued no objection. Taking into account these factors, the State Government had passed the order dated November 07, 2007. Another significant aspects highlighted by the Sugarcane Development Commissioner were that for the year 2008-2009, Raibag Sahakari Sakkare Karkhane had crushed only 20,573 tonnes of sugarcane, whereas its crushing capacity is 4 lakh tonnes. Out of 23 lakh tones of sugarcane so grown in that area, if the entire 4 lakh tones is given away to Raibag Sahakari Sakkare Karkhane, yet there would be excess cane available in the area. In these circumstances, the commencement of the appellant's factory would be actually in the interest of sugarcane farmers, which would encourage sugarcane growth and it will also prevent the farmers from transporting their sugarcane outside the State. There has been under-crushing of sugarcane frown in the entire State as such. In fact, for the year 2007-2008, it was noticed that as against the growth of 340 lakh tonnes of sugarcane, only 270 lakh tones was crushed, thereby leaving about 70 lakh tonnes of sugarcane remaining uncrushed. For the year 2008-2009, it was projected that 90 lakh tonnes would go without crushing. Therefore, the State Government announced several incentives to sugarcane farmers for paying compensation for uncrushed sugarcane and also incentives to Sugar Factory were given to crush sugarcane apart from the allocated area, with an incentive of Rs.100/- for every tone of sugarcane so crushed. All these would go to show that commencement of new Sugar Factories would be in the interest of all concerned and in the public interest.

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18. The appellant, in its counter affidavit filed in the High Court, apart from reiterating the aforesaid facts, submitted that entire action of the appellant, in this behalf, was bonafide and it had invested substantial amounts for the establishment of the factory. Therefore, there was no reason to interfere in the matter. A

19. Survey of India also opposed the writ petitions. It justified its earlier distance certificate by mentioning that the area was measured by taking recourse to the methodology that was operating at that time. B

20. On the basis of pleadings in the said writ petitions and the arguments that were advanced by the counsel for the writ petitioners and the respondents, the High Court formulated as many as five points which arose for consideration in all those writ petitions which are as follows: C

"(1) Whether Shivashakti Sugars has set up a sugar factory at Saundatti Village in accordance with law in as much as

(a) is there a valid industrial entrepreneur memorandum filed in accordance with the Sugarcane Control Order; D

(b) is the new sugar factory established beyond 15 kms from the existing sugar mills viz. Doodaganga Sugar Mills and Raibagh Sugar Mills;

(c) the distance certificate obtained is in accordance with law; E

(d) after filing of the IEM whether effective steps have been taken in terms of Explanation IV to Clause 6A of the Sugarcane Control Order such as:

(i) whether the land required for setting up the industry is acquired; F

(ii) whether civil construction and building was commenced within the stipulated period of two years;

(iii) whether firm order for plant and machinery and the letter of credit was within two years period; G

(iv) whether requisite finance has been arranged

(2) If effective steps are not taken within the stipulated period of two years, whether IEM stands de-recognised?

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A (3) Whether the order of extension passed by the Central Government is valid in accordance with law or is void ab initio and nonest?

(4) Whether these writ petitions filed are not maintainable and liable to be dismissed on the ground of delay, laches, want of
B bonafides and on the ground that no public interest is involved?

(5) What order?"

21. Thereafter, the High Court discussed, in great detail, each of the aforesaid points and came to the conclusion that 'effective steps' as required under the provision of Sugarcane (Control) Order were not
C taken by the appellant; the order giving extensions to the appellant for completing the objections were not valid; there could not be any new sugar factory established by the appellant in view of existing sugar mills, namely, Doodhganga Sugar Mills and Raibag Sugar Mills within 15 km from the sugar factory of the appellant; the Survey of India had not determined the distance by conducting the measurements independently;
D clause 6A of the Sugarcane Control Order was mandatory and retrospective in nature and, therefore, was applicable in the case of the appellant as well. In the process, the High Court also held that Raibag Sugar Factory was an existing factory within the meaning of clause 6A of the Sugarcane Control Order 2006.

E 22. The appellant has challenged the aforesaid findings of the High Court. In the first instance, it is argued that interpretation of clause 6A of the Sugarcane Control Order by this Court in ***M/s. Ojas Industries*** case holding it to be retrospective, is *per incuriam*. It is also argued that, in any case, since M/s. Raibag Sahakari Sakkare Karkhane was
F not an existing sugar factory at the relevant time, rigours of clause 6A was not applicable in the case of the appellant as the question of distance did not arise. It was also argued that the findings of the High Court that the appellant did not take effective steps as per explanation to clause 6A was clearly erroneous and, therefore, it resulted in an automatic de-recognition of the IEM of the appellant. The appellant has questioned
G the correctness of the decision of the High Court insofar as it holds that extensions given by the Union of India were inappropriate. Even the *locus standi* of the writ petitioners who filed the writ petitions is challenged. It was also submitted that having regard to the subsequent events and particularly to the effect that very substantial amount was
H spent by the appellant on the establishment of the factory and appellant

had taken all possible steps and sanctions from various Authorities, it should not be made to suffer the closure of the factory since the factory of the appellant is in business from the year 2011. In nutshell, following issues have been raised for consideration:

(a) Whether Clause 6A of the Sugarcane Control Order, 1966 (as amended in 2006) can be made applicable to an entrepreneur, who has been granted an IEM prior to the amendment on November 10, 2006 and whether the judgment of this Court in the case of ***Ojas Industries*** case, insofar as it holds Clause 6A to be retrospective, is *per incuriam?*

(b)Whether assuming that Clause 6A is applicable to an IEM holder, prior to the 2006 amendment, would this Clause be applicable in the present case as M/s. Raibagh Sahakari Sakkare Karkhane Niyamit was not an existing sugar factory (within the meaning of explanation 1 to Clause 6A)?

(c) Whether the High Court was correct in holding that the appellant did not take effective steps (as per explanation 4 to Clause 6A), within the time frame specified under Clause 6C of the Sugarcane Control Order, 1966?

(d)Whether the High Court was correct in concluding that if the effective steps are not taken within the time specified, the same would result in an automatic re-recognition would be an order for shutting down the unit?

(e)Whether the High Court was correct in concluding that the extensions for commencing commercial production were incorrectly granted by the Union of India, as the application for extension was not filed before the IEM had lapsed?

(f)Whether the petitioners in the four writ petitions, could be considered persons aggrieved and had locus to maintain the writ petitions?

(g)Whether even if the High Court is correct in law, in view of the subsequent events, i.e. the establishment of the sugar mill by the appellant and it continuing to crush sugarcane since the year 2011, the appellant's factory may be permitted to continue, in the interest of justice, in the facts and circumstances of the present case?"

23. We feel that it would be more appropriate to first deal with the issues (b) and (g), inasmuch as our answer thereto would reveal that there is no need to traverse through the other issues at all.

24. Before we touch upon the discussion on these issues, let us reproduce the provisions of Clauses 6A to 6C and 6E of the Sugarcane (Control) Order which were introduced by way of an amendment in the year 2006. These are set out as under:

> "***6-A Restriction on setting up of two sugar factories within the radius of 15 km.***—Notwithstanding anything contained in clause 6, no new sugar factory shall be set up within the radius of 15 km of any existing sugar factory or another new sugar factory in a State or two or more States:
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> Provided that the State Government may with the prior approval of the Central Government, where it considers necessary and expedient in public interest, notify such minimum distance higher than 15 km or different minimum distances not less than 15 km for different regions in their respective States.
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> Explanation 1.— An existing sugar factory shall mean a sugar factory in operation and shall also include a sugar factory that has taken all effective steps as specified in Explanation 4 to set up a sugar factory but excludes a sugar factory that has not carried out its crushing operations for last five sugar seasons.
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> Explanation 2.— A new sugar factory shall mean a sugar factory, which is not an existing sugar factory, but has filed the Industrial Entrepreneur Memorandum as prescribed by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry in the Central Government and has submitted a performance guarantee of rupees one crore to the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution for implementation of the Industrial Entrepreneur Memorandum within the stipulated time or extended time as specified in clause 6-C.
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> Explanation 3.— The minimum distance shall be determined as measured by the Survey of India.
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> Explanation 4.— The effective steps shall mean the following steps taken by the person concerned to implement the industrial Entrepreneur Memorandum for setting up of sugar factory—

(a) purchase of required land in the name of the factory;

(b) placement of firm order for purchase of plant and machinery for the factory and payment of requisite advance or opening of irrevocable letter of credit with suppliers;

(c) commencement of civil work and construction of building for the factory;

(d) sanction of requisite term loans from banks or financial institutions;

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

"6-B. Requirements for filing the Industrial Entrepreneur Memorandum.— (1) Before filing the IEM with the Central Government, the concerned person shall obtain a Certificate from the Cane Commissioner or Director [Sugar] or specified authority of the State Government concerned that the distance between the site where he proposes to set up sugar factory and adjacent existing sugar factories and new sugar factories is not less than the minimum distance prescribed by the very Central Government or the State Government, as the case may be, and the person concerned shall file the Industrial

Entrepreneur Memorandum with the Central Government within one month of issue of such certificate failing which validity of the certificate shall expire.

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

6-C. Time-limit to implement Industrial Entrepreneur Memorandum.— The stipulated time for taking effective steps

A shall be two years and commercial production shall commence within four years with effect from the date of filing the Industrial Entrepreneur Memorandum with the Central Government, failing which the Industrial Entrepreneur Memorandum shall stand derecognised 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 on the recommendation of the State Government concerned, may give extension of one year exceeding six months at a time, for implementing the Industrial Entrepreneur

C Memorandum and commencement of commercial production thereof.

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6-E. Application of clauses 6-B, 6-C and 6-D to the person

D **whose Industrial Entrepreneur Memorandum has already been acknowledged.—**

(1) Except the period specified in sub-clause (2) of clause 6-B of this order, the other provisions specified in clauses 6-B, 6-C and 6-D shall also be application to the person whose Industrial

E Entrepreneur Memorandum has already been acknowledged as on date of this notification but who has not taken effective steps as specified in Explanation 4 to clause 6-A.

(2) The person whose Industrial Entrepreneur Memorandum has already been acknowledged as on date of this notification but

F who has not taken effective steps as specified in Explanation 4 to clause 6-A shall furnish a performance guarantee of rupees one crore to the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution within a period of six months of issue of this notification failing which the Industrial

G Entrepreneur Memorandum of the person concerned shall stand derecognised as far as provisions of this order are concerned."

25. The aforesaid provisions stipulate the steps which an entrepreneur has to take in an establishment of a sugar factory. These

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provisions also mention time limit to implement IEM provisions which are made for extension of time as well. Consequences of non-implementation of the provisions are also laid down.

Clause 6A also defines what is an existing sugar factory and what is a new factory. This Clause also stipulates the distance requirement and how the minimum distance of 15 km provided therein shall be determined. With this, we advert to the discussion on issues (b) and (g) in the first instance.

Issue (b)

26. M/s. Chidambaram and Kavin Gulati, senior advocates argued the matter on behalf of the appellant. It was their submission that on the date when the appellant applied for and got acknowledged its IEM on June 08, 2006, M/s. Raibag Sahakari Sugar factory was not in operation on that date. Therefore, distance requirement as provided for under Clause 6A was not applicable in the instant case. It was also emphasised that M/s. Raibag Sahakari had not crushed sugarcane since 2001-2002 i.e. in the last five crushing seasons prior to June 08, 2006, which was also a relevant consideration to hold that distance requirement was inapplicable in this case. It was submitted that there was a clinching evidence to prove the aforesaid facts inasmuch as this has been judicially acknowledged in the orders of the High Court itself while dealing with the challenge to the action of the State Government in inviting tenders for giving lease to M/s. Raibag Sahakari and while deciding challenge to the grant of the said lease in favour of respondent No.1.

27. We may point out at this stage that the aforesaid fact is not in dispute. There cannot be any quarrel about the same having regard to plethora of evidence produced in support of this submission which has already been recorded above. The question is as to whether M/s. Raibagh Sahakari would be treated as 'existing sugar factory' within the meaning of Clause 6A of the Sugarcane Control Order. It is the case of the appellant that Clause 6A of the Sugarcane Control Order provides a minimum distance of 15 km to be maintained between an existing sugar factory and another new sugar factory. Explanation 1, defines an existing sugar factory. This explanation is in three parts. The first part provides that a factory shall be considered as an existing sugar factory to be a sugar factory 'in operation'. The second part provides that, it shall also include a sugar factory that has taken all effective steps as specified in

A explanation 4. The third part provides that a sugar factory shall not be considered as an existing sugar factory if 'a sugar factory that has not carried out its crushing operations for the last five sugar seasons'. It is submitted that if a sugar factory, is not 'in operation' on the date when a new sugar mill applies for an IEM, the old sugar factory, shall not be considered as an existing sugar mill.
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28. The learned counsel for respondent no. 1 heavily relied upon the reasoning in the impugned judgment of the High Court to support his case. There appears to be force in the aforesaid submissions of the appellant. Requirement of Explanation 1 to Clause 6A is that in order to qualify as an existing sugar mill, it needs to crush for five consecutive
C years. We find that the High Court has wrongly recorded that the requirement is of crushing for any of the one season out of five and this has led to error on the part of the High Court in holding that M/s. Raibagh Sahakari was an existing sugar factory.

29. Another aspect which becomes relevant in this behalf (and
D would also have bearing while deciding issue (g)) is that the case of the appellant for setting up of the factory was processed keeping in view the fact that M/s. Raibagh Sahakari was not in operation. Further, in one case way back in the year 1995, it had even granted 'no objection' certificate for setting up of the factory by the appellant. Another significant
E aspect which is to be borne in mind is that the State Government had passed order of liquidation of M/s. Raibagh Sahakari in exercise of its power under Section 72 of the Karnataka Co-operative Societies Act, 1951. Even a liquidator was appointed to undertake the liquidation process. From this scenario, everybody would get a bonafide impression that such a factory which is non-operational, is going to be liquidated in due course
F of time. No doubt, subsequently the State Government decided to revive this factory and steps in this behalf were taken in the year 2008. However, much before that IEM of the appellant was got acknowledged on June 08, 2006. As on that date, there was no 'existing' sugar factory within the meaning of Clause 6A of the Sugarcane Control Order.
G Therefore, the requirement of distance as prescribed in Clause 6A would be inapplicable.

30. Insofar as M/s. Doodhganga Sahakari factory is concerned, two aspects need to be stressed upon. First, as per the certificate of Survey of India given on June 05, 2006, distance between the said factory
H and the then proposed factory of the appellant is shown to be 15 km.

Secondly, M/s. Doodhganga Sahakari had given their no objection to the setting up of the factory by the appellant on the basis of which matter was processed further.

31. We have to keep in mind that the requirement of distance mentioned in the Amendment Order was inserted keeping in mind the benefit of the existing sugar factories. In a situation like this, when such a factory itself gave 'no objection' certificate, thereby waived the requirement, the bonafides of the appellant cannot be doubted. We would like to reproduce here the following observations from the judgment in the case of ***Rajendra Singh*** v. ***State of M.P. & Ors.***, (1996) 5 SCC 460:

> "6. It has been held by a Constitution Bench of this Court in *Har Shankar* v. *Dy. Excise and Taxation Commr.* [(1975) 1 SCC 737 : AIR 1975 SC 1121] that: (SCC p. 748, para 22)
>
> "[T]he writ jurisdiction of High Courts under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred."
>
> At the same time, it was observed that the licensees are not precluded from seeking to enforce the statutory provisions governing the contract. It must, however, be remembered that we are dealing with parties to a contract, which is a business transaction, no doubt governed by statutory provisions. [Reference may also be made to the decision of this Court in *Asstt. Excise Commr.* v. *Issac Peter*, (1994) 4 SCC 104.] While examining complaints of violation of statutory rules and conditions, it must be remembered that violation of each and every provision does not furnish a ground for the court to interfere. The provision may be a directory one or a mandatory one. In the case of directory provisions, substantial compliance would be enough. Unless it is established that violation of a directory provision has resulted in loss and/or prejudice to the party, no interference is warranted. Even in the case of violation of a mandatory provision, interference does not follow as a matter of course. A mandatory provision conceived in the interest of a party can be waived by that party, whereas a mandatory provision conceived in the interest of the public cannot be waived by him. In other words, wherever a complaint of violation of a mandatory provision is made, the court should enquire — in whose interest is the provision conceived. If

A it is not conceived in the interest of the public, question of waiver and/or acquiescence may arise — subject, of course, to the pleadings of the parties. This aspect has been dealt with elaborately by this Court in *State Bank of Patiala* v. *S.K. Sharma* [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] and in *Krishan Lal* v. *State of J&K* [(1994) 4 SCC 422 : 1994 SCC (L&S) 885 : (1994) 27 ATC 590] on the basis of a large number of decisions on the subject. Though the said decisions were rendered with reference to the statutory rules and statutory provisions (besides the principles of natural justice) governing the disciplinary enquiries involving government servants and employees of statutory corporations, the principles adumbrated therein are of general application. It is necessary to keep these considerations in mind while deciding whether any interference is called for by the court — whether under Article 226 or in a suit. The function of the court is not a mechanical one. It is always a considered course of action."

32. Another aspect which is to be borne in mind is that the purpose of distance requirement is that there is sufficient availability of sugarcane in the area so that it could easily cater to all the sugar factories. It is not disputed that appellant's factory has not adversely affected the utilisation of crushing capacity of either M/s. Doodhganga Sahakari factory or M/s. Raibagh Sahakari factory. It was pointed out by the learned counsel for the appellant during arguments, which fact was not denied by either side, that for last three years, M/s. Doodhganga Sahakari factory had crushed more sugarcane than their target.

33. We, therefore, answer this issue by holding that in the facts of the present case, the necessity of distance requirement between M/s. Raibagh Sahakari factory and the appellant's factory as contained in Clause 6A was not attracted.

Issue (g)

34. We have already highlighted various steps which were taken by the appellant for setting up its factory. The High Court has held that these were not "effective steps" in terms of Sugarcane Control Amendment Order. However, whether such steps would constitute as 'effective' steps as required by amended provisions contained in Clauses 6A, 6B and 6C of the Sugarcane Control Order or not need not even be

gone into. Important aspects which need to be highlighted are the following:

(i) IEM of the appellant was acknowledged on June 08, 2006. It had time till June 08, 2010 to commence commercial production as per the Sugarcane Control Order.

(ii) Extension was applied first on January 27, 2010 which was granted and thereafter second extension was granted by the Union of India till June, 2011. Commercial production commenced on May 25, 2011. These extensions were given after considering replies of the appellant to the show cause notice that was issued. Even Government of Karnataka had recommended the appellant's case for extension. State government had also highlighted the public purpose behind this project, which was for the welfare of the farmers as well.

(iii) The appellant took various steps for setting up of this factory from time to time which have been taken note of above. These include purchase of land, placement of firm order for plant and machinery and payment of advance in that behalf, commencement of civil construction, taking term loans from the Banks etc.

(iv) These steps were taken along with due permissions which were required under different laws, duly accorded by the various Governmental Authorities, thus, showing its bona fides.

(v) The appellant has incurred an expenditure of Rs.299.05 crores as per its audited balance sheet for 2015-2016. The expenditure on land and building as well as machinery is Rs.142.26 crores.

(vi) The total loans for the running unit till year 2013 were to the tune of Rs. 237 crores.

(vii) The operational cost for running the factory in the year 2012-2013 was Rs.149.29 crores.

(viii) The appellant's unit is having 377 persons as employees on its rolls that are in regular employment. In addition, indirect employment of approximately 7150 persons during each crushing season is facilitated by the running of the appellant's factory.

(ix) The appellant has also set up a co-generation plant for production of electricity which was initially 15 megawatt and, at present, is giving supply of 37 megawatt electricity.

(x) There is ample sugarcane supply in the State of Karnataka and, in particular, in Raibagh region and, therefore, there is no adverse effect on the operation of any other sugar mills including M/s. Raibagh Sahakari and M/s. Doodhganga Sahakari

35. When we keep in mind all the aforesaid factors cumulatively, we see that no purpose is going to be served in getting the unit of the appellant closed. On the contrary, public purpose demands that the appellant's factory remain in operation and continue to function.

36. We have already highlighted the factors which weigh in favour of continuing the operations of the appellant's factory. Apart from equitable considerations on the side of the appellant, there are certain economic factors as well which tilt the balance totally in favour of the appellant herein. These include expenditure of approximately Rs.300 crores by the appellant in establishing the factory (including expenditure on land and building to the tune of Rs.142.26 crores); loans raised to the tune of Rs.237 crores; operational cost of Rs.150 crores; generation of employment of 377 persons on regular basis and indirect employment of more than 7000 persons; and setting up of co-generation plant for production of electricity which is giving supply of 37 mw of electricity. These factors, particularly, bank loans, employment, generation and production at the factory serve useful public purpose and such economic considerations cannot be overlooked, in the context where there is hardly any statutory violation.

37. It has been recognised for quite some time now that law is an inter disciplinary subject where interface between law and other sciences (social sciences as well as natural/physical sciences) come into play and the impact of other disciplines of law is to be necessarily kept in mind while taking a decision (of course, within the parameters of legal provisions). Interface between law and economics is much more relevant in today's time when the country has ushered into the era of economic liberalization, which is also termed as 'globalisation' of economy. India is on the road of economic growth. It has been a developing economy for number of decades and all efforts are made, at all levels, to ensure that it becomes a fully developed economy. Various measures are taken in this behalf by the policy makers. The judicial wing, while undertaking the task of performing its judicial function, is also required to perform its role in this direction. It calls for an economic analysis of law approach,

most commonly referred to as 'Law and Economics'.[1] In fact, in certain branches of law there is a direct impact of economics and economic considerations play predominant role, which are even recognised as legal

[1] Richard A. Posner in his book *'Frontiers of Legal Theory'* explains this concept as follows:

> Economic analysis of law has heuristic, descriptive, and normative aspects. As a heuristic, it seeks to display underlying unities in legal doctrines and institutions; in its descriptive mode, it seeks to identify the economic logic and effects of doctrines and institutions and the economic causes of legal change; in its normative aspect it advises judges and other policymakers on the most efficient methods of regulating conduct through law. The range of its subject matter has become wide, indeed all-encompassing. Exploiting advances in the economics of nonmarket behavior, economic analysis of law has expanded far beyond its original focus on antitrust, taxation, public utility regulation, corporate finance, and other are as of explicitly economic regulation. (And within that domain, it has expanded to include such fields as property and contract law). The "new" economic analysis of law embraces such nonmarket, or quasi-nonmarket, fields of law as tort law, family law, criminal law, free speech, procedure, legislation, public international law, the law of intellectual property, the rules governing the trial and appellate process, environmental law, the administrative process, the regulation of health and safety, the laws forbidding discrimination in employment, and social norms viewed as a source of, an obstacle to, and a substitute for formal law."

Posner also mentioned that this interface between Law and Economics might grandly be called 'Economic Theory of Law', which is built on a pioneering article by Ronald Coase {R.H. Coase, "The Problem of Social Cost", 3 Journal of Law and Economics 1 (1960)}:

> "The "Coase Theorem" holds that where market transaction costs are zero, the law's initial assignment of rights is irrelevant to efficiency, since if the assignment is inefficient the parties will rectify it by a corrective transaction. There are two important corollaries. The first is that the law, to the extent interested in promoting economic efficiency, should try to minimize transaction costs, for example by defining property rights clearly, by making them readily transferable, and by creating cheap and effective remedies for breach of contract...
>
> The second corollary of the Coase Theorem is that where, despite the law's best efforts, market transaction costs remain high, the law should simulate the market's allocation of resources by assigning property rights to the highest-valued users. An example is the fair-use doctrine of copyright law, which allows writers to publish short quotations from a copyrighted work without negotiating with the copyright holder. The costs of such negotiations would usually be prohibitive; if they were not prohibitive, the usual result would be an agreement to permit the quotation, and so the doctrine of fair use brings about the result that the market would bring about if market transactions were feasible."

A principles. Monopoly laws (popularly known as 'Antitrust Laws' in USA) have been transformed by economics. The issues arising in competition laws (which has replaced monopoly laws) are decided primarily on economic analysis of various provisions of the Competition Commission Act. Similar approach is to be necessarily adopted while interpreting bankruptcy laws or even matters relating to corporate finance, etc. The B impress of economics is strong while examining various facets of the issues arising under the aforesaid laws. In fact, economic evidence plays a big role even while deciding environmental issues. There is a growing role of economics in contract, labour, tax, corporate and other laws. Courts are increasingly receptive to economic arguments while C deciding these issues. In such an environment it becomes the bounden duty of the Court to have the economic analysis and economic impact of its decisions. We may hasten to add that it is by no means suggested that while taking into account these considerations specific provisions of law are to be ignored. First duty of the Court is to decide the case by applying the statutory provisions. However, on the application of law D and while interpreting a particular provision, economic impact/effect of a decision, wherever warranted, has to be kept in mind. Likewise, in a situation where two views are possible or wherever there is a discretion given to the Court by law, the Court needs to lean in favour of a particular view which subserves the economic interest of the nation. Conversely, E the Court needs to avoid that particular outcome which has a potential to create an adverse affect on employment, growth of infrastructure or economy or the revenue of the State. It is in this context that economic analysis of the impact of the decision becomes imperative[2]. At times, this Court has laid emphasis on this aspect, *al beit* in other context. For example, in ***Raunaq International Limited*** v. ***I.V.R. Construction Ltd. & Ors.***, (1999) 1 SCC 492, this Court cautioned the High Courts not to F easily grant interim stay while dealing with the writ petitions where challenge is to award of tender by the Government in favour of a party, highlighting the fact that even commercial transactions of State or public body may involve element of public law or public interest and grant of G such interim stay may delay the approach, and in turn escalate the cost thereof, which may not be in public interest. Relevant paragraphs from

[2] In the jurisprudence of the Economic Approach to Law, there are various theories propounded by the jurists, e.g., The Positive Theory or Normative Theory etc. However, here, we are limiting the discussion to that facet which relates to economic impact of a H judicial decision.

the said judgment read as under:

"11. When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers

[Emphasis supplied]

12. Wh ..led as a public interest litigation challenging the award ... ..act by the State or any public body to a pa... ..ular tenderer, the court must satisfy itself that the party which h... ..rought the litigation is litigating bona fide for public good. The public interest litigation should not be merely a cloak for attaining private ends of a third party or of the party bringing the petition. The court can examine the previous record of public service rendered by the organisation bringing public interest litigation. Even when a public interest litigation is entertained, the court must be careful to weigh conflicting public interests before intervening. Intervention by the court may ultimately result in delay in the execution of the project. The obvious consequence of such delay is price escalation. If any retendering is prescribed, cost of the project can escalate substantially. What is more important is that ultimately the public would have to pay a much higher price in the form of delay in the commissioning of the project and the consequent delay in the contemplated public service becoming available to the public. If it is a power project which is thus delayed,

A the public may lose substantially because of shortage in electricity supply and the consequent obstruction in industrial development. If the project is for the construction of a road or an irrigation canal, the delay in transportation facility becoming available or the delay in water supply for agriculture being available, can be a substantial setback to the country's economic development. Where
B the decision has been taken bona fide and a choice has been exercised on legitimate considerations and not arbitrarily, there is no reason why the court should entertain a petition under Article 226.

C xx xx xx

18. The same considerations must weigh with the court when interim orders are passed in such petitions. The party at whose instance interim orders are obtained has to be made accountable for the consequences of the interim order. The interim order could delay the project, jettison finely worked financial arrangements
D and escalate costs. Hence the petitioner asking for interim orders in appropriate cases should be asked to provide security for any increase in cost as a result of such delay or any damages suffered by the opposite party in consequence of an interim order. Otherwise public detriment may outweigh public benefit in granting
E such interim orders. Stay order or injunction order, if issued, must be moulded to provide for restitution.

xx xx xx

24. Dealing with interim orders, this Court observed in *CCE* v. *Dunlop India Ltd.* [(1985) 1 SCC 260] (SCR 190 at p.
F 196) that an interim order should not be granted without considering the balance of convenience, the public interest involved and the financial impact of an interim order. Similarly, in *Ramniklal N. Bhutta* v. *State of Maharashtra* [(1997) 1 SCC 134] the Court said that while granting a stay, the court should arrive at a proper
G balancing of competing interests and grant a stay only when there is an overwhelming public interest in granting it, as against the public detriment which may be caused by granting a stay. Therefore, in granting an injunction or stay order against the award of a contract by the Government or a government agency, the court has to satisfy itself that the public interest in holding up the

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project far outweighs the public interest in carrying it out within a reasonable time. The court must also take into account the cost involved in staying the project and whether the public would stand to benefit by incurring such cost." *[Emphasis supplied]*

38. Even in those cases where economic interest competes with the rights of other persons, need is to strike a balance between the two competing interests and have a balanced approach. That is the aspect which has been duly taken care of in the instant case, as would be discernible from the concluding paragraph of this judgment.

39. Although law and economics traces back to the period of Jeremy Bentham[3], i.e. 18th century, in the last few decades, interplay between law and economics has gained momentum throughout the world. Indian judiciary has resorted to economic analysis of law on *ad hoc* basis. Time has come to consider the inter-discipline between law and economics as a profound movement on sustainable basis. These are the additional relevant considerations which have weighed in our mind in adopting a particular course of action in the instant case.

40. Even if we find some technical violation, the aforesaid factors demand this Court to exercise its power under Article 142 of the Constitution of India. This Court would be inclined to do so in the instant case which is a fit case for exercise of such powers keeping in view the equitable considerations and moulding the relief.

41. The learned senior counsel for the appellant had made a very fair suggestion that even if there is a shortage of sugarcane (though it is not so), sugarcane from the 14 villages originally assigned to respondent No.1 and now with the appellant can be re-allotted to respondent No.1. Having regard to this submission, we dispose of these appeals by setting aside the directions contained in the judgment of the High Court and allowing the appellant's factory to continue its operation subject to the condition that 14 villages which were originally assigned to respondent No.1 would be re-allotted to it after taking these villages from the appellant.

Appeals allowed in the aforesaid terms. No order as to costs.

Nidhi Jain

Appeals allowed.

[3] *Utilitarian Theory*, which is essentially economic theory