

**BEFORE THE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE AT
CHENNAI**

Appeal Nos. 73 and 74 of 2021

Rajashree Sugars & Chemicals
Limited,
Rep. by its Depy. General Manager,
Mr.M.Thangathirupathi,
having office at Unit-1, Varadaraj Nagar,
Periyakulam Taluk,
Theni District 625 562

...Appellant

-Vs-

M/s. GKN Food Products,
A Partnership Firm,
Rep. by its Managing Partner,
Mr. Sivamurugeswara Pandian.N.
S.F. No.892/3A, Sadayalpatti,
Kodankipatti Village, Bodi Taluk,
Theni District
Pin 625 534 and 2 others

...Respondents

COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT

I, Sivamurugeswara Pandian, son of G.K.Narayanasamy, Hindu, aged about 40 years, having my place of work at S.F.No.892/3A, Sadayalpatti Kodankipatti Village, Bodi Taluk, Theni District, now temporarily come down to Chennai, do hereby solemnly affirm and sincerely state as follows:-

1.I am the 1st Respondent herein and am well acquainted with the facts of the case. I have gone through the Memorandum of Appeal filed by the Appellant before this Hon'ble Tribunal and I deny the contents therein



save those which are specifically admitted hereunder and puts the Appellant to strict proof of the same.

2. I state that application under Water and Air Act was submitted to the office of the 2nd Respondent seeking consent for establishment a unit for manufacture of Jaggery powder at the rate of 80 tons per month and Jaggery block at the rate of 40 tons per month. By the proceedings dated 29.01.2021, the 2nd Respondent rejected the applications on the ground that the Unit had not furnished any approved building plan/building permit obtained from the competent authority to establish the industry which is a non-planned area. Yet another ground for rejecting the applications was that the Unit's site is located adjacent to three numbers of houses with a built up area of approximately 250-350 sq.ft each.

3. I state that aggrieved by the proceedings dated 29.01.2021, I filed Appeal Nos.10 and 11 of 2021 before the Hon'ble Appellate Authority, Tamil Nadu Pollution Control Board. Pending the appeal, the Appellant filed applications in I.A.Nos.61 and 62 of 2021 seeking to implead itself as a party Respondent. The Appellant sought to implead itself on the ground that the taluks of Theni, Periyakulam, Andipatty, Bodinayakanur and Uthamapalayam of Theni District and a part of Usilampatty and Periyayur Taluks of Madurai Districts are declared as reserved area for its factory and that in the reserved area, no other person is permitted to manufacture gur (jaggery) or Khandasari sugar or sugar without a license from Central Government as per the provisions of the Sugarcane Control Order. In substance, the case of the Appellant was that the area



where it is manufacturing sugar has been declared as a reserved area for the factory run by it and that this Respondent has no legally valid right to establish the Unit. I state that the Hon'ble Appellate Authority, Tamil Nadu Pollution Control Board allowed the impleading applications.

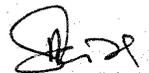
4. I state that by the order dated 06.10.2021, the Hon'ble Appellate Authority, Tamil Nadu Pollution Control Board allowed Appeal Nos.10 and 11 of 2021 and directed the 2nd and 3rd Respondents to grant Consent for Establishment to this Respondent for establishing jaggery manufacturing unit in the area concerned. Aggrieved by the order dated 06.10.2021, the present appeals are filed before this Hon'ble Authority.

5. I have gone through the averments and allegations contained in the Memorandum of Appeal and the outset, I deny the same and puts the Appellant to strict proof of the same. The averment contained in Para VII (a) and (b) are hereby emphatically denied and the Appellant is put to strict proof of the same. The averment in Ground (a) that the unit of the 1st Respondent squarely falls under the reserved area allotted to the Appellant by the Commissioner of Sugars under the provisions of Sugarcane Control Order, 1966 is wholly incorrect and the Appellant is put to strict proof of the same.

6. I respectfully state that in exercise of powers conferred by Section 3 of the Essential Commodities Act, 1955, the Central Government enacted Sugarcane (Control) Order, 1966 in order to fix the minimum price of sugarcane to be paid by the producers of sugar or their agents for the

sugarcane purchased by them having regard to the cost of production of sugarcane and other factors. I state that as per Clause 7(b)(ii) of the Sugarcane (Control) Order, 1966, in a reserved area, no sugarcane or sugarcane juice shall be purchased for crushing or for manufacture of gul, shakkar, jaggery rab or khandsari sugar by a crusher not belonging to a grower or body of growers of sugarcane or by a khandsari unit in the area. Apart from Clause 7(b)(ii), clauses 2,6,7,8 and 9 of the Sugarcane (Control)Order, 1966 no sugarcane or sugarcane juice can be purchased for crushing or for manufacture of gul, shakkar, jaggery rab or khandsari sugar in a reserved area.

7. I state that the an amendment was introduced to Sugarcane (Control) Orders, 1966 with the promulgation of Sugarcane (Control)(Amendment) Order, 2007 with effect from 31.07.2007 as per which the words “gur, gul, jaggery’ contained in the above clauses above said, more particularly, Clause 7(b)(ii) of the Sugarcane (Control) Orders, 1966 was ordered to be omitted, thus paving way for a crusher not belonging to a body of growers of sugarcane to purchase sugarcane or sugarcane juice in a reserved area. Therefore, I respectfully state that Appellant cannot have monopoly in the matter of purchase of sugarcane or sugarcane juice in a reserved area. In view of the coming into force of Sugarcane (Control) (Amendment) Order, 2007, amending Clause 7 of the Sugarcane (Control) Rules, 1966, the Appellant do not have locus standi to contend that this Respondent is not entitled to set up its factory within its reserved area. It is also pertinent to bring to the notice of this Hon’ble Tribunal that the term “reserved area” in Clause 6 of the Sugarcane Control Order, 1961

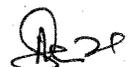


was also omitted under the amendment dated 31.07.2007. In view of the same, the Appellant cannot be heard to contend that establishment of a jaggery manufacturing in a reserved area is barred and it cannot claim monopoly over the same.

8. The allegations contained in Para VII (b) and (d) that this Respondent is proposing to manufacture Chakkar/Khandasari sugar under the guise of manufacturing jaggery is an incorrect and misleading statement. The same is wholly incorrect and the Appellant is put to strict proof of the same.

9. With regard to the averments contained in Para VII (e) is concerned, I state that the Government Order dated 04.05.2017 states that re-classification certificate is required only for converting the agricultural land to industrial area. In the instant case, the land in question is not classified as agricultural/wet land but is entered in the revenue records as tharissu/industrial building as would be evident from the communication dated 17.08.2021 sent by Joint Director, Agriculture Department to the Director of Town and Country Planning which is annexed to in the typed set of papers filed along with the Appeal. In view of the same, I respectfully state that the above Government Order cannot be made applicable to the instant case and hence there is no necessity for obtaining necessary permission.

10. With regard to averments contained in Para VII (f), I state that it is fact that I filed W.P.No.14415 of 2021 before the Madurai Bench of Hon'ble High Court, Madras seeking for consideration of the



representations dated 28.06.2021 and 23.07.2021. It is also a fact that the said Writ Petition came to be disposed on 16.08.2021 directing the Commissioner of Sugar to consider the said representations and pass orders affording opportunity to the parties concerned. It is pertinent to bring to the notice of this Hon'ble Tribunal that after the disposal of the said Writ Petition, I addressed a letter to the Commissioner of Sugars to pass orders on my representation. By the communication dated 12.09.2021, the authority concerned sent a reply stating that the District Collector has been informed about the provisions of Sugarcane Control Amendment Order 2007. I was informed that the subject relating to State Area Demarcation of Sugar mill will be decided by the Area Limitation Committee by following due procedure under existing norms. It is also pertinent to bring to the notice of this Hon'ble Tribunal that information was sought from the Public Information Officer of the office of Commissioner of Sugars under the Right to Information Act, 2005. Amongst other, Information was also sought as to whether prior permission of required from the office of Commissioner of Sugars for manufacturing jaggery. On 02.09.2021, reply was received from the authority concerned to the effect that no permission is required from the office of Commissioner of Sugars for manufacture of jaggery from Sugarcane. The said fact has been wantonly suppressed by the Appellant with oblique motive. I further state that consequent upon the amendment, the manufacture of jaggery do not come under the purview of Sugarcane (Control) Order, 1966.



11. The allegations and averments contained in Ground (a) are incorrect and the Appellant is put to strict proof the same. As already stated, the Government Order on which reliance is placed by the Appellant does not apply to the facts of the case. As per the said Government Order, reclassification certificate is required only for converting the agriculture land to industrial area. The land where the unit is proposed to be established is not classified as agriculture/wet land, but is entered in the revenue records as "Tharisu/industrial building" as would be evident from the communication dated 17.08.2021 sent by the Joint Director, Agriculture Department to the Director of Town and Country Planning. In as much as the Government Order dated 04.05.2017 is not applicable to the facts of the case on hand, the averment that prior permission of Commissioner of Agriculture as per the guidelines issued in the Government Order is mandatory is wholly incorrect.

12. The allegations contained in Ground (b) are wholly incorrect and the Appellant is put to strict proof of the same. The Appellant is attempting to mislead this Hon'ble Tribunal that this Respondent intends to establish the unit for manufacture of Chakkar/Khandasari Sugar under the guise of jaggery manufacturing unit. The said statement is incorrect and the Appellant is put to strict proof of the same. The allegation to the contra is self serving. As already stated, in view of the introduction of amendment Notification dated 31.07.2007 amending Clause 7 of the Sugarcane (Control) Order, 1966, the Appellant cannot have monopoly in the matter of purchase of sugarcane or sugarcane juice in a reserved area and the Appellant do not have locus standi to contend that this



Respondent to set up its factory within its reserved area. As far as the averment relating to applicability of Government Order dated 04.05.2017, the finding was rendered by the Hon'ble Appellate Authority on the basis of the communication dated 17.08.2021.

13. With regard to the averments contained in Ground (c), as already stated, the reply given by the Commissioner of Sugars for the information sought under the Right to Information Act, 2005 would prove that no prior permission is required from the said authority for establishment of the Unit for manufacturing jaggery. In the said Ground, the Appellant has referred only to the communication dated 01.09.2021 sent by the Commissioner of Sugar to this Respondent, but conveniently omitted to state about the RTI information sought on 11.08.2021 and the reply sent on 02.09.2021.

14. With regard to the averments contained in Ground (d), at the risk of repetition, the description of the land as "non-planned area" is not sustainable. I respectfully state that there is no ban for establishing industries in a non-planned area. That apart, no guidelines has been issued by the Tamil Nadu Pollution Control Board in the form of Board proceedings banning industrial activities in non-planned area. Therefore, no reliance can be placed by the Appellant in that behalf.

15. With regard to allegations contained in Ground (e), I state that the Hon'ble Appellate Authority in the impugned order, took into consideration the notification dated 31.07.2007 and also the reply sent by the Public Information Officer of the Commissioner of Sugars under



the Right to Information Act, 2005. It is also pertinent to bring to the notice of this Hon'ble Tribunal that by the communication dated 24.08.2021, the Commissioner of Sugars, acting on the representation sent by the Appellant, informed the District Collector, Theni District as to the amendment introduced in the year 2007 and was requested to take note of the latest provision of law.

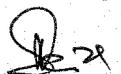
16. I further state that the issue as regards the land classification and obtaining licence from the Commissioner of Sugars or from the Central Government is within the realm of the competent authority and the Appellant has no locus with regard to the same. I state that licence from the competent authority is required where the unit is to be established in a reserved area and not otherwise.

17. With regard to allegations contained in Ground (f), as already stated the Government Order dated 04.05.2017 is not applicable to the facts of the case on hand. That apart, there is no bar or ban for establishment of an industry in a non-planned area. The allegations and averments made by the Appellant are repetitive in nature. The communication dated 17.08.2021 clearly states that the land is a tharisu/industrial building and the same is culled out from the revenue records. When the land is classified as an industrial building, there is no bar for establishment of a manufacturing unit in the land in question.

18. With regard to averments contained in Ground (h) is concerned, In this regard, it is pertinent to point out before this Hon'ble Tribunal that initially the Appellant was allotted the entire area of Uthamapalayam,

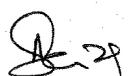


Periyakulam and Andipatti Taluks for carrying on their sugar manufacturing business by purchasing sugarcane from the growers of that area. I state that the Appellant had obtained order of reserved area in respect of Uthamapalayam and Periyakulam Taluks in the year 1987. After bifurcation of Periyakulam Taluk as Periyakulam and Andipatti Taluks, the Appellant obtained order of reserved area for Andipatti Taluk vide proceedings dated 17.05.1988. During the year 1997, Uthamapalayam Taluk was bifurcated and Bodinaickanur and Theni Taluks came into existence. After the said bifurcation, the Appellant has not obtained any revised order for allotment of Bodinaickanur and Theni Taluks which were erstwhile Uthamapalayam taluk as reserved area for their factory for sugarcane drawal. When the Appellant had obtained revised order in the year 1987 consequent upon the bifurcation of Periyakulam Taluk, as a natural corollary, it should have obtained revised order after the bifurcation of Uthamapalayam Taluk as well. The averment that obtaining a separate order for bifurcation of Taluk is a non-essential condition is far fetched and is self serving. The unit where this Respondent proposes to establish the Unit is at Bodinaickanur in respect of which the Appellant has not obtained revised order. The non-obtaining of revised order goes to the root of the matter and the same disentitles the Appellant to claim monopoly in the matter of purchase of sugarcane or sugarcane juice in Bodinaickanur Taluk. Assuming without admitting that obtaining a separate order of bifurcation is a non-essential condition, the Appellant is non-suited consequent upon the promulgation of Sugarcane (Control) Amendment Order, 2007 with effect from 2007.



19. I state that suppressing the amendments as referred to above, the Appellant had addressed letter to the Commissioner of Sugars on 25.06.2020 ,17.12.2020 and 26.03.2021 to issue instructions to the concerned officials to stop the work being out the Unit. The said letters had been addressed by the Appellant to the Commissioner of Sugars with an vindictive motive and mislead the authority concerned. I state that on 28.06.2021, I addressed a detailed letter to the Commissioner of Sugars bringing to its notice as to the amendment made to the Sugarcane Control Orders. It was also brought to the notice of the authority concerned that the Appellant had obtained orders on reserved area only for Uthamapalayam, Periyakulam and Andipatti Taluks. Request was made to the authority to take action against the Appellant for willful suppression of facts and for making false allegations against the this Respondent. The above facts would to go show that the intention of the Appellant is not bonafide.

20. I state that eventhough, the Government Order dated 04.05.2017 is not applicable to the facts of the case, I submitted application on 05.02.2021 to the Deputy Director of Town and Country Planning, Theni District in terms of the Government Order dated 04.05.2017. I state that the office of the Assistant Director of Town and Country Planning, Theni after taking into consideration the application submitted by me, by the communication dated 04.08.2021 requested the Joint Director, Agriculture Department Theni to issue No Objection Certificate to the Appellant for developing the industry. I state that pursuant to the communication dated 04.08.2021, the office of the Joint Director,



Agriculture Department conducted inspection on 16.08.2021 and in that behalf, the issuance of No Objection Certificate is awaited from the said authority

21. I state that I have invested huge amount for the establishment of the Unit for manufacture of jaggery unit and the Appellant is putting spokes thereby preventing me from proceeding with the establishment of the Unit. I am advised to state that no case, much less a prima facie case has been made out by the Appellant for grant of the relief sought.

For the reasons stated above, it is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss the Appeals and thus render justice.

Solemnly affirmed at Madras
this the 18th day of November 2021
and signed his name in my
presence

BEFORE ME,

N. V. S. S. S.
32/11/21 *29/11/21*
High Court by order.

Advocate: Madras

**BEFORE THE NATIONAL
GREEN TRIBUNAL,
SOUTHERN ZONE, CHENNAI**

Appeal Nos.73 and 74 of 2021

COUNTER AFFIDAVIT

M/s. RITA CHANDRASEKAR

COUNSEL FOR 1ST RESPONDENT