

## BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

## WESTERN ZONE BENCH, PUNE.

## ORIGINAL APPLICATION NO. 18 OF 2021

Mr. Sanjay Bhimashankar Thobde ...Applicant

V/s

The Chairman and directors,

Shree Siddheshwar Sahakari Sakhar Karkhana Ltd

Add ors.

...Respondents

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3	Copy of notice issued by Respondent No. 3, dated 24/02/2014.	B	
4	Copy of letter by the State of Maharashtra to the Collector Solapur, dated 15/03/2017.	C	
5	Copy of order by the Collector, Solapur to the Respondent No. 1 dated 06/04/2017	D	
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16	Copy of the letter dated 25/11/2021 written by the Respondent No. 3 to the Collector Solapur.	<b>O</b>	
17	Copy of the order dated 29/11/2021 passed by the Maharashtra Pollution Control Board, Regional Office, Pune to the Respondent No. 1 Sugar Factory.	<b>P</b>	

18	Copy of order by the Hon'ble High Court, Mumbai in Writ Petition No.7872/2021 with connected Petition No. 9446/2021.	Q	
19	Copy of order by DGCA Ref No. C-18011/06/22 dated: 19/09/2022.	R	
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Date: 11/03/23

VPCChoudhary  
Advocate for Respondent  
Solapur Municipal Corporation  
Adv. Vanita Choudhary

## BEFORE THE NATIONAL GREEN TRIBUNAL

## WESTERN ZONE BENCH, PUNE

## ORIGINAL APPLICATION NO. 18/2021

Mr. Sanjay Bhimashankar Thobde ...Applicant

V/s

The Chairman and Director,

Shree Siddheshwar Sahakari Sakhar Karkhana Ltd

And others. ...Respondents

AFFIDAVIT IN REPLY ON BEHALF OFRespondent No. 3 Solapur Municipal Corporation

I ... Saujika Ghangaram Akulwar Age: 41 years,  
 working as, Deputy Engineer (SME) Solapur,

Respondent No. 3 hereinabove, do hereby state on solemn  
 affirmation as under;

I say that I am Saujika Ghangaram Akulwar Solapur, and  
 am aware of the facts of the case personally as well as on  
 the bases of record, hence in a position to depose the same  
 on oath. I have perused the Original Application filed by  
 the applicant and I am filing the present Affidavit.

1. I say that the village Kumthe where the Sugar Factory is  
 situated comes within the jurisdiction of Respondent No.

3, Solapur Municipal Corporation since 1992 due to the

Noted and Registered

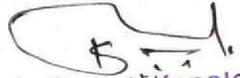
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extension of the boundary limits of the Municipal Corporation and the inclusion of village Kumthe within the jurisdiction of Respondent No. 3, the Municipal Corporation.

2. I say that between 2012 and 2013, Respondent No. 1 took a decision to expand the sugar factory for increasing the crushing capacity from 5000 to 7500 TCP, expansion of the distillery from 20 kl per day to 50 kl per day, as well as for setting up 38 MegaWatt co-generation Power Project. It is the case of Respondent No. 1 that for the said expansion of the sugar factory and to operate the co-generation plant and the sugar factory, Respondent No. 1 was required to install a boiler of 200 TPH, which is interconnected with a 90-meter height RCC Chimney. Therefore, on 25th December 2012, Respondent No. 1 applied for NOC to Respondent No. 3, Solapur Municipal Corporation, for the necessary expansions and co-generation projects and to undertake chimney construction, vide communication dated 24th January 2013. Respondent No. 3 issued "in-principle" NOC to Respondent No. 1 for the said expansions as well as the



  
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Co-generation power project, subject to scrupulous compliance of all rules and Acts in relation to the installation of the project and obtaining all necessary permissions and sanctions from various Government authorities and the Solapur Municipal Corporation.

Annexed herewith and marked as **Exhibit-A** is the copy of the letter dated 24/01/2013, issued by Respondent No. 3 granting NOC to Respondent No. 1.

3. I say that Respondent No. 1 constructed a co-generation plant without taking permission of Respondent No. 3 and the said chimney had a height of 92 meters, the height of the chimney being beyond permissible limit. Therefore Respondent no. 3 had issued a notice dated 24/02/2014 u/s 478 of Maharashtra Municipal Corporation Act, 1949 calling upon Respondent no. 1 to remove the said Chimney within a period of 8 days. I say that Respondent no. 1 had carried out unauthorized work which was mentioned in the said notice dated 24/02/2014. Annexed herewith and marked as **Exhibit-B** is the copy of the notice issued by Respondent No. 3, dated 24/02/2014.



  
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4. I say that after receiving the said notice dated 24/02/2014, on 03/03/2014 Respondent no 1 approached Respondent No. 3 and requested to grant for 90 days time for obtaining all necessary 'No Objections from the Airport Authority of India' and to obtain such permission the time granted of 8 days is insufficient. I say that considering the said request Respondent no 3 granted a 30 days time period to Respondent no 1.

5. I say that in the meantime, in 2016-17 the Govt. of India issued a notification for the "Regional connectivity scheme". I say that the Upper Secretary, Urban development department, State of Maharashtra, pursuant to this scheme vide communication dated 15/03/2017, directed the Collector, Solapur, to take necessary steps within 3 months for removal of the chimney as the same was causing obstruction in take off at Solapur Airport.

Thereafter by referring to the order dated 15/03/2017 passed by the State of Maharashtra, the Collector, Solapur vide letter dated 06/04/2017 had directed Respondent No. 1 to remove the chimney within a period of one month.



  
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I say that a copy of the letter, issued by the Collector, Solapur, dated 06/04/2017 was marked to Respondent No. 3 with the direction that if Respondent No. 1 is unable to remove the chimney within a period of one month then further action should be taken by Respondent. No. 3 and the report should be submitted accordingly.

Annexed herewith and marked as **Exhibit-C** is the copy of the letter by the Upper Secretary, Urban development department, State of Maharashtra to the Collector Solapur, dated 15/03/2017. Annexed herewith and marked as **Exhibit-D** is the copy of the order by the Collector, Solapur to Respondent No. 1 dated 06/04/2017.

6. I say that aggrieved by the order of the Collector, Solapur, dated 06/04/2017, Respondent No. 1 filed a Writ Petition No. 5253/2017 on 28th April 2017 before the Hon'ble High Court, Mumbai, challenging the communication from the Upper Secretary, Urban development department, State of Maharashtra to the Collector, Solapur, dated 15/03/2017, and the Notice issued by the Collector, Solapur, dated 06/04/2017. The Hon'ble High Court, Mumbai, on dated 4/5/2017, did not grant any stay to the



said orders but permitted Respondent No. 1 to approach the Airport Authority of India, New Delhi. Annexed herewith and marked as **Exhibit-E** is the copy of the order in Writ Petition No.5253/2017, dated 04/05/2017

7. I say that as per the direction given by Hon'ble High Court, Mumbai in the Writ Petition No. 5253/2017, Respondent No. 1 filed an Appeal before the Appellate Committee of the Airport Authority of India on 28/07/2017, challenging the aforesaid orders.
8. I say that in the meantime, Respondent No. 1 failed to remove the said chimney within one month hence Respondent No. 3 proceeded on 11/08/2017 to demolish the said chimney along with the police protection. However, thousands of people gathered at the site of the factory premises of Respondent No. 1 and created a lot of obstructions and hurdles in the demolition of the said chimney. Due to this sudden situation Respondent No.3 filed a police complaint with the MIDC police station, Solapur, against the people who made the situation critical.



  
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9. I say that when Respondent No. 3 proceeded to demolish the unauthorized work of the chimney as aforesaid, the Chairman and Executive Director of Respondent No. 1 gave an undertaking dated 11/08/2017 in which they mentioned that Respondent No. 1 shall make necessary alternate arrangements for constructing a new chimney within three months that is before 11/11/2017, that after complying with all the permissions and that they will see no obstacle or hurdle will be caused for taking off of aircraft at the Solapur airport. After almost more than one month had lapsed, no arrangements were made by Respondent No. 1 as they mentioned in their undertaking. Respondent No. 3 issued a reminder to Respondent No. 1. Respondent No. 1 still did not make any alternate arrangements at the site.

Annexed herewith and marked as **Exhibit-F** is the copy of undertaking by Respondent No. 1 dated 11/08/2017.

10. I say that the Siddheshwar Rashtriya Sakhar Kamgar Union also filed a Writ Petition No.12131/2017 before the Hon'ble High Court on 3rd November 2017 seeking a stay of the communications by the Collector and Upper

  
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Secretary, Urban development department,, the State of Maharashtra to pull down the chimney as the crushing season was round the corner in November. In the event the chimney was pulled down, the union employees would be rendered jobless without any source of income. On 10th November 2017, the Hon'ble High Court, Mumbai in Writ Petition No.12131/2017 directed that no-coercive steps should be taken against Respondent No. 1 .

Annexed herewith and marked as **Exhibit-G** is the copy of the order in Writ Petition No 12131/2017, dated 10/11/2017



**11.**I say that on 18/12/2017, the Airport Authority of India, heard Respondent No. 1's Appeal for height clearance and NOC up to 553 meters AMSL(Above Mean Sea Level). The Airport Authority rejected the said Appeal. The Airport Authority observed that the Top Elevation of 493.36 meters AMSL (30 m AGL, Above Ground Level ) could not be further increased.

I say that being dissatisfied and aggrieved with the above order passed by the Airport Authority of India dated 18/12/2017, Respondent No. 1 filed Writ Petition (Stamp)

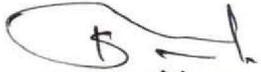
  
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no. 11873/2018 before the Hon'ble High Court, Mumbai, dated 16/04/2018. The Hon'ble High Court directed that all the connected Petitions viz. Writ Petition No. 5253/2017, Writ Petition (Stamp) No. 11873/2018, and Writ Petition No. 12131/ 2017 filed by the Kamgar Union will be listed on 03/08/2018. The Writ Petition No.5253/2017 and connected Petitions were dismissed by the Hon'ble High Court, Mumbai, on dated 06/08/2018.

Annexed herewith and marked as **Exhibit-H** is the copy of the order in Writ Petition No.5253/2017 and connected Petitions by the Hon'ble High Court, Mumbai dated 06/08/2018.

12. I say that the Director General of Civil Aviation, based on the survey conducted by the Airport Authority of India in 2017 observed that the Chimney's height was 52.2 meters higher than the permitted limits. The Dy. Director General of Civil Aviation at New Delhi conducted a personal hearing on 31/05/2019. The Director General of Civil Aviation, passed an order dated 24/08/2019 directing Respondent No. 1 to reduce the height of the said



  
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Chimney to 498.4 meters AMSL, within 60 days from the date of issue of the order.

Annexed herewith and marked as **Exhibit-I** is the copy of the order passed by the Director General of Civil Aviation, dated 24/08/2019.

13. I say that being aggrieved and dissatisfied against the order by the Hon'ble High Court Mumbai in WP. No. 5253/2017, dated 06/08/2018 Respondent No. 1 approached the Supreme Court by filing a Special Leave Petition, SLP No. 30415/2018 dated 17/11/2018. At the same time, Siddheshwar Rashtriya Sahakar Kamgar Union had also filed SLP No. 30657/2018, dated 20/11/2018, in the Hon'ble Supreme Court. The Hon'ble Supreme heard the above SLPs jointly and passed an order on 29/08/2019 thereby disposing of the Special Leave Petitions on the basis of the order dated 24/08/2019 passed by Dy. Director General Civil Aviation, Govt. of India, since upon issuance of such order the said SLP had been rendered redundant. Annexed herewith and marked as **Exhibit-J** copy of the order by the Hon'ble Supreme



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Court in SLP 30657/2018 and SLP 30415/2018 dated 29/08/2019.

14.I say that Respondent No. 3 Solapur Municipal Corporation cancelled the NOC issued by Respondent No. 3 vide speaking order dated 15/01/2021. Annexed herewith and marked as **Exhibit-K** is the copy of the speaking order issued by Respondent No. 3 dated 15/01/2021.

15.I say that the Upper Secretary, Urban Development Department, State of Maharashtra, vide letter dated 16/11/2021 informed/directed Respondent No. 3 that after considering the opinion of Law and Judiciary Department, the Municipal Corporation should take immediate action to demolish the Chimney. Annexed herewith and marked as **Exhibit-L** is the copy of the letter dated 16/11/2021 issued by the Upper Secretary, Urban Development Department, State of Maharashtra to Respondent No. 3 Corporation.

16.I say that in pursuance of the above-said letter Respondent No. 3 Assistant Director, Town Planning Department, Solapur Municipal Corporation issued a

  
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notice dated 17/11/2021 to Respondent No. 1 Sugar Factory thereby informing that the process of tender for the demolition of co-generation work Chimney has been completed and the work order has been issued and also the Corporation has received direction from the Urban Development Department to take immediate action for the demolition of the Chimney. In view thereof Respondent No. 1 Sugar Factory was informed to demolish the Chimney on its own within the period of 7 days after receipt of the notice, else thereafter Respondent No. 3, Solapur Municipal Corporation will undertake the demolition of the said Chimney. Annexed herewith and marked as **Exhibit-M** is a copy of the notice dated 17/11/2021 issued by Respondent No. 3 to Respondent No. 1 Sugar Factory.

17. I say that recently the Respondent No. 3 Corporation after following the tender process, appointed Biniyas Content Pvt. Ltd., vide letter dated 22/11/2021, for the demolition work of the co-generation Chimney of the Respondent 1 Sugar Factory. The demolition work was to start on 24/11/2021 as per the opinion received from the Law and



  
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Judiciary Department. Hereto annexed and marked exhibit as **Exhibit-N** is copy of the letter dated 22/11/2021 issued by the Respondent No. 3 to the Biniyas Corporation Pvt. Ltd. Bangalore.

18. I say that despite the above Respondent No. 1 did not demolish the chimney and thereafter on 25/11/2021 Respondent No. 3 wrote a letter to Collector Solapur to inform that Respondent No. 1 had not demolished the Chimney. The Collector, Solapur held a meeting on 22/11/2021 which was attended by the Deputy Commissioner of Police, Solapur, Representative of Maharashtra Pollution Control board, Boiler Inspector, Solapur City and other officers. It was decided to visit the site of the Sugar Factory on 23/11/2021 and accordingly it was done. It was found that unless and until the functioning of the plant of the sugar factory and related machineries were not being stopped, the work of demolition of the chimney could not be done. And therefore it is necessary to take the steps by convening the meeting of the district Disaster Management Committee. Annexed herewith and marked as **Exhibit-O** is a copy of



  
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the letter dated 25/11/2021 written by Respondent No. 3 to the Collector Solapur.

19. I say that at the same time, Respondent No. 3 has also issued a similar letter to the concerned authorities including Deputy Director of Maharashtra Pollution Control Board, Solapur and others and conveyed the meeting dated 26/11/2021 for taking steps to demolish the Chimney.

20. I say that thereafter the Maharashtra Pollution Control Board, Regional Office, Pune passed an order dated 29/11/2021 in which they issued the closure direction u/sec. 33A of the Water (Prevention and Control of Pollution) Act, 1974, and u/sec 31A of the Air (Prevention and Control of Pollution) Act, 1981, and Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016 thereby directed Respondent No. 1 to close down the manufacturing activities within 96 hours, being a safe closure time period with immediate compliance intimation to the Board. The Board also directed Respondent No. 1 not to resume manufacturing activities till further orders from the Board. Annexed



  
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herewith and marked as **Exhibit-P** is a copy of the order dated 29/11/2021 passed by the Maharashtra Pollution Control Board, Regional Office, Pune to Respondent No. 1 Sugar Factory.

21. I say that Respondent No. 1 filed a Writ Petition 7872/2021 on 22/11/2021 in the Hon'ble High Court Mumbai, challenging the speaking order dated 15/01/2021 passed by Respondent No. 3 canceling the NOC issued by Respondent No. 3 City Engineer, Solapur Municipal Corporation and notice dated 17/11/2021 issued by Respondent No. 3 City Engineer, Solapur Municipal Corporation, directing Respondent No. 1 to demolish the said Chimney within a period of 7 days.

22. I say that the Hon'ble High Court jointly heard Writ Petition No. 7872/2021 with Writ Petition 9446/2021 and passed an order dated 31/05/2022 to remand the matter for fresh consideration by the DGCA. The Hon'ble High Court set aside the speaking order and the notice dated 17/11/2021 and directed Respondent No. 3 to conduct fresh hearings and to pass a speaking and reasoned order.



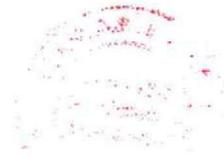
  
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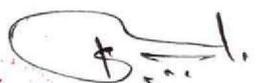
Annexed herewith and marked as **Exhibit-Q** is the copy of the order of Writ Petition No.7872/2021.

23. I say that the DGCA heard the matter and passed an order Ref No. C-18011/06/22 dated: 19/09/2022. The DGCA has set aside the previous order and has remanded the matter back to Joint DDG to examine the whole issue afresh and pass a final order afresh. Annexed herewith and marked as **Exhibit-R** is the copy of the order issued by DGCA Ref No. C-18011/06/22 dated 19/09/2022.

24. I say that this Hon'ble Tribunal passed an interim order directing Respondent No. 1 to stop all operations at the said Sugar Factory at dated 21/11/2022.

25. I say that Respondent No. 1 filed Civil Appeal No. 9222/2022 before the Hon'ble Supreme Court on dated: 03/01/2023 against the order passed by this Honble National Green Tribunal. The Hon'ble Supreme court partly stayed the operation of the impugned order. Annexed herewith and marked as **Exhibit-S** is the copy of the order by the Hon'ble Supreme Court in the Civil Appeal No. 9222/2022 dated 03/01/2023



  
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26. I say as per the direction of the Hon'ble High Court, Mumbai, in the Writ Petition 7872/2021, the Respondent No. 3 has conducted fresh hearing and the matter is closed for order.

Hence this affidavit.

Solemnly affirmed at Solapur

Dated this day of <sup>th</sup> 11<sup>th</sup> March 2023

VP Choudhary

(Advocate for Respondent No 3)  
Adv. Vanita Choudhary



*[Signature]*  
Explained and Identified by



*[Signature]*

Sarika Gangaram Akulwar  
Dy. Engineer, sme, solapur

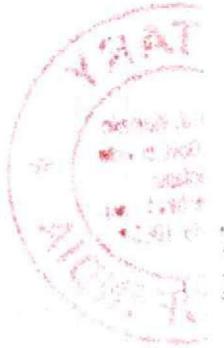
Solemnly Affirmed before me by  
Shri Sarika G. Akulwar  
Who is identified by Shri K. J. Kanale  
Whom / personally know  
Date:- 11 / 03 / 2023

*[Signature]*

Kiran J. Kanale  
Advocate B.A.L.L.B.  
Notary Govt. of India  
'Kanale Plaza' 82, Rly. Lines,  
Dufferin Chowk, Solapur-413001  
Ph. 0217-2317779, Res.:- 2318527



*[Signature]*  
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नोटीस क्रमांक ६४९६

दिनांक २४/१२/२०१४

सोलापूर महानगरपालिका, सोलापूर.

नोटीस बी. पी. एम. सी. अॅक्ट १९४९ चे कलम ४७८ अन्वये

बांधकाम परवानगी विभाग, नगर अभियंता कार्यालय,

अवेक्षक सोलापूर महानगरपालिका, सोलापूर

यांजकडून -

श्री. माहिकारी संपालक, श्री. सिधेश्वर सहकारी साखर कारखाना लि. कुमठे.

वय धंदा राहणार यांसी

आपणास कळविण्यात येते की, शहर सोलापूर टी. पी. स्कीम नं.

पेठ कुमठे ध. नं. फा. प्लॉट नं. प्लॉट नं.

श्री. सं. नं. २१/४, २१/५ सदरहू ठिकाणी तुम्ही खालीलप्रमाणे बांधकाम केले आहे.

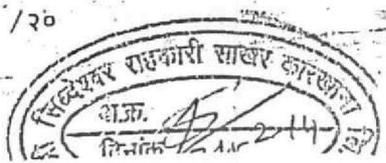
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 पूर्वेस - खुली जागा  
 दक्षिणेस - खुली जागा  
 पश्चिमेस - साखर कारखाना भाग

पेठ कुमठे गट नं. २१/४, २१/५, श्री सिधेश्वर सहकारी कारखाना परिसरात पुढे बाजूस - (१) अंदाजे ४.६० मी. व्यासाचे (जाडेल -) चिमणी - करिता - पात्राचे जागा न तसेच अंदाजे - १५ मी x १५ मी - भाग जोडाभावाचे जागेत - आर. सी. सी. - पात्राचे जागा: (२) ई. एस. पी. प्लॉट - चे - अंदाजे - २३ मी x ३ मी. भाग जोडाभावाचे जागेत - आर. सी. सी. प्लॉटिंग - करिता - २.०० मी - उंची - चे - आर. सी. सी. कॉलगा - चे - बांधकाम - केले आहे. (३) बांधकाम - प्लॉट - करिता - अंदाजे ३०.०० मी - x ६५.०० मी - भाग जोडाभावाचे जागेत - आर. सी. सी. प्लॉटिंग - करिता - २.०० मी - उंची - पर्यंत - कॉलगा - चे - बांधकाम - केले - असून - साखर अंदाजे ४०.०० मी उंची स्थीला स्तूपरुद्ध उगे - केले - आहे.

सदर वर नमूद केलेले बांधकाम बेकायदेशीर व विगरपरवानाचे आहे सवब मुं. प्रा. म्यु. पल कार्पो अॅक्ट १९४९ चे कलम ४७८ (१) प्रमाणे नोटीस देऊन कळविण्यात येते की, सदरची नोटीस मिळाल्या पासून ८ दिवसाचे आत वर नमूद केलेले बेकायदेशीर व विगरपरवाना बांधकाम काढून टाकावे, पाडावे अगर नाहीसे करावे. वरीलप्रमाणे नोटीसीची पूर्तता मुदतीत केली गेली नाही तर म्यु. पल कार्पो. अॅक्ट १९४९ चे तरतुदीस अनुसरून नोटीसीची अमान्यता केलेबद्दल तुमचे विरुद्ध फौजदारी खटला दाखल करणेत येईल वर नमूद केलेल्या बांधकामास मुं. प्रा. महा. अधिनियम १९४९ चे कलम २५३ अन्वये महानगरपालिकेची बांधकाम परवानगी घेणे आवश्यक आहे.

अगर सदर नोटीसीची पूर्तता तुम्ही मुदतीत केली नाही तर मुं. प्रां. म्यु. पल कार्पो अॅक्ट १९४९ चे कलम ४७८ (२) चे तरतुदीस अनुसरून सदरचे विगरपरवाना व बेकायदेशीर बांधकाम काढून टाकणेत येईल, बदल करणेत येईल अगर नाहीसे करणेत येईल सदर कामी होणारा खर्च आपणांस भरावा लागेल.

दि. / / २०



1.15 PM

अवेक्षक

बांधकाम परवानगी विभाग

नगर अभियंता कार्यालय

सोलापूर महानगरपालिका

20/3/17

महाराष्ट्र शासन  
सामान्य प्रशासन विभाग, मंत्रालय,  
विस्तार इमारत, सातवा मजला,  
मादाम कामा मार्ग, हुतात्मा राजगुरु चौक,  
मुंबई-४०० ०३२.

Government of Maharashtra  
General Administration Department,  
Mantralaya,  
Annexe Building, Seventh floor,  
Madame Cama Road, Hutatima Rajguru Chowk,  
Mumbai 400 032.

क्र. एमएडीसी-२०१२/प्र.क्र.४४९/२८-अ

दिनांक:- १५ मार्च, २०१७

प्रति,  
जिल्हाधिकारी,  
सोलापूर.

विषय:- होटगी ज़ि.सोलापूर येथील विमानतळां नजीक असलेला अडथळा दूर  
करणेबाबत.

महोदय,

केंद्र शासनाच्या Regional Connectivity Scheme मध्ये पहिल्या टप्प्यात राज्यातील दहा विमानतळांचा समावेश करण्यात आला आहे. त्यामध्ये सोलापूर (होटगी) विमानतळांचा समावेश आहे. सदर विमानतळ भारतीय विमानपत्तन प्राधीकरणाकडे हस्तांतरीत करावयाचे आहे. तथापि सदरहू विमानतळा नजिक असलेल्या साखर कारखान्याच्या चिमणीचा (धुराडे) विमान उड्डाणामध्ये अडथळा येत असल्याने सदरहू साखर कारखान्याची चिमणी (धुराडे) हटविण्याबाबत राज्य शासनाने धोरणात्मक निर्णय घेतला आहे. या संदर्भातील सर्व खर्च राज्य शासनामार्फत करण्यात येणार आहे. तरी होटगी ज़ि.सोलापूर येथील विमानतळांनजीक असलेली साखर कारखान्याची चिमणी (धुराडे) हटविण्याबाबत आवश्यक कार्यवाही ३ महिन्यांच्या आत करून त्याबाबतचा अहवाल राज्य शासनास सादर करावा. तसेच होटगी विमानतळाचा विकास होण्याच्या दृष्टीने विमानतळाच्या संपूर्ण जमिनीचा ताबा भारतीय विमानपत्तन प्राधीकरणास देणे आवश्यक असल्याने सदर जमिनीवरील अतिक्रमणे हटविण्याची कार्यवाही सुध्दा तातडीने करून सदर जमिन भारतीय विमानपत्तन प्राधीकरणास हस्तांतर करून त्याबाबतचा अहवाल राज्य शासनास त्वरीत सादर करावा.

आपला,

  
(दि. प्र. देशमुख)

अवर सचिव, महाराष्ट्र शासन

प्रत:-

विभागीय संचालक, (पश्चिम क्षेत्र) भारतीय विमानपत्तन प्राधीकरण, मुंबई यांना माहितीस्तव सादर

जिल्हाधिकारी तथा जिल्हादंडाधिकारी कार्यालय सोलापूर.  
दुय्यम घिटणीस शाखा (गृह शाखा),  
शिध्देस्वर पेठ सोलापूर ४१३००१.

दुरध्वनी क्र.०२१७-२७३१०२० फॅक्स क्र.०२१७-२६२११२० ई मेल dcbsolapur@gmail.com  
क्र.२०१६/डीसीबी-२/आरआर-१६२९

दिनांक :- ०६/०४/२०१७

प्रति,

व्यवस्थापकीय संचालक,  
शिध्देस्वर सहकारी साखर कारखाना कुमठे  
ता.उत्तर सोलापूर जि.सोलापूर

विषय :- होटगी येथील विमानतळां नजीक असलेल्या अडथळां दूर करणेबाबत.

संदर्भ:- मा.अवर सचिव सामान्य प्रशासन विभाग मंत्रालय मुंबई यांचे पत्र क्र.एमएडीसी-  
२०१२/प्र.क्र.४४१/२८-अ दिनांक १५/०३/२०१७

उपरोक्त विषयास अनुसरून मा.अवर सचिव सामान्य प्रशासन विभाग मंत्रालय मुंबई यांचे पत्र क्र.एमएडीसी-  
२०१२/प्र.क्र.४४१/२८-अ दिनांक १५/०३/२०१७ चे पत्रान्वये केंद्र शासनाच्या Regional Connectivity Scheme मध्ये  
पहिल्या टप्प्यात राण्यातील दहा विमानतळांचा समावेश करण्यात आला आहे.त्यामध्ये सोलापूर (होटगी) विमानतळांचा  
समावेश करण्यात आला आहे. सदर विमानतळ भारतीय विमानतळ विमानपत्तन प्राधिकरणाकडे हस्तांतरीत करावयाचे आहे.  
तथापि सदरहू विमानतळा नजिक असलेल्या साखर कारखान्याच्या धिमणांचा (धुराडे) विमान उड्डानामध्ये अडथळा असल्याने  
सदरहू साखर कारखान्याची चिमणी (धुराडे) हटविण्याबाबत राज्य शासनाने धोरणात्मक निर्णय घेतला आहे.

मा.अवर सचिव सामान्य प्रशासन विभाग मंत्रालय मुंबई यांनी दिलेल्या सुचनेप्रमाणे शिध्देस्वर सहकारी साखर  
कारखान्याची चिमणी (धुराडे) १ महिन्याचे आत हटविण्यात यावेत, तसेच सध्याची चिमणी (धुराडे) हटविलेनंतर इतर  
ठिकाणी चिमणी (धुराडे) उभी करावयाचे असल्यास, भारतीय विमान प्राधिकरण यांचे परवानगी शिवाय चिमणी उभी करता  
येणार नाही, त्याबाबत त्यांचेशी समन्वय साधावा.

सही/-

(रणजीत कुमार)  
जिल्हादंडाधिकारी सोलापूर.

प्रति:- गायकत, सोलापूर म.न.पा. सोलापूर यांना

२/- उक्त प्रकरणी शिध्देस्वर सहकारी साखर कारखान्याने चिमणी (धुराडे) विहित कालावधीत न हटविल्यास  
त्याबाबतची पुढील योग्य ती कार्यवाही करून त्याबाबतचा अहवाल इकडील कार्यालयास सादर करावा.

मार्त:- व्यवस्थापक भारतीय विमानपत्तन प्राधिकरण, पश्चिम विभाग मुंबई.

राज्य शासन  
४३  
१०/५/१७

१५  
१०/५/१७

CE  
for n.a.

Comm  
SME

३३  
२५/१७

११/४/१७

(रणजीत कुमार)  
जिल्हादंडाधिकारी सोलापूर.

RECAP, १०/५/१७  
अनुमोदित करत.

१०/५/१७

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION No. 5253 of 2017

Siddheshwar Sahakari Sakhar  
Karkhana Ltd.

..Petitioner.

Vs

The Collector & District Magistrate & Ors ..Respondents.

Mr. R.S. Apte, Senior Counsel i/by S.C.Wakankar for the  
Petitioner.

Mr. N.C.Walimbe, A.G.P. for Respondent-State.

Ms. Shilpa Kapil for Respondent No.3.

Mrs. S.V.Bharucha a/with Pradeep Jetley for Respondent  
No.5.

CORAM : V.M. KANADE & C.V.BHADANG, JJ.

DATED : 4th May, 2017.

PC.

- 1) Heard the learned Counsel for the respective parties.
- 2) The petitioner is being aggrieved by letter communication dated 6<sup>th</sup> April, 2017 issued by Respondent No.1-Collector Sholapur and order dated 15<sup>th</sup> March, 2017. By order dated 15<sup>th</sup> March, 2017 the Under Secretary, Government of Maharashtra, Mantralaya, Mumbai has informed the Collector, Sholapur that all structures beyond permissible limit near Sholapur Airport should be demolished.



In view of the said direction given by the Under Secretary, State of Maharashtra, the Collector by letter dated 6<sup>th</sup> April, 2017 informed the Managing Director of the Petitioner to remove the Chimney which was coming in the approach way of the Runway within a period of one month.

3) Shri Apte, learned Senior Counsel for the Petitioner submits that height of the chimney is about 90 meters and it is slightly beyond the permissible limit. It is submitted that they have approached the Airport Authority of India, Delhi seeking relaxation of the said restriction.

4) It is quite well settled that no structure shall be constructed or erected within a radius not exceeding twenty kilometers from the Aerodrome Reference Point of the civil and defence aerodromes. It is admitted position that Chimney is located in the approach/take off area.

5) The Airport Authority of India has issued NOC in respect of construction of proposed structure which is below 463 meters and Permissible Top Elevation in 493.96 (restricted) meters Above Mean Sea Level (AMSL). It is settled position in law while calculating this Permissible Top Elevation, it has to be done from the Mean Sea Level. This is done by using special equipment to find out whether the structure or the height of the structure is above from the Mean Sea Level.

6) These restrictions have been imposed taking into consideration safety of the passengers in the Aircraft and overall safety of people residing in the said area where the Airport is situated. Shri Apte, learned Senior Counsel appearing on behalf of the petitioner has submitted that they have applied to the Airport Authority of India seeking requisite permission. The said application is pending.

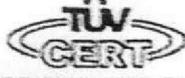
7) The petitioner may apply to the said Airport Authority of India, New Delhi to seek stay of the impugned order. We are not inclined to stay the said order.

8) In the present case, the respondents to file their reply before the next date.

Stand over to 12<sup>th</sup> June, 2017.

(C.V. BHADANG,J)

(V.M. KANADE,J)



AN ISO 9001: 2008 Company

 FAX NO. 020-26121212  
 E-Mail: info@siddheshwaragri@sahar.com

ISO 9001:2008 / CR / 1258 / 2016, Date : 23 / 03 / 2016

# सिध्देश्वर सहकारी साखर कारखाना लि : कुमठे, सोलापूर

## Siddheshwar Sahakari Sakhar Karkhana Ltd; Kumathe.

Post : Tikekarwadi, Tal : North Solapur, Dist : Solapur (Maharashtra), Pin : 413224

(Registered Under Multi-State Co-operative Societies Act-2002)

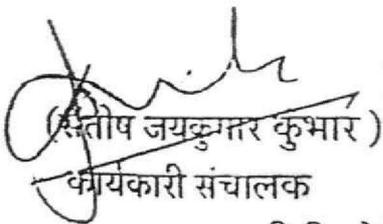
 DHARMRAJ A. KADADI  
 Chairman

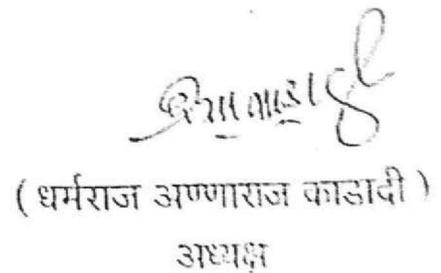
 SANTOSH J. KUMBHAR  
 Managing Director

### हमीपत्र

आज दि.11 ऑगस्ट 2017 रोजी श्री सिध्देश्वर सहकारी साखर कारखाना लि. कुमठे येथील नव्याने सहवीज निर्मिती प्रकल्पासाठी विनापरवाना बांधण्यात आलेली चिमणी पाडणेकरिता सोलापूर महानगरपालिका व शासकीय यंत्रणा कारखाना स्थळावर दाखल झालेली आहे. परंतु कारखाना व्यवस्थापनाने शासनास चिमणी स्थलांतरीत/नियमित करण्यासाठी कालावधी मिळावा अशी विनंती केली होती. याबाबत शासनाने 3 महिन्यांचे मुदतीमध्ये चिमणी स्थलांतरीत करण्याचे हमीपत्र दिल्यास विनंतीचा विचार करता येईल असे कळविले आहे.

या अनुषंगाने आम्ही श्री धर्मराज अण्णाराज काडादी, अध्यक्ष व श्री संतोष जयकुमार कुंभार, कार्यकारी संचालक श्री सिध्देश्वर सहकारी साखर कारखाना लि., कुमठे कारखान्याच्यावतीने असे शासनास हमीपत्र देतो की, दि.11 नोव्हेंबर 2017 पुर्वी सर्व नियमांचे पालन करून व विमान उड्डाणात अडथळा होणार नाही अशा रितीने कारखान्याची वरीलपमाणे नव्याने बांधण्यात आलेली चिमणी पर्यायी व्यवस्था करित आहे.

  
 (संतोष जयकुमार कुंभार)  
 कार्यकारी संचालक

  
 (धर्मराज अण्णाराज काडादी)  
 अध्यक्ष

श्री सिध्देश्वर सहकारी साखर कारखाना लि., कुमठे

दिनांक : 11.08.2017  
 ठिकाण : कुमठे, सोलापूर

psv

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12131 OF 2017

Siddheshwar Rastriya Sakhar  
Kamgar Union

..Petitioner

Vs.

The State of Maharashtra & Ors.

..Respondents

WITH

WRIT PETITION NO.5253 OF 2017

(Not on board. Taken on board)

-----

Mr.Vineet Naik, Senior Advocate, with Mr.Y.D. Patil and  
Mr.Vishwanath Patil for Petitioner in WP No.12131/17.

Mr.Y.S. Jahagirdar, Senior Advocate, with Mr.Siddharth Wakankar  
for Petitioner in WP No.5253/17.

Mr.Sandeep Babar, AGP for State in WP No.12131/17.

Ms.Shilpa Kapil for Respondent No.4-Airport Authority of India.

Mr.P.A. Vyas with Mr.Tripathi for UOI.

Mr.D.V. Mohole, Deputy Chitnis, Naib Tahasildar (Home) Collector  
Office, Solapur.

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CORAM : SHANTANU S. KEMKAR AND  
G.S. KULKARNI, JJ.

DATE : 10<sup>th</sup> NOVEMBER 2017

P.C.:

Heard the learned Counsel for the parties.

2. In view of the communication sent by the Airport Authority  
of India to the petitioner, which has been filed alongwith  
Additional Affidavit at page no.108, the learned Counsel appearing

for the Airport Authority of India-respondent No.4 seeks time to get instructions in the matter as to what is the stage about the examination of the CHQ File No.AAI/20012/181/2014-ARI(NOC) for Case file of M/s.Siddheshwar Sahakari Sugar Factory, Solapur. She is also directed to seek instructions as to whether the said Authority is intending to give an opportunity of hearing to the petitioner of Writ Petition No.5253 of 2017. Let the affidavit to that effect be filed before the next date of hearing.

3. Till the next date of hearing, the respondents are directed not to take any coercive steps in pursuance of the order passed by the Collector, Solapur and the Under Secretary, State Government.

4. List on 17<sup>th</sup> November 2017.

[G.S. KULKARNI, J.]

[SHANTANU S. KEMKAR, J.]

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5253 OF 2017

Siddheshwar Sahakari Sakhar Karkhana  
Ltd., through its Managing Director  
Santosh Jaykumar Kumbhar .... Petitioner

Vs.

Collector and District Magistrate,  
District Solapur & Others .... Respondents

WITH

WRIT PETITION [STAMP] NO.11873 OF 2018

Shree Siddheshwar Sahakari Sakhar  
Karkhana Ltd. .... Petitioner

Vs.

Union of India & Others .... Respondents

WITH

WRIT PETITION NO.12131 OF 2017

Siddheshwar Rastriya Sakhar Kamgar  
Union .... Petitioner

Vs.

The State of Maharashtra & Others .... Respondents

Mr. Y.S. Jahagirdar, Senior Advocate with Mr. S.C.  
Wakankar for the Petitioner in WP-5253/2017.

Mr. Vineet B. Naik, Senior Advocate with Mr. Yuwraj  
D. Patil for the Petitioner in WP-12131/2017.

Mr. S.B. Kalel, Assistant Government Pleader, for

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Respondent Nos.1 & 4 in WP-5253/2017 and for  
Respondent Nos.1 & 2 in WP-12131/2017.

Mr. Deendayal G. Dhanure for Respondent No.2 in  
WP-5253/2017 and for Respondent No.3 in WP-12131/  
2017.

Mr. Anil C. Singh, Additional Solicitor General, with  
Mr. Adwait Sethna, Ms Shilpa Kapil & Mr. Chidanand  
Kapil for AAI-Respondent No.3 in WP-5253/2017 and  
for Respondent No.4 in WP-12131/2017.

Smt. S.V. Bharucha for Respondent No.5 in WP-5253/  
2017.

Mr. Girish Shrivastav, Jt. General Manager (AAI),  
present in Court.

**CORAM: S.C. DHARMADHIKARI &  
SMT. BHARATI H. DANGRE, JJ.**

**DATE : AUGUST 06, 2018**

**ORAL ORDER (Per Shri S.C. DHARMADHIKARI, J.):**

1. These petitions under Article 226 of the Constitution of India have been filed by the petitioners - Siddheshwar Sahakari Sakhar Karkhana Limited through its Managing Director and Siddheshwar Rastriya Sakhar Kamgar Union - to challenge the communication dated 17-5-2017, issued by the respondent/Airports Authority of India.

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2. That communication informs the petitioner/sugar factory that the Airport at Solapur has to be made functional. If that Airport at Solapur has to be made functional, then, facilities have to be provided for the safe landing and take-off of aircrafts from the Runway of this Airport.
  
3. It is common ground that the petitioner in the first two petitions is a sugar factory and in that sugar factory the authorities found a Chimney of 90 metres height. That comes directly in the way of approach to the Runway and, therefore, for smooth and proper, so also safe landing of the aircrafts and with a view to make the Airport functional, it is necessary to remove the same from the site or reduce the height of the same to the permissible limits.
  
4. On 15-3-2017 itself, the Collector, District Solapur was informed by the Department of General Administration, Government of Maharashtra that there is a project styled as Regional Connectivity Scheme of the Central Government. By that, area connectivity has to be established so that major cities

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and towns having Airports are connected with each other and from that Airport aircrafts can take-off and land for carrying the crew and passengers and cargo to nearby and adjoining States in India.

5. As far as Maharashtra State is concerned, the Airports have been identified. These Airports were already constructed. The Runways also were laid. However, the other facilities and amenities enabling the aircrafts to land and take-off were not provided for several reasons. That is how these Airports were rendered non-functional. Resultantly, the public funds investment running into several Crores of rupees was wasted.

6. With great fanfare and inaugural ceremonies presided over by none other than the Hon'ble Prime Minister of India, the Central Government proclaimed that now even a common man can fly and reach his destination by air. "Ude Desh Ka Aam Naagrik" ("UDAN" for short) was the scheme and by which the dreams of thousands of people was to come true and

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equally the Regional Connectivity was to be achieved.

7. The petitioner/sugar factory was informed that it should either reduce the height of the Chimney or remove it altogether as the same is directly coming in the Flying Zone. If that is coming within the Flying Zone, then that cannot be allowed to stand. It is the question of safety of passengers and to avoid any untoward incident that such structures have to be removed.

8. In pursuance of the directions from the State Government, on 6-4-2017 the Managing Director of the petitioner/sugar factory was informed that within a period of one month it should remove its Chimney or bring its height within the permissible limits else coercive steps would have to be taken.

9. We do not see how the petitioner/sugar factory could have then approached the State of Maharashtra or the State Government. Be that as it may, it was advised to address a representation on 12-4-2017 to the Secretary to the Chief

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Minister of the State.

10. In this representation, copy of which is at page 74, the petitioner did not dispute that, in the month of September, 2015 a meeting was convened by the Department of Civil Aviation in which Solapur Airport was identified as a Class "C" Airport. The petitioner denied that the Chimney comes in the way of smooth landing and take-off of the aircrafts. In fact, it is not within the Funnel Zone. Hence the petitioner disputed the contents of the communication from the State Government and the District Collector. On the other hand, it asserted that it applied for a No Objection Certificate ("NOC" for short) to the Airports Authority of India ("AAI" for short). That proposal was received and on 17-2-2017 that proposal was accepted.

11. This proposal was forwarded and on which on 17-2-2017 the AAI had communicated to the petitioner its no objection in the following terms:-

*"1. This NOC is issued by Airports Authority of India (AAI) in pursuance of responsibility conferred by and as per the provisions of Govt. of India (Ministry of Civil Aviation) order GSR751 (E) dated 30<sup>th</sup> Sep. 2015 for Safe*

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and Regular Aircraft Operations.

2. This office has no objection to the construction of the proposed structure as per the following details:

NOC ID:	SOLA/WEST/B/121316/186296
Applicant Name*	Dharmraj A Kadadi
Site Address*	New Survey No.21/4 and Old Survey No.21/A At Post Tikekarwadi Tal North Solapur District Solapur, At Post Tikekarwadi Tal North Solapur District Sol, Solapur, Maharashtra
Site Coordinates*	75 56 49.1-17 36 50.2,
Site Elevation in mtrs AMSL as submitted by Applicant*	463 M
Permissible Top Elevation in mtrs Above Mean Sea Level (AMSL)	493.96 M (Restricted)

\* As provided by applicant

3. This NOC is subject to the terms and conditions as given below:

a. Permissible Top Elevation has been issued on the basis of Site coordinates and Site Elevation submitted by Applicant. AAI neither owns the responsibility nor authenticates the correctness of the site coordinates & site elevation provided by the applicant. If at any stage it is established that the actual data is different, this NOC will stand null and void and action will be taken as per law. The office in-charge of the concerned aerodrome may initiate action under the Aircraft (Demolition of Obstruction caused by Buildings and Trees etc.) Rules, 1994.

b. The Structure height (including any superstructure) shall be calculated by subtracting the Site elevation in AMSL from the Permissible Top Elevation in AMSL i.e. Maximum Structure Height = Permissible Top Elevation

minus (-) Site Elevation.

c. The issue of the 'NOC' is further subject to the provisions of Section 9-A of the Indian Aircraft Act, 1934 and any notifications issued thereunder from time to time including the Aircraft (Demolition of Obstruction caused by Buildings and Trees etc.) Rules, 1994.

d. No radio/TV Antenna, lighting arresters, staircase, Mumtee, Overhead water tank and attachments of fixtures of any kind shall project above the Permissible Top Elevation of 493.96 M (Restricted), as indicated in para 2.

e. Only use of oil fired or electric fired furnace is permissible, within 8 KM of the Aerodrome Reference Point.

f. The certificate is valid for a period of 7 years from the date of its issue. If the construction of structure/Chimney is not commenced within the period, a fresh 'NOC' from the Designated Officer of Airports Authority of India shall be obtained. However, if construction work has commenced, onetime revalidation request, for a period not exceeding 8 years from the date of issue of NOC in respect of building/structure and for a period not exceeding 12 years from the date of issue of NOC in respect of chimney, may be considered by AAI. The date of completion of the Structure should be intimated to this office.

g. No light of a combination of lights which by reason of its intensity, configuration or colour may cause confusion with the aeronautical ground lights of the Airport shall be installed at the site at any time, during or after the construction of the building. No activity shall be allowed which may affect the safe operations of flights.

h. The applicant will not complain/claim compensation against aircraft noise, vibrations, damages etc. caused by aircraft operations at or in the vicinity of the airport.

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i. *Day markings & night lighting with secondary power supply shall be provided as per the guidelines specified in chapter 6 and appendix 6 of Civil Aviation Requirement Series 'B' Part I Section 4, available on DGCA India website: www.dgca.nic.in.*

j. *The applicant is responsible to obtain all other statutory clearances from the concerned authorities including the approval of building plans. This NOC for height clearances is to ensure the safe and regular aircraft operations and shall not be used as document for any other purpose/claim whatsoever, including ownership of land etc.*

k. *This NOC has been issued w.r.t. the Civil Airports. Applicant needs to seek separate NOC from Defence, if the site lies within their jurisdiction.*

l. *In case of any discrepancy/interpretation of NOC letter, English version shall be valid.*

m. *In case of any dispute w.r.t. site elevation and/or AGL height, top elevation in AMSL shall prevail."*

12. From a bare perusal of this NOC, it is evident that the permissible Top Elevation in metres Above Mean Sea Level ("AMSL" for short) was 493.96 metres (restricted). This is thus a conditional NOC. The petitioner is well aware of this communication. We do not see how it still asserted before the State Government that it has a NOC to construct a Chimney of 90 metres. Far from such a permission, the AAI by the above

communication, styled as a NOC, restricted the height.

13. On 7-3-2017, the petitioner addressed a communication to the General Manager, Airports Authority of India, and the same reads as under:-

*“Respected Sir,*

*We are a Co-Operative Society of Industrial complex engaged in Manufacturing of Sugar, Alcohol & Kraft Paper operating for past 45 years in Solapur (Maharashtra). As a part of business expansion, we are establishing a 38 MW Co-Generation Power Plant in the existing Sugar Complex. We obtained necessary approvals from Govt of Maharashtra and Gov of India.*

*As a part of Project, we are installing a Boiler of 200 TPH capacity. We are required to construct 90 Meter RCC chimney as per MPCB Consent to Establish NOC Condition (NOC Ref: 1.0/BO/CAC-CELL/RO(PUNE)E/CAC-370 DT 28.1.2014)*

*With reference. to above cited subject, we had already submitted proposal of construct RCC chimney of 90 Meter height from FFL. We had already paid the appeal fee Rs.2,24,720/- by DD No.018414 Dated 16/10/2014 drawn on Axis Bank in favour of Airport Authority of India along with relevant document.*

*As per discussions at your office dated 30.08.2016, it was informed that our case is under active consideration. We were also advised to approach Mumbai office of AAI, as a first step for grant of NOC, and which we did and the said office has issued NOC for the height as per jurisdiction. The copy of the said NOC is attached.*

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*You are requested to consider our application for grant of NOC."*

Thus, in this communication it is admitted that the proposal was to construct RCC Chimney of 90 metres height. Reliance was placed on the consent of the Maharashtra Pollution Control Board ("MPCB" for short).

14. The petitioner was aware that this communication could not have altered the earlier decision of the AAI.

15. Hence, on 10-4-2017 (page 28A) the AAI reiterated its decision and communicated to the petitioner that there is no question of going back on its NOC. In fact, by this communication, while reiterating the contents of the NOC and taking the petitioner's request as an appeal, the AAI communicated that the petitioner's case was re-examined in detail, data was collected from Aerodrome Ground Aid, procedure for Air Navigation Operations and Communication, Navigation and Surveillance criteria, Permissible Top Elevation approved by the Competent Authority is 493.96 metres AMSL. It is in these circumstances that the petitioner was informed that

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it is not possible to clear the height and the communication was not to be construed as a NOC. In any event, the revised height clearance to the Local Municipal Bodies was also relied upon.

16. Then, there was a NOC for height clearance dated 17-5-2017 and copy of which is found at page 28B. The petitioner's request was re-examined by the AAI and with this communication it treated the matter as closed.

17. Then, there is a Notification (Exhibit "D", page 29) dated 30-9-2015, issued by the Ministry of Civil Aviation.

18. Learned Senior Counsel appearing for the petitioners in above petitions do not dispute that in the Notification/Rules, the definition of the term "aerodrome elevation" {see Clause 3(iii)} means the elevation of the highest point of the landing area as specified in Schedule III to Schedule VII is set out. There is a "Colour Coded Zoning Map" which is also a term defined and referable to Schedule IX of the Rules. The term "No Objection Certificate" is defined in Clause 3(viii) thereof. Then the relevant and material definition is of the term "structure". As

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per Clause 3(ix) that definition reads as under:-

*“(ix) “structure” includes building, mast, tower, chimney, poles, transmission lines, elevated roads or viaducts or bridges and elevated railway lines, wind farms and all other man-made structures;”*

19. It is undisputed, therefore, that the definition includes a Chimney. Once no structure shall be constructed or erected, or any tree planted or grown on any land within a radius not exceeding 20 kms. from the Aerodrome Reference Point of the civil and defence aerodromes, as specified in Schedule III to Schedule VII, without obtaining a NOC for the height clearance, then, by Clause 4 of this Notification exception is made only in the cases specified in sub-rule (2) of Rule 7 of the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015. That is in cases of those aerodromes where the Colour Coded Zoning Maps have been issued and the Local, Municipal or Town Planning and Development authorities, in accordance with the height specifications, provided a Colour Coded Zoning Maps, approved the construction of the structure as per the existing building

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regulations or bye laws or any other law for the time being in force, but there is a proviso to sub-rule (2) of Rule 7 by which no approval can be given by the Local authorities as also the Development authorities for sites which lie in approach, take off and transitional areas of an airport or in any other area, marked in the Colour Coded Zoning Map for the compulsory obtaining of NOC from the Designated Officer or Authorised Officer.

20. A full procedure is, therefore, laid down in these Rules and which also provides for the remedy of an appeal to the aggrieved party.

21. We do not, therefore, see how the petitioner could have claimed that its Chimney of 90 metre height does not, in any manner, violate or breach these Rules. That these Rules are very elaborate and concern the safety of aircraft operations, then, all the more we do not think we should allow the petitioner to rely on the NOC from the MPCB, or some understanding given to it through meetings with the said authorities.

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22. On Writ Petition No.5253 of 2017, when it was initially moved, a Division Bench of this Court heard both sides and a detailed order was passed. On 10-8-2017, a request was made to allow the petitioner to approach the Chairman, Appellate Committee of respondent No.3 and request it to pass an order on the pending application. This was after being aware of the refusal by this Court of any interim relief on 4-5-2017.

The order of 4-5-2017 is fairly detailed and reads as under:-

*"1) Heard the learned Counsel for the respective parties.*

*2) The petitioner is being aggrieved by letter communication dated 6<sup>th</sup> April, 2017 issued by Respondent No.1-Collector Sholapur and order dated 15<sup>th</sup> March, 2017. By order dated 15<sup>th</sup> March, 2017 the Under Secretary, Government of Maharashtra, Mantralaya, Mumbai has informed the Collector, Sholapur that all structures beyond permissible limit near Sholapur Airport should be demolished. In view of the said direction given by the Under Secretary, State of Maharashtra, the Collector by letter dated 6<sup>th</sup> April, 2017 informed the Managing Director of the Petitioner to remove the Chimney which was coming in the approach way of the Runway within a period of one month.*

*3) Shri Apte, learned Senior Counsel for the Petitioner submits that height of the chimney is about 90 meters and it is slightly beyond the permissible limit. It is submitted that they have approached the Airport Authority of India, Delhi seeking relaxation of the said restriction.*

4) *It is quite well settled that no structure shall be constructed or erected within a radius not exceeding twenty kilometers from the Aerodrome Reference Point of the civil and defence aerodromes. It is admitted position that Chimeny is located in the approach/take off area.*

5) *The Airport Authority of India has issued NOC in respect of construction of proposed structure which is below 463 meters and Permissible Top Elevation in 493.96 (restricted) meters Above Mean Sea Level (AMSL). It is settled position in law while calculating this Permissible Top Elevation, it has to be done from the Mean Sea Level. This is done by using special equipment to find out whether the structure or the height of the structure is above from the Mean Sea Level.*

6) *These restrictions have been imposed taking into consideration safety of the passengers in the Aircraft and overall safety of people residing in the said area where the Airport is situated. Shri Apte, learned Senior Counsel appearing on behalf of the petitioner has submitted that they have applied to the Airport Authority of India seeking requisite permission. The said application is pending.*

7) *The petitioner may apply to the said Airport Authority of India, New Delhi to seek stay of the impugned order. We are not inclined to stay the said order.*

8) *In the present case, the respondents to file their reply before the next date.*

*Stand over to 12<sup>th</sup> June, 2017."*

23. In terms of both these orders, all that was permitted was to approach the authorities or seek relief in terms of the pending application. Merely because the respondents did not file

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a reply or did not report about the outcome of the pending application, this Court could not have been persuaded to direct otherwise.

24. On 10-11-2017, when both the petitions (WP-Nos.12131 and 5253 of 2017) were placed before the Division Bench, it was stated that there is a communication from the AAI which was annexed to the additional affidavit at page 108 of the paper-book and time was sought to obtain instructions with regard to examination of the file concerning the petitioner. The authority was to revert back and report to this Court whether it is intending to give an opportunity of hearing to the petitioner/sugar factory.

25. A direction was issued to file an affidavit.

26. However, this Court was persuaded to pass an order that till the next date of hearing of the petition, the respondents should not take any coercive steps in pursuance of the orders passed by the Collector, Solapur and the Under Secretary to the State Government. Because that order was passed, it has

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continued till date. The matter was mentioned before us by Ms Shilpa Kapil and our attention was invited to the fact that these orders and directions of this Court are an impediment in making the Airport functional. The respondent No.4/AAI attempted to obtain a relief of vacating this interim stay but that was on 23-7-2018. We were surprised by this approach of the AAI for it suddenly feels that this one Airport cannot be made functional on account of pendency of the petition and the orders therein.

27. It is in these circumstances, on 23-7-2018, we passed the following order:-

*"1. Let the petitioner's advocate on record circulate a praecipe setting out the details of a pending Writ Petition on the point particularly filed by the petitioner to challenge the orders of the authorities under the Aircraft Act, 1934. Secondly, we find that the petitioner's petitions are being rendered infructuous or at least attempted to be by the Airport Authority of India by relying on documents or pleadings which are either not in proper format or if already filed, copies have not been given to the other side. We deprecate such state of affairs by any parties in this Court.*

*2. In the event any party wishes to rely on current policies or any further developments, it should, so as to vacate the interim order take out an appropriate*

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*proceedings or at least file further affidavits enclosing copies of these materials and serve them on the opponent in advance. We would expect similar conduct and assistance by the petitioners so that at one stretch all the matters can be listed and disposed of.*

3. *We post these matters on 3<sup>rd</sup> August 2018 on Supplementary Board."*

28. Thereafter, these writ petitions, namely, of the petitioner/sugar factory and the Union were posted on 3-8-2018 and we were informed that an attempt would be made to approach the AAI and find a solution. However, it does not seem to be working out for there are clear instructions to the Additional Solicitor General, who appears for the Union of India, the Department of Civil Aviation and the AAI, to the contrary.

29. Our attention was also invited to the fact that on 28-7-2017 the petitioners sought to rely upon an order of the National Green Tribunal or its requirements to increase the height above the ground level to 90 metres. Pertinently, on such an application made as on 28-7-2017, the AAI has not altered its stand. It has been also urged by the petitioners that there is construction of a Chimney by National Thermal Power

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Corporation Limited ("NTPC" for short) and of the same height. That is also an industry. That construction is made pursuant to the NOC of 13-9-2012. However, the Chimney has been constructed, according to the Additional Solicitor General, by this Corporation at a far off place and that does not obstruct or pose any threat to the safety of aircraft operations at the concerned Airport. Hence no parity can be established insofar as this Corporation is concerned.

30. Thus, it was only a facility or opportunity to the petitioner to sit with the representatives of the statutory bodies and work out a solution as was assured on the earlier occasion. The instructions to the Senior Counsel are to urge that there is a plantation and ready crop of sugarcane and which is now due to be harvested. There is a crushing season of the sugar factory and that is to commence in October, 2018. At least till that time the construction of the Chimney should be allowed to remain or stand at site. This sugar factory is of 1969. It caters Talukas such as North Solapur, South Solapur, Akkalkot and Mohol in Solapur District and Tulzapur Taluka in Osmanabad District and two

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Districts of Karnataka State which are also being catered to by this sugar factory. Now what is projected before us is the hardship and prejudice to about 26381 members of the petitioner who are poor farmers. For the last 44 years, various members and employees of the petitioner are cultivating and harvesting sugar crops or rendering service to this sugar factory. To enable it to manufacture sugar, there are about 1200 workers whose future is at stake. Then there are dependent families of these harvesters and cane transporters all of whom would be affected prejudicially. Then it is stated that a 38 Mega Watt Co-Generation Power Plant has also been erected in the existing sugar factory complex and to carry out the expansion of the crushing capacity of the factory upto 7500 TCD and as a part of it, a Boiler of 200 TPH (110 kg pressure) capacity was to be installed and therefore in the year 2014 the construction of the Chimney was necessary and that is how it has come up at the site. We should, therefore, take a sympathetic view, is the further instruction to this Counsel.

31. After hearing both Counsel at great length and

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perusing with their assistance the memo of these petitions so also the annexures, the affidavits in reply and the additional affidavits in reply, we find that the attempt by the petitioner is not bona fide at all. There is already reference to a Civil Suit filed by one Mahadev Baburav Chakote being Regular Civil Suit No.406 of 2017 in the Court of Civil Judge, Senior Division, Solapur. On 7-7-2017, an application seeking a restraint against the authorities from demolishing this Chimney was rejected. Secondly, we find that the petitioner knowing fully well that no permission can be granted to put up a Chimney of more than the prescribed height and as stipulated in the NOC, still went ahead and has put up this Chimney/structure at site. That flies in the face of the NOC. If the permissible height cannot be exceeded even by the Ministry of Civil Aviation and the Government of India, then, we do not see how any accommodation could have been sought by the petitioner. It is thus apparent that what is done by the petitioner at the site is erection and construction of a structure contrary to law. It is unauthorized and beyond the limits specified. Once everything that the petitioner attempted to

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do has been unsuccessful and the AAI reiterated the terms of its conditional NOC dated 17-5-2017, then, we do not see how the petitioner can request us to make any order contrary to the Rules, much less an order directing the AAI to accommodate the petitioner further.

32. This is virtually an attempt to use the writ jurisdiction of this Court to seek a relief which is in contravention of law. Once the petitioner accepted the conditional NOC, then, the writ jurisdiction is not meant to enable it to wriggle out or escape the consequences of this NOC. Neither the Rules nor the conditions imposed have ever been challenged. The matters of safety of aircraft operations are exclusively to be determined and decided by the authorities under the Aircraft Act, 1934. The authority is the Department or Ministry of Civil Aviation and the Directorate General of Civil Aviation (Safety). Neither of them are in a mood to accommodate the petitioner, as is evident from their affidavits filed in this Court. This is a stand reiterated and repeatedly even in the latest affidavit of 6-2-2018. It has been brought to our

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notice, in fact, by the last affidavit filed on 31-7-2018 that the petitioner is utilising the pendency of this petition to delay the obvious. This affidavit also points out as to how respondent No.3 had considered the petitioner's request despite a direction to remove the Chimney. The petitioner approached this authority to suggest alternate sites for the Chimney. Today also this is reiterated before us as if it is the job of the AAI to suggest to everybody who builds an offending structure, a site, which would be convenient for law breakers and such offenders. We do not see why the authorities like the AAI or the Ministry of Civil Aviation indulged the petitioner who is a patent wrong-doer. The authorities in-charge of Civil Aviation and particularly aircraft operations (safety) ought to be concerned with only these aspects and it is not their business to suggest alternate site to parties like the petitioner. Yet, these authorities are themselves to be blamed if the Airport is not made functional. They cannot blame this Court for passing an order in November, 2017 and then making a capital of it, only to cover up their inefficiency. We find that the petitioner/sugar factory seems to

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be very influential for 7-3-2018 was the date on which the AAI informed the petitioner that it should check approximate site locations by referring to the website. However, a careful perusal of this letter of 7-3-2018 reveals that the entire burden was on the petitioner to find the alternate location. This is but a suggestion from the AAI. This does not mean that there is any form of assurance, much less a representation so as to allow the petitioner to continue with the use of its existing Chimney. Then there was a meeting and the Minutes of that meeting, dated 19-3-2018, also would clarify the matter as above.

33. On 6-4-2018, the Principal Secretary, Civil Aviation Department was informed that the flight operations, in the first round, could not start from Solapur due to presence of obstacles surrounding the Airport. Even the District Magistrate, Solapur, was informed about the possible alternate sites for the Chimney by letter dated 6-6-2018. The existing NTPC Chimney is not going to impact the RCS operation at Solapur. The petitioner, on 25-6-2018, informed the Collector, Solapur, that to shift the said Chimney at alternate sites, as suggested by the AAI, is practically

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impossible. The petitioner sought advice from their technical expert at Chennai. We do not see how the petitioner could request this Court for accommodation, for nothing suggested by the AAI or the Ministry was acceptable to it and they fairly communicated that it is not possible to shift the Chimney to such sites as was suggested by the AAI. That is practically impossible. Yet, the petitioner was informed by the Collector, Solapur on 4-7-2018 to expedite the process of obtaining advise. It is strange that a wrong-doer is requested to expedite the process of obtaining advise. In the garb of the order of this Court dated 10-11-2017, restraining allegedly the authorities from taking any coercive steps, all this was done is the explanation of the learned Additional Solicitor General.

34. It may be true but we do not see how a person like the petitioner can be accommodated and based on the orders of this Court. It can go on dictating terms to the authority. We find that on 31-7-2018, the petitioner has been bold enough to tender an affidavit and to say that the petitioner has learnt that there is an acquisition of a site for new Greenfield Airport at

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Boramani, Solapur. The process of acquisition of about 550 Hectares of land is complete. This is, therefore, an assertion of a petitioner who says that it will not shift its Chimney but now a new Airport site is identified so let the Airport shift from the existing site at Hotgi to Boramani. Even otherwise, until then this Airport is not going to be made functional. Thus, the regional connectivity scheme is sought to be defeated by the petitioner and it seems to be more influential than the respondents for it goes on then alleging discrimination. It also says that the Solapur Airport is not operational regularly and it is used only by the VIPs. We do not see how VIPs were allowed to use it or permissions were given for the aircrafts carrying them to land with the obstacle at site. This is a clear case of compromise with air safety by accommodating a wrong-doer.

35. All this is going on in the garb of an interim order of this Court. This only shows that until there are proven changed circumstances, this Court should never modify its interim order. The mandate of Order XXXIX, Rule 4 of Civil Procedure Code, 1908, as amended, requires changed circumstances not only to

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be brought to the notice of this Court but the satisfaction of this Court that there are indeed changed circumstances and only then its refusal to grant an injunction or interim relief should be modified by it. Else, this is the result and then the parties claim equities. The parties then seek to rely on extraneous and irrelevant materials to perpetuate a wrong already done.

36. This last affidavit of the petitioner/sugar factory, therefore, smacks of arrogance and displays its adamancy. This petitioner does not, therefore, deserve any accommodation from this Court.

37. This is a clear abuse of our writ jurisdiction and this Court is sought to be persuaded to interfere in policy matters. We are nobody to prescribe policies and particularly concerning safe aircraft operations. We should never be seen as interfering with policy matters or suggesting to the framers of the policy any alternatives even if, in our opinion, they are better. We have no business to frame policies or re-write existing policies. Our jurisdiction in such matters is extremely limited and in judicial

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review we cannot sit as an appellate body so as to consider whether the existing policy is wise or foolish.

38. In the case of Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth, reported in AIR 1984 SC 1543, the Hon'ble Supreme Court has this to say with regard to the powers of this Court in judicial review, particularly in policy matters:-

*"14. .... In our opinion, this approach made by the High Court was not correct or proper because the question whether a particular piece of delegated legislation - whether a rule or regulation or other type of statutory instrument - is in excess of the power of subordinate legislation conferred on the delegate has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or*

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regulations made by it have a rational nexus with the object and purpose of the Statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegated by the Statute. Though this legal position is well established by a long series of decisions of this Court, we have considered it necessary to reiterate it in view of the manifestly erroneous approach made by the High Court to the consideration of the question as to whether the impugned clause (3) of Regn. 104 is ultra vires. ....

15. ....

16. In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal

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*infirmary, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. None of these vitiating factors are shown to exist in the present case and hence there was no scope at all for the High Court to invalidate the provision contained in cl. (3) of Regn. 104 as ultra vires on the grounds of its being in excess of the regulation-making power conferred on the Board. Equally untenable, in our opinion, is the next and last ground by the High Court for striking down cl. (3) of Regn. 104 as unreasonable, namely, that it is in the nature of a bye-law and is ultra vires on the ground of its being an unreasonable provision. It is clear from the scheme of the Act and more particularly, Ss. 18, 19 and 34 that the legislature has laid down in broad terms its policy to provide for the establishment of a State Board and Divisional Boards to regulate matters pertaining to secondary and higher secondary education in the State and it has authorised the State Government in the first instance and subsequently the Board to enunciate the details for carrying into effect the purposes of the Act by framing regulations. ...."*

The petitioner/sugar factory has gone as far as instigating and putting up its employees through their Union to file a substantive petition (Writ Petition No.12131 of 2017) to challenge the action of the AAI. We do not see how the Union has any locus and over and above the petitioner-establishment to question the AAI's action.

39. **Once we find the litigation to be of the above nature,**

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we dismiss it outright. The writ petitions are, therefore, dismissed. The interim orders are vacated forthwith. It is only because of the persuasion of the learned Senior Counsel that we do not impose costs so as to discourage such litigation. We warn all authorities and parties that we would be constrained to take strict action in future in the event we find that their acts and actions are apparently collusive and resulting in compromising the safety of aircraft operations. The paramount consideration for the AAI and DGCA ought to be the safety of the passengers and the crew. If we are proclaiming to the world that there is ease of doing business with India and Indian Government policies are suited for meeting that end, then, this conduct is surely not sending the correct signal and message to the world. We say nothing more.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)

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Jagdish  
Sajnowat

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Jagdish Sajnowat  
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## GOVERNMENT OF INDIA



OFFICE OF THE  
DIRECTOR GENERAL OF CIVIL AVIATION  
OPP. SAFDARJUNG AIRPORT, NEW DELHI - 110003.

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भाग संख्या

परिचालन विभाग विमानों का पर्यवेक्षण  
सम्बन्धीन सुधारों के अन्तर्गत  
नई दिल्ली - 110 003

Ref No : AV.20025/05/17-AL  
Dated : 24.08.2019

FINAL ORDERSUB: Chimney of M/s Shri Siddeshwar Sahakar Sakhar Karkhana Ltd(SSSSKL)

Whereas, an obstacle survey conducted in the year 2017 by Airports Authority of India(AAI) reveals the obstacles infringing the Obstacle Limitation Surfaces(OLS) of Solapur airport, Solapur.

2. Whereas, AAI identified the Chimney owned by M/s SSSSKL, Solapur as a major obstacle infringing the Obstacle Limitation Surfaces (OLS) of Solapur airport based on the Obstacle survey-2017. The Chimney is penetrating the APPROACH SURFACE of RWY 33 by 52.2 meters against the permissible top elevation of 498.4 meters AMSL.

3. Whereas, an order for physical verification was issued to the owner of said Chimney under rule 3 and 4 of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc) Rules, 1994, with direction to furnish to The Officer-in-Charge, Solapur Airport, Solapur, a plan showing the said Chimney and also its dimensions and other details mentioned in the said order.

4. Whereas, a physical verification was carried out by AAI at the site which confirmed about the penetration of said Chimney by 52.2 meters.

5. Whereas, subsequently a personal hearing was given to the owner of Chimney forming obstacle as per rule 6 of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc) Rules, 1994. Adv. Vishwanath R Patil, Sh. Ashok Revansiddha Birajdar & Sh. Siddheshwar Nirvanappa Shilwant appeared for personal hearing on 31.05.2019 before Sh. D.C. Sharma, Dy Director General of Civil Aviation at New Delhi.

The authorised representatives for the owner of M/s SSSSKL submitted that the sugar factory owned by M/s SSSSKL was in existence much before Solapur airport. The representatives also informed that from the year 1987 until 2019 except for a short period of 7-8 months, Solapur airport has never seen regular commercial flight services connecting Solapur to any airports in India. However, no legally tenable document/evidence was produced to justify present height of the Chimney.

AAI representative informed that although the sugar factory owned by M/s SSSSKL Solapur existed before the existence of Solapur airport, the Chimney was constructed only in the year 2014 after

the operationalisation of Solapur airport. AAI representative also submitted that the Chimney is critically located at 1 km from the runway 33 end and does not have any valid aviation NOC for the present height. AAI representative reiterated that the existing chimney owned by M/s SSSSKL sugar factory is required to be reduced within permissible limits for commencing aircraft operations from Solapur airport.

The representatives of M/s SSSSKL sought one month time to be given prior to the issuance of Final Order. Subsequently, the Chairman of M/s SSSSKL sugar factory vide letter dated 05.06.19 made a request to Dy Director General of Civil Aviation to pass the Final order after one month citing that they will be seeking a meeting with Chairman AAI to discuss and arrive at an amicable solution. However no response/information on the matter has been received till date.

6. Whereas, it has been established that the said Chimney is penetrating the APPROACH SURFACE of RWY 33 by 52.2 meters and its height need to be reduced to the permissible height at the earliest.

7. Now, therefore, in exercise of the power, conferred under Rule 6 of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994, the undersigned, hereby direct the owner of M/s SSSSK Ltd, Solapur to reduce the height of said Chimney to 498.4 meters AMSL within 60 days from the date of issue of this order, so as to be in conformity with the aforesaid notification.

8. If you are aggrieved by this order, you may prefer an appeal to Director General of Civil Aviation within sixty days of the date of the order as per Rule 6A of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994.

*D.C. Sharma*  
(D.C.Sharma)

Deputy Director General

To  
M/s Shree Siddheshwar Sahakuri Sakhar Karkhana Ltd,  
Tikekarvadi Tal,  
North Solapur,  
Solapur Dist, Maharashtra -413 224.

Copy to : 1. The Chairman, Airports Authority of India, Rajiv Gandhi Bhavan, New Delhi- 03.  
2. The Airport Director, Solapur airport, Solapur, Maharashtra 413224 -with a direction to serve the Final Order to the owner of M/s SSSSK Ltd, Solapur

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Exhibit  
'J'

58. no

ITEM NO.4

COURT NO.8

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 30415/2018

(Arising out of impugned final judgment and order dated 06-08-2018  
in WP No. 5253/2017 passed by the High Court Of Judicature At  
Bombay)

SIDDESHWAR SAHAKARI SAKHAR  
KARKHANA LTD.

Petitioner(s)

VERSUS

COLLECTOR AND DISTRICT  
MAGISTRATE, SOLAPUR & ORS.  
WITH

Respondent(s)

SLP(C) No. 30610/2018 (IX)

(FOR ADMISSION and I.R. and IA No.166595/2018-EXEMPTION FROM FILING  
C/C OF THE IMPUGNED JUDGMENT and IA No.166597/2018-EXEMPTION FROM  
FILING O.T. and IA No.166593/2018-PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS)

SLP(C) No. 30657/2018 (IX)

(FOR ADMISSION and I.R. and IA No.166833/2018-EXEMPTION FROM FILING  
C/C OF THE IMPUGNED JUDGMENT and IA No.166835/2018-EXEMPTION FROM  
FILING O.T. and IA No.166831/2018-PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS)

Date : 29-08-2019 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR  
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Petitioner(s)

Mr. V. Giri, Sr. Adv.  
Mr. Satyajit A. Desai, Adv.  
Ms. Anagha S. Desai, AOR  
Mr. Ashuman Singh, Adv.

Mr. Somanatha Padhan, AOR

For Respondent(s)

Mr. P.S. Narasimha, Sr. Adv.  
Ms. Neetika Sharma, Adv.  
Ms. Sindoor VNL, Adv.  
M/S. M. V. Kini & Associates, AOR

Mr. Ajit S. Bhasme, Sr. Adv.  
Mr. Pankaj Kumar Mishra, AOR  
Mr. A. Bhasme, Adv.

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Dinesh Maheshwari  
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Ms. Sunita Sharma, Adv.  
Mr. Ashish Rana, Adv.  
Mr. Adarsh Tripathi, Adv.  
Mr. Ashish Rana, Adv.  
Mr. B.V. Balaram Das, AOR

Mr. Nishant Ramakantrao Katneshwarkar, AOR  
Mr. Anoop Kandari, Adv.

Mr. Sudhanshu S. Choudhari, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Counsel for the Union of India has placed before us a copy of order dated 24.08.2019 passed by the Deputy Director General, Civil Aviation, Government of India. The same is taken on record.

In view of the aforesaid order passed by the competent authority, the order(s) which are subject matter of challenge in these special leave petition(s) in that sense have become redundant.

The petitioner(s), if so advised, may opt for remedy of appeal(s) under the concerned Rules of the Aircraft (Demolition of Obstructions caused by Buildings and Trees etc.) Rules 1994.

We make it clear that all contentions available to both sides are left open including the question of jurisdiction of the Collector of the State to pass order in that regard.

The special leave petitions and pending applications are accordingly disposed of.

(NEETU KHAJURIA)  
COURT MASTER

(VIDYA NEGI)  
COURT MASTER

Speaking Order dated

15/1/2021

सोलापूर महानगरपालिका, सोलापूर.  
महा. संचालक, नगररचना यांचे कार्यालय, मोलापूर.  
सिधेश्वर कारखाना चिमणी Speaking Order/ दि. /01/2021

विषय :- श्री. सिधेश्वर सहकारी साखर कारखाना होटगी रोड, सव्हें  
नं. 21/4 व 21/5 कुमठे, सोलापूर येथील को-जनरेशन चिमणी  
पाडकामाबाबत.

संदर्भ :- 1) श्री. सिधेश्वर सहकारी साखर कारखाना यांचे  
दि. 25/12/2012 रोजीचे आयुक्त सोलापूर महानगरपालिका यांना  
उद्देशीत कारखान्याचे विस्तारी करण्याकरीता ना-हरकत दाखला  
मिळणेबाबतचा विनंती अर्ज.

2) नगर अभियंता, विभागाकडून कार्यकारी संचालक, सिधेश्वर  
सहकारी कारखाना जा.क्र.न.अ. वा.प. 419,  
दि. 01/02/2013 अन्वये श्री. सिधेश्वर सहकारी साखर कारखान्यास  
शर्ती व अटीस आधीन राहून दिलेले ना-हरकत पत्र.

3) स्टेशन इनचार्ज एअरपोर्ट एंथॉरिटी ऑफ इंडिया एअरपोर्ट,  
मोलापूर यांनी  
क्र. ए. ए. आय./एम. ओ. एन/ए. पी. सी./ऑव्स्टेकल/2013-14/12-  
13/18/02/2014 दि. 18/2/2014 अन्वये जिल्हाधिकारी,  
सोलापूर यांना विमान उडानामध्ये चिमणीचे अडथळा होत  
असल्याने व एअरपोर्ट एंथॉरिटीचे मान्यता न घेता चिमणीचे काम  
केल्याने ते थांबविण्याबाबत दिलेले पत्र.

4) कार्यकारी संचालक श्री. सिधेश्वर साखर कारखाना लि., कुमठे  
यांना नोटीस क्र. 6496  
दि. 24/2/2014 अन्वये वी. पी. एम. सी. ऍक्ट 1949 चे कलम  
478 नुसार देण्यात आलेली नोटीस.

5) प्रभारी कार्यकारी संचालक, श्री. सिधेश्वर सहकारी साखर  
कारखाना लि., कुमठे यांचे दि. 8/8/2016 रोजीचे आयुक्त, सोलापूर  
यांना उद्देशून, उद्देशीत कारखान्याम वीज निर्मिती प्रकल्पासाठी व  
गाळप क्षमता विस्तारीत करण्यासाठी ना-हरकत दाखला  
मिळण्याबाबत प्रमाणपत्र.

6) नगर अभियंता, विभागाकडून कार्यकारी संचालक, सिधेश्वर

सहकारी कारखाना जा.क्र.न. अ. वा.प.398,  
दि.10/08/2016 अन्वये श्री. सिधेश्वर सहकारी साखर कारखान्यास  
शर्ती व अटीस आधीन राहून दिलेले ना-हरकत पत्र.  
7) भारतीय विमान पतन प्राधिकरण यांचेकडील No  
Objection Certificate for Height Clearance  
दि.17/2/2017.

8) मा.अवर मंचिव, महाराष्ट्र शासन, सामान्य प्रशासन विभाग  
यांचे जिन्हाधिकारी यांना उद्देशित दि.15/03/2017 व  
दि.19/07/2017 चे पत्र.

9) श्री. सिधेश्वर सहकारी साखर कारखाना यांच्याकडून  
दि.12/4/2017 नुसार बांधकाम परवानगी मागणी अर्ज व  
नकाशा.

10) कार्यकारी संचालक, श्री. सिधेश्वर सहकारी साखर कारखाना  
यांना जा.क्र.न.अ.वा.प.54, दि.6/5/2017 व  
दि.25/7/2017 नुसार दिलेले उत्तर.

11) श्री. सिधेश्वर सहकारी साखर कारखाना चेअरमन व कार्यकारी  
संचालक यांनी दि.11/8/2017 नुसार दिलेले हमीपत्र.

12) महाराष्ट्र महानगरपालिका अधिनियमातील कलम 478 अन्वये  
नोटीस क्र. 347 दि.11/11/2019 अन्वये चेअरमन व  
कार्यकारी कुमठे यांना संचालक श्री.सिधेश्वर सहकारी साखर कारखाना,  
दिलेली नोटीस.

13) महाराष्ट्र महानगरपालिका अधिनियमातील कलम 478 अन्वये  
नोटीस क्र. 347 दि.11/11/2019 अन्वये कारखान्यास  
दिलेल्या मांडण्याकरीता नोटीसीबाबत कारखान्याला त्यांचे म्हणणे

सुनवणीकामी हजर राहणेकरीता पत्र क्र.137,  
दि.18/12/2020 अन्वये कळविले.

14) दि.28/12/2020 रोजी आयुक्त यांच्या समोर चेअरमन व  
कार्यकारी संचालक श्री. सिधेश्वर सहकारी साखर कारखाना.  
यांच्या उपस्थित झालेली सुनवणी.

15) मा.उच्च न्यायालयात म.न.पा.विरुद्ध रिट पिटीशन (ST)  
क्र.29268/2019 दाखल केले होते. यात मा. उच्च न्यायालयाचे

दि.21/12/2020 चे आदेश.

वाचा क्र.1 व 2 :- ज्या अर्थी चेअरमन व कार्यकारी संचालक सिध्देश्वर सहकारी माखर कारखाना यांनी आयुक्त, सोलापूर महापालिका यांना उद्देशून कारखान्यास वीज निर्मिती प्रकल्पासाठी व गाळप क्षमता विस्तारीत करण्यासाठी ना-हरकत दाखला मिळण्याबाबत दि.25/12/2012 व दि.8/8/2016 रोजी विनंती अर्ज सादर केला होता सदर अर्जास अनुसरून नगर अभियंता, विभागाकडून जा.क्र.न.अ.वा.प.419, दि.01/02/2013, क्र.398 व दि.18/8/2016 अन्वये शर्ती व अटीम आधीन राहून ना-हरकत प्रमाणपत्र देण्यात आले. सदर शर्ती व अटी खालीलप्रमाणे आहेत.

1. या प्रकल्पाच्या उभारणीसाठी त्यास अनुषंगीक सर्व कायदे व नियम यांचे कसोमीने पालन केले जाईल.
2. विविध सरकारी सोलापूर महानगरपालिकेकडून प्रकल्प संबंधात आवश्यक अगल्या मर्च परवानगी व मंजूरी घेतल्या जातील.

वाचा क्र.3 :- ज्या अर्थी स्टेशन इनचार्ज एअरपोर्ट एंथॉरिटी ऑफ इंडिया एअरपोर्ट, सोलापूर यांनी क्र.ए.ए.आय./एस.ओ.एल/ए.पी.सी./ऑवस्टेकल/2013-14/12-13/18/02/2014, दि.18/2/2014 अन्वये जिल्हाधिकारी, सोलापूर यांना विमान उडायामध्ये चिमणीचे अडथळा होत असल्याने व एअरपोर्ट एंथॉरिटीचे मान्यता न घेता चिमणीचे काम चालू असल्याने सदरचे काम तात्काळ थांबविण्यात यावे व चिमणी निष्काशित करावी असे कळविले.

वाचा क्र.4 :- नगर अभियंता विभागाकडून स्थळ पाहणी करून सदर जागेतील विनापरवाना केलेल्या बांधकामास कार्यकारी संचालक श्री. सिध्देश्वर साखर कारखाना लि., कुमठ यांना क्र.6496 दि.24/2/2014 अन्वये वी.पी.एम.सी.एक्ट 1949 चे कलम 478 अन्वये नोटीस देण्यात आली.

उपरोक्त नोटीसीबाबत म्हणणे मांडण्याकरीता कार्यकारी संचालक श्री. सिध्देश्वर साखर कारखाना यांनी दि.3/3/2014 रोजी अर्ज देवून महानगरपालिकेने दि.24/2/2014 रोजीच्या नोटीसीमध्ये नमूद केलेली 7 दिवसाची मुदती ऐवजी म्हणणे मांडण्याकरीता 90 दिवसाची मुदत वाढवून द्यावे अशी विनंती केली. त्यानुसार कारखान्यास 30 दिवसाची मुदत देण्यात आली.

आणि ज्या अर्थी जिल्हाधिकारी, सोलापूर यांनी कारखान्यास सोलापूर महानगरपालिकेकडून देण्यात आलेले मुं. प्रा.महाअधिनियम 1949 चे कलम 478 अन्वये दिलेली नोटीसीनुसार कोणतीच कारवाई झाल्याचे दिसून येत नाही व मा. विभागीय आयुक्त, पुणे विभाग पुणे यांनी दि.30/7/2016 रोजीच्या दौऱ्याच्यावेळी प्रस्तुत विषयी तात्काळ कारवाई करण्यास सुचना दिलेली आहेत. तरी मुं.प्रा.अधिनियम 1949 चे कलम 478(2) अन्वये कारवाई पूर्ण करून त्याचा अहवाल मादर करणेबाबत कळविले.

आणि ज्या अर्थी अवर सचिव सामान्य प्रशासन, महाराष्ट्र यांनी त्यांचेकडे पत्र क्र.एम.ए.डी.सी-2012/प्र.क्र.449/28 अ, दि.15/3/2017 अन्वये जिल्हाधिकारी, सोलापूर यांना उद्देशून केंद्र शासनाच्या रिजीनल कनेक्टीव्हिटीमध्ये पहिल्या टप्प्यात राज्यातील 10 विमानतळांचा ममोवश करण्यात आले आहे. त्यामध्ये सोलापूर (होटगी) या विमानतळाचा समावेश सदर विमानतळ भारतीय विमान पतन प्राधिकरणाकडे हस्तांतरीत करावयाची आहे. तथापी विमानतळ नजीक असलेल्या साखर कारखान्याचा चिमणीचा (धुराडे) विमान उड्डाणामध्ये अडथळा येत असल्याने सदर कारखान्याची चिमणी (धुराडे) हटविण्याबाबत राज्यशासनाने धोरणात्मक निर्णय घेतलेला आहे. सवत्र सदरची चिमणी हटविण्याबाबत तीन महिन्यांच्या आत कार्यवाही करावे व याबाबतचा अहवाल सादर करावा असे कळविले होते.

उपरोक्त प्रमाणे कार्यवाही करण्याबाबत मा. जिल्हाधिकारी, सोलापूर यांनी पत्र क्र.1629 दि.6/4/2017 अन्वये आयुक्त महानगरपालिका यांना कळविलेले आहे.

आणि ज्या अर्थी कार्यकारी संचालक श्री. सिध्देश्वर साखर कारखाना यांना दि.12/4/2017 अन्वये महाराष्ट्र प्रादेशिक व नगर रचना अधिनियम 1966 चे कलम 44,45,58 व 59 आणि मुं.प्रा. अधिनियम 1949 चे कलम 253 व 254 अन्वये बांधकाम परवानगी करीता प्रस्ताव सादर केलेला होता.

सदर प्रस्तावाम अनुसरून खालील कारणांस्तव चिमणी अनुज्ञेय होत नसल्याबाबतचे पत्र क्र.54, दि.6/5/2017 अन्वये श्री. सिध्देश्वर सहकारी साखर कारखान्यास कळविले आहे.

1. अवर सचिव सामान्य प्रशासन विभाग यांचे दि.15/3/2017 चे पत्रानुसार

Regional Connectivity मध्ये मोलापूर हॉटेली विमानतळाचा समाविष्ट करण्यात आलेले आहे व विमानतळ नजीक असल्याने सिध्देश्वर सहकारी साखर कारखान्याची चिमणी हटविण्याबाबत राज्यशासनाने धोरणात्मक निर्णय घेतलेला आहे.

2. ग.अ.र.पोस्ट ऑथोरिटी इन इंडिया यांच्याकडून दि.17/2/2017 नुसार दिलेल्या ना-हस्तांतरण दाखल्यामध्ये चिमणीची उंची 493.96 वजा 463 (Permissible top Elevation - site Elevation) - 30.96 मीटर इतकी अनुज्ञेय होत आहे. श्री. सिध्देश्वर सहकारी परंतु प्रस्तावाने विद्यमान चिमणीची यापेक्षा जास्त आहे त्यामुळे चिमणीची बांधकाम अनुज्ञेय होऊ शकत नाही.
3. मुद्रांकित मंजूर विकास आराखड्याप्रमाणे औद्योगिक विभागात समाविष्ट आहे व ते पुर्वेक 60 मीटर रुंदीच्या रस्त्याने व भुखंडातून दक्षिणोत्तर 9.00 मीटर सेवा रस्त्याने व त्यास लागून मलंग 30 मीटर रुंदीच्या रस्त्याने वाधित होत आहे. सदर भुखंडामध्ये श्री. सिध्देश्वर शुगर फॅक्टरी असे नमूद आहे.
4. उक्त भुखंड हा स्टेट हायवे मन्मुख असल्याने संबंधीत तसेच जरूर त्या खात्याची एन.ओ.सी. त्याप्रमाणे प्रस्तावित कामामाठी नियमाप्रमाणे आवश्यक असलेली ना-हस्तांतरण अमलेने दाखले आवश्यक आहे.
5. उपरोक्त ठिकाणी प्रस्तावित प्रमाणे विकास परवानगी द्यायची झाल्यास मा. शासनाने तसेच संबंधीत खाते यांचे निर्णयानुसार परवानगी देणे आवश्यक ठरते.
6. जर नमूद जमीनीच्या नियमानुसार विकास परवानगा अभिन्यास घेणे आवश्यक आहे.

वरीलप्रमाणे त्रुटी असल्याने बांधकाम परवानगी देता येत नाही असे कळविण्यात आले.

तदनंतर सिध्देश्वर कारखान्याकडून दि.13/7/2017 नुसार पत्र देवून बांधकाम परवानगी मिळणेबाबत विनंती अर्ज सादर केला होता. तथापी वर नमूद कारणांस्तव परवानगी देत नसल्याबाबत कळविले आहे. तथापी कारखान्यास पत्र क्र.1306, दि.25/7/2017 अन्वये परवानगी देता येत नसल्याबाबत पुनः कळविण्यात आले.

तसेच सिध्देश्वर सहकारी साखर कारखान्या यांनी कारखान्याची चिमणी पाडण्यात येवू नये याकरीता वेगवेगळ्या न्यायालयात खालील नमूद केल्याप्रमाणे दावे दाखल केले होते सदरचे दावे व मा. न्यायालयाने फेटाळलेले आहेत.

तसेच सदरचे चिमणीबाबत मा. डेप्युटी डायरेक्टर जनरल ऑफ सिव्हील एन्जीनियरिंग एण्ड प्लॅनिंग यांनी दि.24/8/2019 अन्वये आदेश पारित करून चिमणीची उंची 498.4 AMSL पर्यंत म्हणजेच 30 मीटर पर्यंत कमी करणेबाबत अंतिम आदेश पारित केलेले होते व तसेच आपण सदर आदेशाविरुद्धतात मा. डायरेक्टर सिव्हील एन्जीनियरिंग एण्ड प्लॅनिंग यांचेकडे अपील केलेला होता सदर अपीलावर मा. डायरेक्टर ऑफ सिव्हील एन्जीनियरिंग यांनी दि.3/12/2019 अन्वये आदेश पारित करून मा. डायरेक्टर ऑफ सिव्हील एन्जीनियरिंग एण्ड प्लॅनिंग यांनी दि.24/8/2019 अन्वये दिलेले आदेश अंतिम केलेले आहेत त्याअर्धी आपण चिमणीची उंची कमी करणेबाबत कार्यवाही करणे आवश्यक होते परंतु आपण याप्रमाणे कार्यवाही केलेले नाही.

उपरोक्त न्यायालयीन निर्णय व मा. शासन व जिल्हाधिकारी, सोलापूर यांनी वेळोवेळी कळविल्यानुसार सदरची चिमणी पाडकामाकरीता सोलापूर महानगरपालिकेकडून निविदा मागवून व निविदा निश्चितीनंतर चिमणी पाडकामाचे नियोजन करून दि.11/8/2017 रोजी मत्तेदारी "विहान कन्स्ट्रक्शन्स" यांचे मजूर व मशिनरी तसेच म.न.पा. शामकीय नियंत्रणेमह पाडकामाकरीता गेले असता सदर ठिकाणी कामगारांची विरोध व इतर वादी यामुळे पाडकाम होवू शकला नाही. परंतु सदर पाडकामास विरोध करणाऱ्यांबाबत एम.आय.डी.पोलीस ठाणे येथे एफ.आय.आर नोंदविण्यात आले.

यावेळेस कारखान्याचे चेअरमन व कार्यकारी संचालक यांनी दि.11/11/2017 पूर्वी सर्व नियमांचे पालन करून व विमान उडणास अडथळा होणार नाही अशा रितीने कारखान्याने बांधण्यात आलेले चिमणीचे पर्यायी व्यवस्था वगैरे आहे असे हमीपत्र लिहून दिले. तथापी आजतागायत कारखान्याने हमीपत्राप्रमाणे कार्यवाही केलेली नाही.

तदंतर महानगरपालिकेकडून महाराष्ट्र महानगरपालिका अधिनियमातील कलम 478 अन्वये क्र 347 दि.11/11/2019 अन्वये अनाधिकृत विनापरवाना बांधकाम निष्कासनाबाबत नोटीस देण्यात आली. सदर नोटीसीच्या विरोधात साखर कारखान्याने मां.उच्च न्यायालयात म.न.पा.विरुद्ध रिट पिटीशन (ST) क्र.29268/2019 दाखल केले होते.

दरम्यान उपरोक्त नोटीसी अनुषंगाने चेअरमन व कार्यकारी संचालक सिध्देश्वर सहकारी साखर कारखाना यांना त्यांचे म्हणणे मांडण्याकरीता क्र.137

दि.18/12/2020 रोजी पत्र देवून दि.28/12/2020 रोजी मुनावणी करिता उपस्थित राहणेबाबत कळविण्यात आले होते.

दि.28/12/2020 रोजी दुपारी 12.00 वाजना मा. आयुक्त यांच्या दालनात मुनावणी झाली. सदर मुनावणी करिता श्री. धर्मराज काडादी चेअरमन सिध्देश्वर सहकारी साखर कारखाना व कार्यकारी संचालकश्री. समीर मलगर हे उपस्थित होते.

सदर मुनावणीत आयुक्त यांनी, श्री. सिध्देश्वर सहकारी साखर कारखान्यास एअरपोर्ट एंथॉरिटी ऑफ इंडिया यांनी दि.3/12/2019 रोजी आदेश देवून सदर चिमणीची उंची कमी करण्याचे आदेश देवूनही आपण अद्याप कोणतीच कार्यवाही का केली नाही ? याबाबत विचारणा केली त्यावर चेअरमन व कार्यकारी संचालक सिध्देश्वर सहकारी साखर कारखाना यांनी खालील प्रमाणे समक्षतेत मुददे उपस्थित केले.

1. सिध्देश्वर सहकारी साखर कारखाना गळीत हंगाम चालू आहे त्यावर को-जनरेशन बॅक प्लॉट व कारखाना प्लॉट वेगवेगळे नाहीत सदर चिमणी पाडल्यास साखर कारखाना बंद होऊ शकतो.
2. होटगी विमानतळासाठी रनवे क्र.15 व रनवे क्र.33 असे 2 रनवे आहेत. किंगफिशर विमानाने रनवे 15 चे वापर केला होता. रनवे क्र.15 वरून उड्डाण केल्यास चिमणीचा अडथळा होत नाही. याप्रमाणे आम्ही एअरपोर्ट एंथॉरिटी ऑफ इंडिया यांच्याकडे म्हणणे मांडणार असून चिमणी कमी ना-हकत प्रमाणपत्र मिळणेबाबत पुनश्च विनंती करणार आहोत. तसेच मध्या कारखान्याचे गाळप चालू असून ते माहे एप्रिल अखेर चालणार असल्याने तो पर्यंत चिमणीचे पाडकाम करण्यात येवू नये.
3. आमच्या कारखान्याची चिमणी वाहतुकीस अडथळा आहे ? परंतु हेतु:पूरसर आमच्या चिमणी बाबतचा कार्यवाही चालू आहे.
4. आमचा कारखाना 1971 मध्ये मुरू केले असून होटगी विमानतळ 1986 साली मुरूवात झालेली आहे.
5. योगमणी विमानतळासाठी 550 हेक्टर जमीन खरेदी केली असून शासनाने 2019 मध्ये 42 कोटी रुपये अनुदान दिलेले आहे. तसेच 2013 चा जी.आर. पत्राचा सदरचा जी.आर. Self Explainatory आहे, असे सांगून आपण याबाबत सोबत आणलेले लेखी म्हणणेही मादर केले होते.

## आदेश

1. नगर अभियंता, विभागाकडून जा.क्र.न.अ.चा.प.419, दि.01/02/2013, क्र.398 व दि.18/8/2016 अन्वये महानगरपालिकेकडून देण्यात आलेले तत्वतः हरकत नसलेबाबत दिलेले ना-हरकत प्रमाणपत्र हे अस्पष्ट असून प्रमाणपत्रातील शर्ती व अटींची आपण आजतागायत पूर्तता केलेली नाही त्यामुळे सदरचे ना-हरकत प्रमाणपत्र रद्द करण्यात येत आहे.
2. तसेच उपरोक्त सर्व बाबी विचारात घेता, सदर ठिकाणी केलेले विनापरवाना चिमणीचे बांधकाम हे अनाधिकृत ठरत आहेत. तरी आपण सदरचे विनापरवाना अनाधिकृत चिमणीचे बांधकाम दि.22/01/2021 अखेरपर्यंत स्वतःहून निष्काशित करावे अन्यथा दि.23/01/2021 नंतर महाराष्ट्र महापालिका अधिनियम 1949 चे कलम 478(2) नुसार विनापरवाना करण्यात आलेले चिमणीचे बांधकाम निष्काशित करणेची कार्यवाही सोलापूर महानगरपालिकेकडून करण्यात येईल व सदर कामी यापूर्वी आलेला, आता येणारा खर्च व याकरीता 3% सुपरव्हीजन चार्जम आपल्याकडून वसूल करण्यात येईल.

Digitally signed by  
P.SIVASANKAR

पि. शिवशंकर, भा.प्र.से  
आयुक्त,

Date: Fri Jan 15 17:17:23 IS सोलापूर महानगरपालिका,  
2021

Reason: Approved

सोलापूर

प्रति,

चेअरमन व कार्यवागी मंचाळक,

श्री. सिध्देश्वर सहकारी साखर कारखाना लि., कुमठे,

सोलापूर, पोस्ट टिकेकरवाडी, ता. उत्तर सोलापूर, जि. सोलापूर

दुरध्वनी क्र.0217-2601543.

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महाराष्ट्र शासन  
नगर विकास विभाग,

चौथा मजला, मुख्य इमारत, मंत्रालय,  
मादाम कामा मार्ग, हुतात्मा राजगुरु चौक, मुंबई - ४०० ०३२.

दूरध्वनी क्र :- ०२२-२२७९४१९६

Email ID :kishor.gokhale@gov.in

क्रमांक:टिपीएस-१७१९/२२३७/प्र.क्र.२१६/१९/नवि-१३

दिनांक : १६.११.२०२१

प्रति,

✓ मा.आयुक्त, सोलापूर महानगरपालिका, सोलापूर.

विषय:- सिध्देश्वर सहकारी साखर कारखान्याची चिमणी पाडण्यासाठी सोलापूर महानगरपालिकेने घेतलेल्या निर्णयास स्थगिती मिळणेबाबत (अर्जदार श्री.धर्मराज काडादी, अध्यक्ष सिध्देश्वर सहकारी साखर कारखाना)

- संदर्भ :- १) सोलापूर महानगरपालिकेने सिध्देश्वर सहकारी साखर कारखान्यास मुं.प्रां.मनपा अधिनियम १९४९ मधील कलम ४७८ अन्वये दि.११/११/२०१९ रोजी बजावलेली नोटीस.  
२) अर्जदारांनी दि.०२/१२/२०१९ रोजी मा.मुख्यमंत्री महोदयांना सादर केलेले निवेदन.  
३) सोलापूर महानगरपालिकेकडील अहवाल पत्र क्र.७३५, दि.०३/१२/२०१९.  
४) अर्जदारांनी दि.१७/०८/२०२० रोजी मा.उप मुख्यमंत्री महोदयांना दिलेले निवेदन,  
५) अर्जदारांनी दि.१६/०१/२०२१ रोजी मा.मंत्री (नगर विकास) महोदयांना सादर केलेले निवेदन.  
६) शासनाचे सोलापूर महानगरपालिकेस निर्देश पत्र क्र.टिपीएस-१७२०/१३९०/नवि-१३, दि.११/०२/२०२१.  
७) सोलापूर महानगरपालिकेचे शासनास पत्र क्र.६१६, दि.१२/०७/२०२१.

महोदय,

विषयांकित प्रकरणी श्री.सिध्देश्वर सहकारी साखर कारखान्याच्या विद्यमान चिमणीची (धुराडे) उंची अनुज्ञेय उंचीपेक्षा तसेच विमान प्राधिकरणाकडील ना-हरकत प्रमाणपत्रात नमूद उंचीपेक्षा जास्त असल्याने सदर चिमणीचे विनापरवाना बांधकाम तोडण्याबाबत सोलापूर महानगरपालिकेने कारखान्यास मुंबई प्रांतिक महानगरपालिका अधिनियम, १९४९ मधील कलम ४७८ अन्वये दि.११/११/२०१९ रोजी नोटीस बजावली आहे.

सोलापूर महानगरपालिकेने सदर चिमणी पाडकामाबाबत ई-निविदा प्रक्रिया राबवून मक्तेदार निश्चित करण्यात आला असून सदर तोडण्यासाठी मक्ता मंजूर करण्याचा प्रस्ताव दि.१२/०४/२०२१ अन्वये सर्वसाधारण सभेकडे मंजूरीस्तव पाठविण्यात आला असता, सदर चिमणीचे बांधकाम पाडणेकामी दि.०९/०७/२०२१ रोजीच्या सर्वसाधारण सभेमध्ये सदरचा मक्ता (प्रस्ताव) मंजूर झालेला आहे.

तथापि, विषयांकित प्रकरणी अर्जदारांनी कारखान्याची चिमणी पाडण्यासाठी दि.११/११/२०२१ रोजीच्या नोटीशीन्वये सोलापूर महानगरपालिकेने घेतलेल्या निर्णयास स्थगिती मिळावी अशी विनंती संदर्भ क्र.२ च्या निवेदनाद्वारे मा.मुख्यमंत्री महोदयांना केली असता, दरम्यान शासनाने दुसऱ्या ठिकाणी (बोरामणी-सोलापूर येथे) नव्याने विमानतळ मंजूर केला आहे. या पार्श्वभूमीवर नगर विकास विभागाने विधी व न्याय विभागाचे अभिप्राय मागविले असून सदर प्रकरणी कारखान्याची अनाधिकृत चिमणी तोडण्याबाबत सोलापूर महानगरपालिकेने सुरु केलेली प्रक्रिया थांबवू नये मात्र प्रत्यक्ष तोडण्यापूर्वी विधी व न्याय विभागाच्या सल्ल्याची वाट पाहावी, असे निर्देश शासनाने दि.११/०२/२०२१ रोजी सोलापूर महानगरपालिकेस दिले होते.

प्रस्तुत प्रकरणी विधी व न्याय विभागाचे सविस्तर अभिप्राय दि.०८/१०/२०२१ रोजी प्राप्त झाले असून विधी व न्याय विभागाने Aircraft Act, 1934 (XXII of 1934), The Ministry of Civil Aviation (Height Restriction for Safeguarding of Aircraft Operations) Rules, 2015, The Aircraft (Demolition of Obstructions caused by Buildings and Trees etc.) Rules, 1944 मधील तरतुदी तसेच Bombay Provincial Municipal Corporation Act, १९४९ मधील तरतुदींचा सविस्तरपणे उहापोह करून त्यांचे सविस्तर अभिप्राय दि.८/१०/२०२१ रोजी या विभागास दिले आहेत. सदर अभिप्रायातील महत्वाचा मुद्दा खालीलप्रमाणे आहे.

So far as the decision taken by the Government to develop new airport at Mauze Boramani and Tandulawadi, District Solapur, it appears that the Government vide decision dated 21<sup>st</sup> August 2013 has taken the decision to develop new airport at Boramani and airport at Hotangi will remain in operation till the said new airport come into operation. It is pertinent to note that Section 9A of the Aircraft Act, 1934 confers powers upon the Central Government to issue directions to regulate or prohibit, inter alia, the construction of buildings within a prescribed radius of the aerodrome reference point, if it is of the opinion that it is necessary or expedient to do for the safety of aircraft operations.

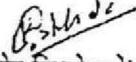
Section 14 of Aircraft Act, 1934 provide that every rule made under the Act is subject to the condition of the rule being previously published. This condition can be dispensed with by the Central Government only in writing. Thus, it appears that the Central Government has the powers to remove such restrictions or dispended with the condition. However, neither the Urban Development Department in its note nor the applicant Sakhar Karkhana in its application made clear that after the aforesaid decision of the State Government, the Central Government has delisted the airport if Hotangi from the Schedule III of the Rules, 2015 if dispended with the conditions impose therein. Thus, it infers that the restriction imposed under Rules, 2015 in respect of airport at Hotangi continue to be in force, Therefore, in view of the aforesaid legal position, it can be said the State Government, is not the competent authority to consider the request of applicant Sakhar Karkhana to grant stay to the impugned notice of Solapur Corporation under the guise that the State Government has taken decision to move the airport from Hotangi to Mauze Boramani.

सदर प्रकरणी विधी व न्याय विभागाने, विमानतळाच्या विशिष्ट अंतरातील बांधकामाबाबत, ती नियंत्रित करणे अथवा निर्बंधित करण्याचे अधिकार केंद्र शासनास आहेत. तसेच असे निर्बंध हटविण्याचे अथवा काही अटींवर हटविण्याचे अधिकार केंद्र शासनास आहेत. मौजे-होंटंगी येथील विमानतळाच्या परिसरातील

बांधकामाबाबत फॅट्र शासनाने निर्बंध हटविल्याचे दिसून येत नसल्याने या ठिकाणचे बांधकामाबाबतचे निर्बंध अद्याप लागू आहेत. त्यामुळे अर्जदार कारखान्याच्या चिमणी बांधकामाबाबत महानगरपालिकेकडील नोटीशीवर सदर बोरामणी येथे नव्याने विमानतळ होणार असल्याच्या कारणास्तव स्थगिती देण्यास राज्य शासन सक्षम प्राधिकरण नाही, असे अभिप्राय दिले आहेत.

प्रस्तुत प्रकरणी विधी व न्याय विभागाचे उक्त अभिप्राय पाहता, तसेच विविध न्यायालयांचे आदेश, एअरपोर्ट ॲथोरिटी ऑफ इंडिया यांनी घेव्हावेळी पारित केलेले आदेश विचारात घेऊन सोलापूर महानगरपालिकेने सदर कारखान्याची चिमणी पाडकामाबाबत नियमानुसार आवश्यक कार्यवाही त्वरित करावी, असे आपणांस कळविण्याचे मला आदेश आहेत.

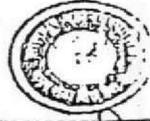
आपला,

  
(किशोर वि.गोखले)

अवर सचिव, महाराष्ट्र शासन

प्रत:-

- १) मा. संचालक, नगर रचना, महाराष्ट्र राज्य, पुणे.
- २) मा. सह संचालक, नगर रचना, पुणे विभाग, पुणे.
- ३) सहायक संचालक, नगर रचना, सोलापूर शाखा कार्यालय, सोलापूर.



सोलापूर महानगरपालिका, सोलापूर.  
सहाय्यक संचालक, नगररचना यांचे कार्यालय, सोलापूर.

जा.क्र. - ससंनर/नर/११५८

दि.१७.११.२०२१

प्रति,

चेअरमन व कार्यकारी संचालक

श्री. सिध्देश्वर सहकारी साखर कारखाना लिमिटेड

कुमठे, ता. उत्तर सोलापूर,

जिल्हा सोलापूर

मो.क्र. ०२१७ २६०१५४३

ई-मेल आयडी- siddheshwarsugar@yahoo.com

विषय:- सिध्देश्वर सहकारी साखर कारखाना होटगी रोड स.नं. २१/४ व २१/५ कुमठे  
सोलापूर येथील को जनरेशन वर्क चिमणी पाडकामाबाबत.

संदर्भ :- अवर सचिव महाराष्ट्र शासन यांचेकडील क्र. टी.पी.एस -  
१७१९/२२३७/प्रक्र२१६/१९/नवि१३ दि. १६/११/२०२१ चे पत्र.

सोलापूर महानगरपालिकेकडून सिध्देश्वर सहकारी साखर कारखाना को जनरेशन वर्क चिमणी पाडकामाबाबतची टेंडर प्रक्रिया पूर्ण केलेली असून मक्तेदार यांना सदर पाडकामाची वर्क आर्डर दि. ०८/०९/२०२१ नुसार देण्यात आलेली आहे.

प्रकरणी सदभान्वये अवर सचिव महाराष्ट्र शासन यांचे पत्र प्राप्त झाले असून प्रस्तुत प्रकरणी विहित न्यायालयाचे आदेश ऐअर पोर्ट अॅथॉरीटी यांनी वेळोवेळी पारित केलेले आदेश विचारात घेऊन सोलापूर महानगरपालिकेन सदर कारखान्याची बेकायदेशीर चिमणी पाडकामाबाबत नियमानुसार आवश्यक कारवाई त्वरित करावी असे कळविले आहे. मा.आयुक्त महोदय सो.म.पा यांची सर्व कामकाजावर देखरेख असल्याने त्यांनी दिलेल्या आदेशानुसार कार्यवाही करण्यात येत आहे.

तरी आपणास कळविण्यात येते की, सदर नोटीस मिळाल्यापासून ०७ दिवसांच्या आत सदर चिमणी आपण स्वतःहून निष्काषित करावी व आपण सदर चिमणी विहित मुदतीत पाडकाम नाही केल्यास सदर चिमणी निष्कासन/पाडकाम कारवाई सोलापूर महानगरपालिकेमाफत करण्यात येईल व त्यासाठी मक्तेदार यांना द्यावा लागणारा खर्च आपणाकडून व त्यावरील सुपरव्हिजन चार्जस आपणाकडून वसूल करण्यात येतील. याची नोंद घ्यावी.

*mgugale*  
17.11.2021

सहा. संचालक नगर रचना  
सोलापूर महानगरपालिका, सोलापूर

- प्त: 1) मा.जिल्हाधिकारी सोलापूर यांना माहितीस्तव सादर  
2) विमानतळ यवस्थापक, भारतीय विमानपत्तन होटगी रोड, सोलापूर यांनी माहितीस्तव सादर  
3) विभाग प्रमुख, अतिक्रमण विभाग, सो.म.पा यांना माहितीस्तव सादर व पुढील कार्यवाहीसत्त्व सादर  
4) मक्तेदार बिनियास कॉन्टेक्ट प्रा.लि बेंगलोर यांना माहितीस्तव व पुढील कार्यवाहीसत्त्व सादर



**SOLAPUR MUNICIPAL CORPORATION, Assistant Director,  
Town Planning Department, Solapur**

OW.NO. ADTP/TP/1191

Date 22-11-2021

**INTIMATION LETTER**

To,  
BINIYAS CONTENT PVT.LTD.,  
Aged 32 years, Occupation Contractor  
Address Structural Rehabilitation Engineer,  
CIN U 74140KA2005 PT Q36185  
NO. 200 CBI Main Road, 10<sup>TH</sup> Cross Ganga Nagar,  
Bangalore - 560 032  
Mobile No. 9663307001  
Email ID [mohankoti@binyas.com](mailto:mohankoti@binyas.com)

Subject :- Demolition of Co-Generation work Chimney at  
Siddheshwar Sugar Factory, Survey No.  
21/4,21/5, Kumthe, Hotagi Road, Solapur

Reference :- 1) Your tender dated 22/01/2021 as per E-Tender  
Notice No. 2020-21 (2020 SMC 63115) DATED  
22/12/2020.

2) our letter- work order outward no ADTP/TP/823  
date- 8/9/2021

Sir,

Whereas Solapur Municipal Corporation has invited the tender by publishing the public notice as per dated 22/12/2020 ( E-tender Instruction no. 2020-21 ) (2020 SMC 63115 ) for doing the demolition work of Co-Generation Chimney at S.No. 21/4 Siddheshwar Co-operative Sugar Factory Hotagi Road, Kumthe, Solapur in view of same as per tender filled by you, the said work has been given to you as per sanction of the Hon'ble General body Solapur Municipal Corporation, Solapur through resolution No.78 dated 09/07/2021.

In view of above between Municipal Corporation and you executed the agreement on 08/09/2021. The actual work is to be started receiving the opinion of from the Law and Judiciary Department through the Under Secretary, Urban Development Department, Government of Maharashtra. However, after receiving the said opinion Work should be completed within 60 days,

Now we have received the opinion of the law and judiciary department hence you are suggested to start the demolition work from 24/11/2021 and work should be completed within 60days as mentioned in the agreement.

Thanking you,

The contract amount of Rs.1,17,60,000/-

With the permission of the Hon'ble Commissioner

Dated 13/07/2021

*ndyade*  
22.11.2021

Asst. Director Town Planning,  
Solapur Municipal Corporation, Solapur

To,  
Dy. Engineer,  
Town Planning Department, S.M.C.

In respect of the said work and as per the terms and conditions in tender give complete information to the contractor and do the needful for complete the work within time limit. After completion of work take due care for paying bills.

*ndyade*  
22.11.2021

Asst. Director Town Planning,  
Solapur Municipal Corporation, Solapur



### आयुक्त यांचे कार्यालय

सोलापूर महानगरपालिका.

'संभ्रमयत', रेल्वे लाईन्स, सोलापूर - ४१३ ००१.

दूरध्वनी : (कार्या.) २७४०३०० (नि.) २७४०३०३

ई-मेल : smccommisioner@yahoo.com

ज्जा. न्ना. वे. ६०८

दिनांक : २५/११/२०२१.

प्रति,

मा. जिल्हाधिकारी, सोलापूर

- विषय- श्री. सिध्देश्वर सहकारी साखर कारखाना लि., कुमठे, तालुका उत्तर सोलापूर येथील को-जनरेशनची अनधिकृत चिमणी पाडकामाबाबत.
- संदर्भ- १) मक्तेदार बिनियास कॉन्टेक, बेंगलोर यांना दि.८/९/२०२१ रोजी देण्यात आलेली वर्क ऑर्डर.
- २) अवर सचिव, नगर विकास, मंत्रालय, मुंबई यांचेकडील क्र.टीपी.एस./-१७१९/२२३७/प्र.क्र.२१६/१९/नवि-१३, दि.१६/११/२०२१. चे पत्र.
- ३) चेअरमन कार्यकारी संचालक श्री. सिध्देश्वर सहकारी साखर कारखाना, कुमठे, होटगी रोड, सोलापूर यांना दि.१७/११/२०२१ नुसार देण्यात आलेली अंतिम नोटीस.
- ४) मा. जिल्हाधिकारी यांच्या कक्षात दि.२२/११/२०२१ रोजीचे बैठकीतील मा. जिल्हाधिकारी यांचे आदेश.
- ५) मा. जिल्हाधिकारी, सोलापूर यांचे पत्र क्र. २०२१/डी.सी.बी/२/आर.आर/६२२८, दि.२३/११/२०२१ रोजीचे पत्र.

महोदय,

उपरोक्त विषयास अनुसरून श्री. सिध्देश्वर सहकारी साखर कारखाना, कुमठे, होटगी रोड, सोलापूर येथील को-जनरेशन वर्क चिमणी पाडकामाची संदर्भान्वये संदर्भ क्र. १ नुसार मक्तेदार बिनियास कॉन्टेक, बेंगलोर यांना दि.८/९/२०२१ रोजी वर्क ऑर्डर देण्यात आलेली आहे.

यासंदर्भात अवर सचिव, नगर विकास, मंत्रालय, मुंबई यांचेकडील क्र.टीपी.एस./-१७१९/२२३७/प्र.क्र.२१६/१९/नवि-१३, दि.१६/११/२०२१ नुसार पत्र प्राप्त झाले असून "प्रस्तुत प्रकरणी विधी व न्याय विभागाचे अभिप्राय पाहता, तसेच विविध न्यायालयाचे आदेश ऐअरपोर्ट अॅथोरिटी ऑफ इंडिया यांनी वेळोवेळी पारित केलेले आदेश विचारात घेऊन सोलापूर महानगरपालिकेने सदर कारखान्याची चिमणी पाडकामाबाबत नियमानुसार आवश्यक ती कार्यवाही त्वरीत करावी" असे कळविले आहे.

त्यानुसार चेअरमन व कार्यकारी संचालक श्री. सिध्देश्वर सहकारी साखर कारखाना, कुमठे, होटगी रोड, सोलापूर यांना दि.१७/११/२०२१ रोजी नोटीस देऊन सदर चिमणीचे पाडकाम आपण स्वतः ७ दिवसांच्या आत चिमणी पाडकाम करावे अन्यथा सदरचे पाडकाम सोलापूर महानगरपालिकेमाफत पाडण्यात येईल व त्यासाठी मक्तेदार यांना दयावा लागणार खर्च आपणाकडून वसूल करण्यात येईल, असे कळविले आहे. सदरचा मुद्दा दि.२८/११/२०२१ रोजी संपलेली असून उक्त पाडकाम महानगरपालिकेमाफत निर्गमन करण्यात आल्या मक्तेदार बिनियास कॉन्टेक, बेंगलोर यांचेकडून करून देण्याची आहे.

संदर्भ क्र. ८ अन्वये सदर चिमणीचे पाडकामासंदर्भात आपले कार्यालयात दि.२२/११/२०२१ रोजी बैठक झाली. सदर बैठकीस पोलीस उपायुक्त सोलापूर शहर, महाराष्ट्र प्रदुपण मंडळ, सोलापूर विभागाचे प्रतिनिधी, Boiler Inspector Solapu City व इतर संबंधित अधिकारी उपस्थित होते.

सदर बैठकीत दि.२३/११/२०२१ रोजी प्रत्यक्ष कारखाना साईटवर सर्व संबंधितांनी जावून पाहणी करणेबाबत आदेश दिलेले आहे होते. त्यानुसार प्रत्यक्ष सिध्देश्वर सहकारी साखर कारखान्याची जागा पाहणी करण्यात आली त्यावेळी खालीलप्रमाणे अधिकारी मनपाकडील सहा. संचालक नगर रचना श्री. मोरेश्वर सुगडे, सहा. अभियंता, इंड. ए. नाईकवाडी, अयंक्षक वावर एन.एन. यांचेमह उप संचालक औदयागिक सुरक्षा व आरोग्य (Dy. Director of Industrial Safety and Health), सोलापूर १०५, साखर पेट, सोलापूर चे प्रतिनिधी श्री. सुग्गे, Maharashtra Pollution control बोर्डचे श्री. अर्जुन पाटील, तसेच कारखान्याचे प्रतिनिधी मॅनॅजिंग डायरेक्टर, श्री. आर.वी.पाटील तसेच श्री. एन.डी. पाटील, तसेच श्री. शेलार केमीस्ट इत्यादी उपस्थित होते.

सदर दिवशी सदर भेटीवेळी खालील अधिकारी अनुपस्थित होते.

- १) Dy. Director of Boiler Department वाणके भवन, नवल पेट्रोल पंपासमोर. सोलापूर.
- २) कार्यकारी अभियंता शहर महाराष्ट्र राज्य विज वितरण कंपनी लि., जुनी मिल कम्पाऊंड, मुरारजी पेट, सोलापूर.
- ३) प्रादेशिक संचालक, साखर (श्री. गराडे साहेब मो.नं.९८९०१३२१०७).

सदर पाहणीचे वेळीचे मुख्य मुद्दे खालीलप्रमाणे निदर्शनास आले आहेत.

- १) सदर कारखाना गाळप चालू स्थितीत अमून उम वाहक चालू आहे.
- २) नवान मिन मॅकशन वा टिकार्णा उम गाळप जालेनंतर रम निर्माण केला जातो व तेथून चौथा वायोरॅस कोजेन वायलर कडे वॅल्टच्या सहाय्याने जात आहे.
- ३) सदर टिकार्णा चिमणांच्या Boiler Plant आहे Themax Company Pune Capacity २०० Tone Per Hour सदर Boiler Plant Chimany ला Connect केलेला आहे. त्याचे सहाय्याने Turbine ला स्टिम पुरवटा केला जातो. Turbine ची Capacity ३८ Mega Watt/Hr असल्याचे श्री. शेलार (केमीस्ट) श्री. सिध्देश्वर कारखाना यांनी सांगितले. याकामी सदर कारखाना चालू होण्याकरीता वेळोवेळी परवानग्या घेण्यात आलेल्या आहेत असे कारखान्याचे प्रतिनिधी यांनी सांगितले. श्री. सिध्देश्वर सहकारी साखर कारखाना, कुमठे, होंटगी रोड, सोलापूर येथील को-जनरेशन वर्कचा वायलर आणि चिमणी केलेले Connector वंद असणे आवश्यक असल्याने उपस्थित सर्व अधिकार्यांनी सुचविलेले आहे. कारण साखर कारखाना युनिल, Boiler Unit, Steam Unit, Bagays and Biogas co-generation Boiler & Chimani चे सर्व एकमेकांशी Connected आहेत.

यामुळे असे स्पष्ट करण्यात येत आहे की, पाडकामाची कार्यवाही करण्याची वाव मनपाच्या अखत्यारि अमून सदर चिमणा पाडकामाच्या संदर्भात कार्यवाही पूर्ण करणेसाठी मनपाची तयारी आहे. तथापि उपरोक्त नपूट केलेल्या कारखान्यातून चालू असलेला वायलर प्लॅन्ट व तदसंबंधीत यंत्रणा वंद केल्याशिवाय चिमणा पाडकाम करता येणार नाही. यामुळे सदर कारखान्यातील चालू असलेली यंत्रणा वंद करणेबाबत व त्या अनुषंगाने उतर याबाबत निर्णय घेण्यासाठी सर्व संबंधितांसह जिल्हा आपत्ती व्यवस्थापन समितीच्या बैठकीत निर्णय घेणे आवश्यक आहे. यानुसार तातडीने जिल्हा आपत्ती व्यवस्थापन समितीची बैठक बोलावून निर्णय घेण्याबाबत आपणास याद्वारे विनंती करण्यात येत आहे.

पि. शिवशंकर (भा.प्र.से)

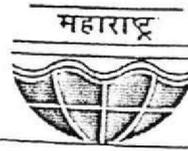
आयुक्त,

सोलापूर महानगरपालिका, सोलापूर

MAHARASHTRA POLLUTION CONTROL BOARD  
REGIONAL OFFICE - PUNE

A 22

Phone No. 020-25811694  
Fax No. 020-25811701  
e-mail: ropune@mpcb.gov.in  
visit us: www.mpcb.gov.in



Jog Centre, 3<sup>rd</sup> Floor,  
Wakdevradi,  
Old-Pune Mumbai Road  
Pune- 411003

MPCB/ROP/CD/2111290001

Date: 29/11/2021

To,  
M/s. Shri Siddheshwar SSK Ltd., (Sugar and Co-Generation)  
Gat No. 21/1 to 21/6, At. Kumathe, Post. Tikekarwadi,  
Tal. North Solapur, Dist. Solapur.

Sub: Closure Directions u/s 33A of the Water (Prevention & Control of Pollution) Act, 1974 and u/s 31 A of the Air (Prevention & Control of Pollution) Act, 1981 and Hazardous and Other Wastes (Management & Transboundary Movement) Rules, 2016 and amendments thereafter.

- Ref:
- 1) Consent granted by the Board.
  - 2) Various complaints made by Dr. Sandeep Aadke and Shri. Sanjay Thobade
  - 3) O.A. 18/2021 filed by Mr. Sanjay Thobade before Hon'ble NGT against your industry.
  - 4) Show Cause Notice for closure issued by the Board vide letter Dtd. 02/7/2021
  - 5) Criminal Complaint bearing no. RCC-822/2021 before Hon'ble CJMFC, Solapur vide Dtd. 07/7/2021 filed by the Board.
  - 6) Caution Notices issued by Sub Regional Officer, Solapur vide letter Dtd. 20/10/2021
  - 7) Direction issued vide no. MPCB/ROP/Directions/2110270020, Dt. 27/10/2021
  - 8) Sub Regional Officer, Solapur submitted legal actions proposal vide no. MPCB-LEGAL-ACTIONS- 160921014, Dtd. 25/11/2021 and Approval received from HQ 29/11/2021.
  - 9) Email received from Sub Regional Officer, Solapur on 29/11/2021 regarding production status.

WHEREAS, your industry is located in the 'Pollution Prevention Area' under Water (Prevention & Control of Pollution) Act, 1974, Air (Prevention & Control of) Act, 1981 and Hazardous & Other Wastes (Management & Transboundary Movement) Rules, 2016 followed by further amendments made therein from time to time.

AND WHEREAS, M.P.C. Board had granted the consent to operate for 2500 TCD and 10 MW Co-Generation under section 26 of the Water (Prevention and Control of Pollution) Act, 1974, under section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Authorization under Rule 6 of the hazardous and Other Wastes (Management & Transboundary Movement) Rules, 2016 and amendments thereof.

AND WHEREAS, it is obligatory on your part to renew the consent to operate time to time as per stipulated period mentioned in the existing consent.

AND WHEREAS, it is obligatory on your part to obtain consent to establish for expansion and shall not carried out expansion before to obtain consent to establish and environmental clearance, if applicable.

2...

..2..

AND WHEREAS, it is obligatory on your part to provide pollution control systems as it warranted and to operate and maintain the same continuously and effectively to achieve the standards prescribed in the Board's Consent.

AND WHEREAS, Board had issued Show Cause Notice for Closure as failed to achieve consented standards for JVS results vide reference (4).

AND WHEREAS, one of the complainants Shri. Sanjay Thobade has filed application before Hon'ble NGT vide O.A. 18/2021. Hon'ble NGT had passed order to form joint committee for actual and factual report of CPCB, SPCB and District Magistrate accordingly committee has visited to your industry.

AND WHEREAS, Board has filed criminal complaint bearing no. RCC 822/2021 vide Dtd. 07/7/2021 before Hon'ble CJMFC, Solapur for violation of EIA Notification, 2006 and further amendments thereto.

AND WHEREAS, Board has refused your application (UAN No. 32789) for consent to operate for expansion of sugar and co-generation unit vide Dtd. 13/03/2020 for non-obtaining of Environmental Clearance.

AND WHEREAS, Board had issued Directions vide reference (7) for on-compliances and same have been violated,

- (1) You have carried out modernization-cum-expansion in Sugar and Co-Generations Unit without obtaining Board's Permission.
- (2) You have installed expansion of unit for co-generation from 10 MW to 36 MW without obtaining Board's Consent as well as Environmental Clearance.
- (3) You have not applied for renewal of consent for both units within stipulated time.
- (4) You have started operation of Co-Generation Boiler and Crushing More than the consented capacity, which doesn't have Environmental Clearance and Violated the provisions of various Environmental enactments.
- (5) You have not submitted your crushing data, distillery production quantity and co-generation production data fortnightly.

AND WHEREAS, Hon'ble District Collector, Solapur has conducted meeting on 22/11/2021 and directed to Sub Regional Officer Solapur to carryout detailed inspection and present status of compliance of various legal directions.

AND WHEREAS, Accordingly, Sub Regional Officer has visited to your industry on 23/11/2021 and reported and confirmed that, the industry has not complied with the Board's Directions.

AND WHEREAS, Sub Regional Officer Solapur has verified and reported on 29/11/2021 that industry is exceeding crushing capacity more than 2500 TCD and Co-generation is more than 10 MW, which conclude that industry is violated the consented production capacity.

AND WHEREAS, despite of all above issues of non-compliance, violations of environmental clearance and legal filed matters and given sufficient opportunities for improvement, you have continued unabated violations of environmental laws.



3...

..3..

AND WHEREAS, after going through the record of your case, reports, legal cases and information of the Board Officials and making necessary enquiries, I came to the conclusion that, you have failed to comply with the provision of Water (P&CP) Act, 1974, Air (P&CP) Act, 1981 and EIA Notification, 2006 and thereby causing grave injury to the Environment in the least bothered way.

NOW, THEREFORE, in exercise of powers conferred upon me by the Board u/s 33A of the Water (Prevention & Control of Pollution) Act, 1974 and u/s 31 A of the Air (Prevention & Control of Pollution) Act, 1981, I, the undersigned, Nitin Shinde, I/c. Regional Officer at Pune hereby direct to close down the manufacturing activities within 96 Hrs being a safe closure time period with immediate compliance intimation to the Board. Also hereby directed to not to resume your manufacturing activity till to further orders of the Board, which may please be noted.

This closure directions is being issued with the approval of Board's Authority.

For and on behalf of  
Maharashtra Pollution Control Board,

*Nitin Shinde*  
29/11/21  
(Nitin Shinde)  
I/C. Regional Officer, Pune

Copy submitted for favor of information to:-

1. The Member Secretary, MPCB, Mumbai.

Copy submitted for information and further necessary action :-

1. District Collector, Solapur.
2. Commissioner, Solapur Municipal Corporation, Solapur.

Copy submitted to :-

1. Joint Director (WPC), MPCB, Mumbai.
2. Law Officer (P & L Div), MPCB, Mumbai.

Copy forwarded for necessary action to :

1. Superintendent Engineer, MSEDCL Division, Solapur / Executive Engineer, MSEDCL Urban Division, Solapur :- He is directed to disconnect the electric supply of above unit, after completion of safe closure time period (96 Hrs.) and communicate accordingly.
2. Superintendent Engineer / Executive Engineer, Irrigation Department, Solapur:- He is directed to disconnect the water supply of above unit, after completion of safe closure time period (96 Hrs.) and communicate accordingly.

Copy to Sub Regional Officer, Solapur:-

He is directed to serve the directions to addressee and competent authorities for effective implementation of the directions. Also submit acknowledgement copies of the directions to this office immediately and submit further compliance report of same time to time.

For and on behalf of MPC Board,

*Nitin Shinde*  
29/11/21  
(Nitin Shinde)  
I/c. Regional Officer, Pune

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7872 OF 2021

WITH

INTERIM APPLICATION NO. 6770 OF 2022

WITH

INTERIM APPLICATION (ST) NO. 4430 OF 2022

WITH

INTERIM APPLICATION NO. 297 OF 2022

WITH

INTERIM APPLICATION NO. 171 OF 2022

WITH

INTERIM APPLICATION NO. 325 OF 2022

WITH

INTERIM APPLICATION NO. 4274 OF 2021

WITH

INTERIM APPLICATION NO. 296 OF 2022

WITH

INTERIM APPLICATION NO. 4273 OF 2021

IN

WRIT PETITION NO.7872 OF 2021

WITH

WRIT PETITION NO. 9446 OF 2021

WITH

INTERIM APPLICATION (ST) 5335 OF 2022

Shree Siddeshwar Sahakari Sakhar Karkhana

Maryadit, Kumathe

... Petitioner

Vs.

State of Maharashtra, Urban Development

Department, Mantralaya &amp; Ors.

... Respondents

Mr. Anil Sakhare, Senior Counsel a/w Mr. Rupesh Bobade for the  
Petitioner in WP 7872/2021 & 9446/2021.

Mr. Shriram Kulkarni a/w Mr. Rupesh Bobade for the Petitioner in  
WP 1873/2022.

Mr. A. I. Patel, Addl. GP a/w.Kavita Solunke, for the Respondent-State.  
Mr. Dilip Bodake for the Respondents.  
Mr. D. P. Singh, for Respondents No.1, 2 and 3-UI in WP/9446/2021.  
Mr. Shrishail Sakhare for the Applicant in IA/296/2022.  
Mr. Prasad Kulkarni for the Applicant in IA/297/2022.  
Mr. Bhushan Walimbe for the Applicant in IA/325/2022.  
Dr. Ramdas Sabban for the Applicant in IA/171/2022 and WP 1873/2022 with IA (St) 9454/2022 and IA(St.) 5335/2022.

CORAM : A. A. SAYED &  
ABHAY AHUJA, JJ  
DATE : 31ST MAY, 2022

**JUDGMENT : (PER COURT)**

1. Petitioner is a Co-operative sugar factory registered under the Multi-state Co-operative Societies Act, 2002.
2. Solapur Airport was built in the year 1987 near village Hotgi. In the year 1992, due to the extension of the territorial limits of the Solapur Municipal Corporation, Petitioner's factory as well as the airport came within the Respondent-Corporation's city limits. On 21<sup>st</sup> August, 2013 there was a Government Resolution which proposed to construct the new airport at Boramani/Tandulwadi.
3. Between 2012 and 2013, Petitioner took a decision for the expansion of the sugar factory for increasing the crushing capacity from 5000 to 7500 TCP, expansion of the distillery from 20 kl per day

to 50 Kl per day, as well as for setting up of 38 Mega Watt Co-generation Power Project. It is the case of Petitioner that for the said expansion of sugar factory and to operate the cogeneration plant and the sugar factory, Petitioner was required to install a boiler of 200 TPH, which is interconnected with 90 meter height RCC Chimney. Therefore, on 25<sup>th</sup> December, 2012, Petitioner applied to the Solapur Municipal Corporation for NOC for the necessary expansions and cogeneration project and to undertake chimney construction.

4. Vide communication dated 29<sup>th</sup> January 2013, Respondent No. 2 issued "in-principle" NOC to Petitioner for the said expansions as well as and the Co-generation power project, subject to scrupulous compliance of all rules and Acts in relation to the installation of the project and obtention of all necessary permissions and sanctions from various Government authorities and the Solapur Municipal Corporation.

5. Pending such permissions, Petitioner went ahead and installed Chimney of the height of 553 meters above mean sea level/ 90 meters above PFL located at a distance of 1900 meters in approach RWY 33 of Solapur Airport.

6. It is submitted on behalf of the Airport Authority that since the Petitioner was erecting a steel structure at the approach path zone of runway 33 end of the airport, the Airport Authority of India vide communication dated 18<sup>th</sup> February, 2014 intimated to the Collector of Solapur that Petitioner's sugar factory was erecting a steel structure which would be a severe obstacle to the aircrafts during landing/taking off on the runway which violates the airport norms. It was also informed that Petitioner was erecting the said structure without taking any NOC from the Airport Authority and requested the Collector to take appropriate steps to demolish the said structure immediately.

7. It is however submitted that Petitioner also obtained permissions from other relevant authorities such as Maharashtra State Pollution Control Board (MPCB) dated 28<sup>th</sup> January, 2014, from Sugar Commissioner, Pune dated 7<sup>th</sup> May, 2013.

8. The Respondent- Solapur Municipal Corporation issued notice dated 24<sup>th</sup> February, 2014 under Section 478 of the MMC Act and Petitioner replied and sought time to obtain the relevant permissions.

9. Thereafter, the Airport Authority of India issued a letter dated 1<sup>st</sup> May, 2014 to Petitioner objecting to the increase in the permissible height for construction in respect of which the Airport Authority suggested the Petitioner to give an undertaking/sanction plan within 90 days. It is submitted on behalf of the Airport Authority that the said letter was not an NOC.

10. The Airport Authority of India issued a letter dated 12<sup>th</sup> September, 2014 to the Prant Tehsildar, Collector Office, Solapur, with a copy to the Petitioner stating that NOC was not granted to the Petitioner for erection of chimney. It is stated in the said letter that the Airport Authority had issued a letter to the Petitioner for reconstructing the height only upto 41 meters AGL requesting stoppage of construction of chimney and for which Petitioner was required to submit an undertaking within 90 days. The Tehsildar was requested by the Airport Authority to take necessary action for stoppage of work as no NOC was granted for the said construction.

11. The Airport Authority of India issued a letter dated 12<sup>th</sup> September, 2014 to the Prant Tehsildar, Collector Office, Solapur, with a copy to the Petitioner stating that NOC was not granted to the

Petitioner for erection of chimney. It is stated in the said letter that the Airport Authority had issued a letter to the Petitioner for reconstructing the height only upto 41 meters AGL requesting stoppage of construction of chimney and for which Petitioner was required to submit an undertaking within 90 days. The Tehsildar was requested by the Airport Authority to take necessary action for stoppage of work as no NOC was granted for the said construction.

12. Later, in the year 2014, Petitioner applied to the Airport Authority of India, Mumbai, (Western Region) seeking no objection as the proposed chimney was 90 meters above the ground level and 553 meters above mean sea level. During the pendency of the said application, Petitioner was advised that the said Airport Authority had power to grant NOC only upto the height of 504 meters above mean sea level. Therefore, Petitioner applied to the Airport Authority at Delhi, seeking NOC for construction of the desired Chimney height.

13. It appears that the proceedings pursuant to the notice dated 24<sup>th</sup> February, 2014, were dropped and vide communication dated 10<sup>th</sup> August, 2016, Respondent No.2 issued fresh "in-principle" NOC to Petitioner similar to the one dated 29<sup>th</sup> January, 2013.

14. It is submitted on behalf of Airport Authority that the Airport Authority of India issued NOC for height clearance dated 17<sup>th</sup> February, 2017 and NOC for height clearance dated 17<sup>th</sup> May, 2017 only upto the height of 30 meters AGL, whereas Petitioner had already constructed the chimney with a height of 90 meters AGL in the year 2014 itself. Vide NOC dated 17<sup>th</sup> February 2017, Airport Authority, Delhi issued NOC for construction of Chimney upto 493.96 meters above mean sea level, valid until 16<sup>th</sup> February 2024. That, the permissible top elevation as per NOC for height clearance is 493.96 meters AMSL and the site elevation in meters AMSL as submitted by the Petitioner was 463 meters. It is submitted that Petitioner could not have commence construction without obtaining NOC from the Airport Authority of India, Ministry of Civil Aviation, Government of India and other appropriate authorities.

15. Vide letter dated 7<sup>th</sup> March 2017, Petitioner appealed to the Airport Authority for NOC for construction of RCC chimney of 90 meters height from PFL stating that the same was required as per condition of MPCB consent / NOC to establish dated 28<sup>th</sup> January, 2014.

16. Somewhere in 2016-17, the Government of India issued a notification for Regional Connectivity of Airports known as "Regional Connectivity Scheme". It appears that pursuant to this scheme, vide communication dated 15<sup>th</sup> March 2017, Respondent No. 1- State directed the Collector, Solapur to take necessary steps within three months for removal of the Chimney as the same was causing obstruction in take off at Solapur Airport and to transfer the possession of the said land to the Airport Authority after removing the encroachment on the said land for the purpose of development of Hotgi Airport.

17. Vide communication dated 6<sup>th</sup> April 2017, Petitioner was granted one month period by the Collector, Solapur to remove the Chimney as there was obstruction for take-off, failing which further necessary action would be taken.

18. It appears that around 12<sup>th</sup> April, 2017 Petitioner made applications under Sections 44, 45, 55 and 58 of the MRTP Act, 1966 and under Sections 253 and 254 of the MMC Act.

19. However, it is submitted that the said applications were rejected on the ground that the (1) Airport Authority of India had given permission only of 30.96 meters AMSL to the chimney and (2) the Government of India has identified "Solapur Hotgi Airport" in the first list for the Regional Connectivity Scheme and since the sakhar karkhana chimney's height was causing hindrance in the operation of the flight and the State of Maharashtra has taken a decision to remove/demolish the sakhar karkhana chimney (by letter Under Secretary Administrative Department Government of Maharashtra, Mantralay, Mumbai, letter No. MADC 2012 PK/449/28A dated 15<sup>th</sup> March, 2017 issued notice to collector by State Government, State of Maharashtra to collector Solapur).

20. Aggrieved by the aforesaid, Petitioner filed Writ Petition No. 5253 of 2017 on 28<sup>th</sup> April, 2017 before this Court challenging the aforementioned communication dated 15<sup>th</sup> March 2017 and the Notice dated 6<sup>th</sup> April 2017.

21. On 4<sup>th</sup> May 2017, this Court did not grant any stay to the said orders, but permitted Petitioner to approach the Airport Authority of India, New Delhi.

22. On 28<sup>th</sup> July 2017, Petitioner filed an Appeal before the Appellate Committee of the Airport Authority of India against the aforesaid orders. By e-mail dated 25<sup>th</sup> September, 2017, the Appellate Committee of the Airport Authority of India, Delhi informed Petitioner that it had directed the Airport Authority of India to hear the appeal.

23. One Siddheshwar Rashtriya Sakhar Kamgar Union filed Writ Petition No.12131 of 2017 before this Court on 3<sup>rd</sup> November, 2017 seeking stay of the communications by the Collector and the State government to pull down the chimney on the ground that the crushing season was round the corner in November and in the event the chimney was pulled down, the union employees would be rendered jobless without any source of income.

24. On 10<sup>th</sup> November, 2017, this Court in Writ Petition No.5253 of 2017 directed no-coercive steps against Petitioner.

25. On 18<sup>th</sup> December 2017, Airport Authority of India, heard Petitioner's Appeal for height clearance and NOC upto 553 meters AMSL and rejected the said Appeal as Solapur Airport was statedly an operational airport and Regional Connectivity operations were

planned thereat observing that Top Elevation of 493.36 meters AMSL (30 m AGL )as authorised by letter dated 10<sup>th</sup> April, 2017 could not be further increased.

26. Being dissatisfied and aggrieved with the above order date 18<sup>th</sup> December, 2017, Petitioner filed Writ Petition (Stamp) no. 11873 of 2018 before this Court. By order dated 23<sup>rd</sup> July, 2018, this Court directed that all the connected Petitions viz. Writ Petition No. 5253 of 2017, Writ Petition (Stamp) No. 11873 of 2018 and Writ Petition No. 12131 of 2017 filed by the Kamgar Union be listed on 3<sup>rd</sup> August, 2018. The Writ Petition No.5253 of 2017 and connected Petitions were finally dismissed by a detailed decision dated 6<sup>th</sup> August 2018. The said decision was challenged in the Supreme Court on 12<sup>th</sup> November, 2018.

27. Thereafter, a notice dated 12<sup>th</sup> November, 2018 was issued by the Airport Authority of India, Airport in Charge, Solapur Airport under Section 9A of the Aircraft Act, 1934.

28. An order dated 10<sup>th</sup> October, 2018 was passed under Rule 4 of Aircraft (Demolition of Obstruction caused by Buildings and Trees etc.) Rules, 1994 (the "said Rules"), which is quoted as under:-

*“4. Owner to furnish details - (1) The service of the copy of the notification under rule 3 shall be accompanied by an order of the Director General of Civil Aviation or any other officer of the Civil Aviation Department authorized by him in this behalf directing the owner to furnish to the officer-in-charge of the aerodrome, within a specified period, a plan showing the location of the building or tree, as the case may be, and also its dimensions or any other details specified in the order. (2) The owner shall be bound to furnish the details asked for in the order passed under sub-rule (1).”*

29. Vide communication dated 4<sup>th</sup> December, 2018, Petitioner pointed out that the NTPC chimney was also obstructing the approach path. Also details about the new airport at village Boramani were also submitted. It was also pointed out that the alternate runway no. 15 was available for take off and landing instead of runway no. 13.

30. The Hon'ble Supreme Court vide interim order dated 7<sup>th</sup> December 2018 allowed the Airport Authority to proceed in the matter uninfluenced by the pendency of the Petitions and to take appropriate action as per law but directed that till the next date of hearing no effect be given to notice/communication dated 15<sup>th</sup> March 2017 issued by the State Government and the letter dated 6<sup>th</sup> April 2017 issued by the Collector.

31. Petitioner filed reply dated 28<sup>th</sup> January, 2019 on 31<sup>st</sup> January 2019 denying the contents and informing that NTPC, Solapur chimney

was in the funnel way of the landing and take-off of flights had a height three times more than Petitioner and that the permission for the said height was granted by the Airport Authority of India, Mumbai whereas the same was not considered in the case of Petitioner. It was informed that Petitioner's factory chimney height is 90 meters i.e. 55. meters above mean sea level while NTPC chimney height is 278 meters i.e. 736 meters above mean sea level and that the notice under Rule 4 of the 1994 Rules issued to the Petitioner was therefore highhanded. That Petitioner's NOC was turned down by letter dated 1<sup>st</sup> May, 2014 stating that it had no authority to grant height certificate above 504 meters above mean sea level while NTPC had been granted NOC of 736 meters above mean sea level.

32. Pursuant to personal hearing notice dated 15<sup>th</sup> May, 2019 the Petitioner was heard on 31<sup>st</sup> May 2019 and the matter was closed for orders after which the Deputy Director General of Civil Aviation passed Final Order dated 24<sup>th</sup> August 2019, holding that Petitioner's Chimney was penetrating approach surface of RWY-33 by 52.2 meters and its height needed to be reduced to the permissible height of 498.4 meters at the earliest. Said order refers to obstacle survey conducted in the year 2017 by Airport Authority of India and a physical

verification about the penetration of the chimney.

33. Later by order dated 29<sup>th</sup> August 2019, when the two SLPs viz. one by Petitioner and the other by the Kamgar Union were listed, the Hon'ble Supreme Court, in view of the order dated 24<sup>th</sup> August 2019, passed by the Deputy Director General of Civil Aviation observed that the orders which were subject matter of challenge in the SLPs had in that sense become redundant and relegated Petitioner to the option of remedy by way of appeal under the Rule 6A of the said Rules thereby disposing the SLPs leaving all contentions open, including the question of jurisdiction of the Collector to pass an order in that regard.

34. It is submitted on behalf of Petitioner that the above mentioned letter/notice dated 15<sup>th</sup> March, 2017 and the notice date 6<sup>th</sup> April, 2017 have become redundant in view of the Supreme Court order dated 29<sup>th</sup> August, 2019 and therefore even the grounds of rejection of the regularisation application dated 12<sup>th</sup> April, 2017 have become redundant and void.

35. In pursuance of the Hon'ble Supreme Court's order dated 29<sup>th</sup> August, 2019, Petitioner filed Appeal under Rule 6A of the said Rules before DGCA, Delhi against order dated 24<sup>th</sup> August 2019 on 23<sup>rd</sup> October 2019, *inter alia* on the following grounds:-

(i) That the obstacle survey conducted in the year 2017 by Airport Authority of India has not been supplied to the Petitioner nor the said survey report is brought on record and therefore, in the absence of the survey report on 2017, the impugned order ought to be set aside and declared as null and void.

(ii) That no physical verification of the chimney was carried out by the Airport Authority of India nor any physical verification report was provided by the Petitioner and therefore in the absence of physical verification report, the impugned order deserves to be set aside.

(iii) The Airport Authority failed to appreciate that in the year 2016-2017 there were 450 flights, in the year 2017-2018 and 2018-2019 there were flights that had safely landed and departed at Solapur Airport without causing obstacles infringing the obstacle limitation surfaces (OLS) at Solapur. Therefore, the apprehensions of the Airport Authority of

India were unfounded without the survey report and physical verification report.

(iv) The Authority has failed to appreciate that Petitioner has obtained necessary permissions from the concerned authorities for construction of cogeneration and expansion of existing sugar factory from Solapur Municipal Corporation, Sugar Commissioner, State of Maharashtra and MPCB.

(v) That the Authority has failed to appreciate that the NTPC chimneys height is more than 278 meters and 3 times height of the Petitioner's chimney and on the ground of parity alone the impugned order deserves to be set aside.

(vi) The Authority has failed to appreciate that the suggestion of shifting the existing chimney is impracticable and technically not viable. It is submitted that boiler has to be at the closest distance for effective power and energy generation and the sites suggested by Airport Authority of India are at a distance of 800 meters and beyond and therefore not viable.

(vii) That the Authority has failed to appreciate that the Government Resolution dated 21<sup>st</sup> August, 2013 whereby it has been recorded that the Government of Maharashtra has

acquired 550 hectares of land in village Boramani and Tandulwadi for construction of the new Airport closure of the Airport at Hotgi.

(viii) That the Authority has failed to appreciate the social contribution of Petitioner in uplifting the farmers being the pioneer sugar factory in the State of Maharashtra that has funds reserved for the farmers (shareholders), medical treatment, etc, which claim has been implemented in getting claims by the legal heirs of deceased farmers amounting of Rs. 1.20 crores.

(ix) That the Authority has failed to appreciate that Petitioner had taken huge loans running in crores from Bank of Baroda, National C-operative Development Corporation and Solapur Janata Sahakari Bank for construction of cogeneration plant and expansion of the existing plant and that if the impugned order was to be implemented and the chimney height reduced to 52.2 meters, the entire set of cogeneration, sugar factory and distillery would become non-functional rendering the closure of co-generation plant, sugar factory and distillery.

36. On 3<sup>rd</sup> December 2019 DGCA, Delhi rejected the Appeal of Petitioner and confirmed order dated 24<sup>th</sup> August 2019 passed by the Deputy DGCA directing the Petitioner to reduce the height of the said chimney to 498.4 meters above mean sea level within 60 days. The said order is quoted as under:-

*“ Whereas, an obstacle survey conducted in the year 2017 by Airports Authority of India (AAI) reveals the obstacles infringing the Obstacle Limitation Surfaces (OLS) of Solapur airport, Solapur.*

*2. Whereas, AAI indentified a Chimney owned by M/s Shri Siddeshwar Sahakari Sakhar Karkhana Ltd. (SSSSKL), Solapur as the critical obstacle infringing Obstacle Limitation Surfaces (OLS) of Solapur airport based on the Obstacle survey-2017. The Chimney is penetrating the APPROACH SURFACE of RWY by 52.2 meters against the permissible top elevation of 498.4 metes AMSI.*

*3. Whereas, an order for physical verification was issued to the owner of said Chimney under rule 3 and 4 of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc) Rules, 1994, with direction to furnish to The Officer-in-Charge, Solapur Airport, Solapur, a plan showing the said Chimney and also its dimensions and other details mentioned in the said order. A physical verification was carried out by AAI at the site and after verification AAI confirmed about the penetration of said Chimney by 52.2 meters and forwarded these details to DGCA.*

*4. Whereas, as per Rule 6 of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994, a personal hearing was granted to the owner of Chimney forming an obstacle by Deputy Director General (DDG) of Civil Aviation, on 31.05.2019. After the said hearing it was established that the Chimney is pertaining the APPROACH SURFACE of RWY 33 by 52.2 meters. Consequently in exercise of the power conferred under Rule 6 of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994, the DDG of Civil Aviation directed the*

*owner of M/s SSSSK Ltd, Solapur, to reduce the height of said Chimney to 498.4 meters AMSL within 60 days from the date of issue of Final order dated 24.08.19.*

*5. Whereas, under the provisions of Rule 6A of the Aircraft (Demolition of obstruction caused by Buildings, and Trees etc) Rules, 1994, an appeal was filed against the Final Order dated 24.08.19 by Managing Director, M/s SSSSKL, Solapur on 22.10.19 to the appellate authority i.e. Director General.*

*6. Whereas, I heard the appeal on 03.12.19 wherein Mr. Dharmraj A Kadadi, President of M/s SSSSK Ltd and Mr. Sameer Bhagwat Salgar, Managing Director of M/s SSSSK Ltd attended the hearing on at DGCA(HQ) and made submission that Final Order is contrary to the principles of justice & equity. The appeal has been dismissed.*

*7. In view of above and under provisions of Rule 6A of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994, I hereby confirm the final order dated 24.08.19 passed by DDG of Civil Aviation and hereby direct, the appellant herein to reduce the height of said Chimney to 498.4 meters AMSL within 60 days of issue of this order."*

37. Aggrieved by the above order, Petitioner has filed Writ Petition (L) No. 21583 of 2021 (WP 9446 of 2021) on 30<sup>th</sup> October, 2021 before this Court challenging the order dated 3<sup>rd</sup> December 2019 passed by the Respondent No.2-DGCA in Appeal under Section 6A of the said Rules 1994, as well as against order dated 10<sup>th</sup> October, 2018 passed by the Respondent No.4-Airport Incharge Airport Authority of India and order dated 24<sup>th</sup> August, 2019 passed by the Respondent No.3-Deputy Director General of Civil Aviation taking up largely the same grounds as in the Memo of Appeal filed before the DGCA such

as:-

(i) That the obstacle survey conducted in the year 2017 by the Airport Authority of India is not supplied to Petitioner nor the said survey report is brought on record.

(ii) That no physical verification of chimney was carried out by the Airport Authority of India nor any physical verification report was provided to Petitioner.

(iii) That the Airport Authority failed to appreciate that in the year 2016-2017 there were 450 flights, in the year 2017-2018 and 2018-2019 there were flights that had safely landed and departed from Solapur Airport without causing obstacles infringing the obstacle limitation surfaces (OLS) at Solapur. Therefore, the apprehensions of the Airport Authority of India were unfounded without the survey report and physical verification report.

(iv) That the Authority has failed to appreciate that the Government Resolution dated 21<sup>st</sup> August, 2013 whereby it has been recorded that the Government of Maharashtra has acquired 550 hectares of land in village Boramani and Tandulwadi for construction of the new Airport closure of the Airport at Hotgi.

(v) That by Government Resolution dated 29<sup>th</sup> October, 2020, the Government of Maharashtra has granted revised administrative approval and revised financial approval for the acquisition of additional land for the Solapur (Boramani) Airport. It is recorded therein that the land admeasuring 549.31 hectares is already acquired and the approval for acquisition of additional land admeasuring 29.94 hectares is granted. That therefore, the Government of Maharashtra is going to use the old airport at Hotgi exclusively for the commercial use and no flight will take off from there after the construction of the new chimney at Boramani and therefore, there is no necessity of reducing the height of the chimney of Petitioners sugar factory.

38. More or less the same grounds that were taken in the Appeal before the DGCA have been reiterated in the said Writ Petition.

39. In the meanwhile, on 11<sup>th</sup> November, 2019, the Respondent No.3-The City engineer, Solapur Municipal Corporation, vide notice under Section 478 of the Maharashtra Municipal Corporation Act, 1949 (the "MMC Act"), directed Petitioner to demolish/pull down the

chimney, to which Petitioner gave a reply on 15<sup>th</sup> November, 2019. On (same day), Writ Petition (ST). No. 29268 of 2019 was filed by the Petitioner before this Court challenging the said notice under Section 478 of the MMC Act.

40. On 2<sup>nd</sup> December, 2019, Petitioner made an application to the Secretary of the Urban Development Department, State of Maharashtra seeking to stay the notice/order dated 11<sup>th</sup> November, 2019.

41. On 29<sup>th</sup> October 2020, Government of Maharashtra issued a Resolution No. MAD-1619/Case No. 55/28-A, granting improved administrative approval to the acquisition of approximately 580 hectares of land for Boramani Airport at Solapur with additional 29.94 hectares private land acquisition. By the said Government Resolution, a total of Rs. 122.79 crores expenses has been approved in addition to expense of Rs. 46.29 crores for the additional 29.94 hectares for private land acquisition.

42. On 21<sup>st</sup> December, 2020, the aforementioned Writ Petition (ST.) No. 29268 of 2019, was withdrawn in view of the aforesaid GR dated

29<sup>th</sup> October, 2020 with liberty to take out appropriate proceedings as advised. It was stated in the said order that Respondents shall not demolish the chimney for a period of four weeks from the date of the order, in view of the request made on behalf of Petitioner. However, it was also directed that Petitioner shall not move this Court seeking any extension. It was recorded therein that in the event of any fresh proceeding being taken out by the Petitioner pursuant to the GR dated 29<sup>th</sup> October, 2020, the same shall be decided strictly on merits and all contentions of the parties were kept open.

43. On 18<sup>th</sup> December, 2020 Respondent No.2 asked Petitioner to attend the hearing on 28<sup>th</sup> December, 2020 and explain the points raised by Petitioner in his reply dated 15<sup>th</sup> November, 2019. It is submitted on behalf of Petitioner that no explanation was sought from Petitioner as to why NOC issued on 1<sup>st</sup> February, 2013 and 18<sup>th</sup> August, 2016 cannot be cancelled.

44. It is submitted that even at the hearing before the Commissioner on 28<sup>th</sup> December, 2020 no query with respect to the cancellation of the NOCs was raised.

45. By order dated 15<sup>th</sup> January, 2021, Respondent-Solapur Municipal Corporation cancelled the NOCs dated 29<sup>th</sup> January, 2013 and 10<sup>th</sup> August, 2016 issued by Respondent No.2. Notice under Section 478 was also held to be proper. The said order is quoted as under:-

“  
File No.SMC-24011(21)/33/2021-SMC-CITY ENGINEER

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सोलापूर महानगरपालिका, सोलापूर.  
महा. संचालक, नगररचना यांचे कार्यालय, सोलापूर.  
सिधेश्वर कारखाना चिमणी Speaking Order/ दि. 10/01/2021

विषय :- श्री. सिधेश्वर सहकारी साखर कारखाना होयणी रोड, मज्जे  
नं. 21/4 व 21/5 कुमठे, सोलापूर येथील को-जगरेशन चिमणी  
पाडकामाबाबत.

संदर्भ :- 1) श्री. सिधेश्वर सहकारी साखर कारखाना यांचे  
दि. 25/12/2012 रोजीचे आयुक्त सोलापूर महानगरपालिका यांना  
उद्देशित कारखान्याचे विस्तारी करण्याकरीता ना-हरकत दाखवता  
मिळणेबाबतचा विनंती अर्ज.

2) नगर अभियंता, विभागाकडून कार्यकारी संचालक, सिधेश्वर  
सहकारी कारखाना जा.क्र.न.अ. वा.प.419,  
दि.01/02/2013 अन्वये श्री. सिधेश्वर सहकारी साखर कारखान्यास  
शर्ती व अटीस आधीन राहून दिलेले ना-हरकत पत्र.

3) स्टेशन इनचार्ज एअरपोर्ट एंथॉरिटी ऑफ इंडिया एअरपोर्ट,  
सोलापूर यांनी  
क्र.ए.ए.आय./एम.ओ.एल/ए.पी.सी./ऑव्स्टेकल/2013-14/12-  
13/18/02/2014 दि.18/2/2014 अन्वये जिल्हाधिकारी,  
सोलापूर यांना विमान उडणामध्ये चिमणीचे अडथळा होत  
असल्याने व एअरपोर्ट एंथॉरिटीचे मान्यता न घेता चिमणीचे काम  
केल्याने ते थांबविण्याबाबत दिलेले पत्र.

4) कार्यकारी संचालक श्री. सिधेश्वर साखर कारखाना लि., कुमठे  
यांना नोटीस क्र.6496  
दि.24/2/2014 अन्वये बी.पी.एम.सी.एक्ट 1949 चे कलम  
478 नुसार देण्यात आलेली नोटीस.

5) प्रभारी कार्यकारी संचालक, श्री. सिधेश्वर सहकारी साखर  
कारखाना लि., कुमठे यांचे दि.8/8/2016 रोजीचे आयुक्त, सोलापूर  
यांना उद्देशून, उद्देशित कारखान्यास बीज निर्मिती प्रकल्पासाठी व  
माध्यम क्षमता विस्तारीत करण्यासाठी ना-हरकत दाखवता  
मिळण्याबाबत प्रमाणपत्र.

6) नगर अभियंता, विभागाकडून कार्यकारी संचालक, सिधेश्वर

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- महकारी कारखाना जा.क्र.न. अ. वा.प.398,  
दि.10/08/2016 अन्वये श्री. सिध्देश्वर महकारी साखर कारखान्यास  
शर्ती व अटीस आधीन राहून दिलेले ना-हरकत पत्र.  
7) भारतीय विमान पतन प्राधिकरण यांचेकडील No  
Objection Certificate for Height Clearance  
दि.17/2/2017.  
8) मा.अवर सचिव, महाराष्ट्र शासन, सामान्य प्रशासन विभाग  
यांचे जिल्हाधिकारी यांना उद्देशित दि.15/03/2017 व  
दि.19/07/2017 चे पत्र.  
9) श्री. सिध्देश्वर महकारी साखर कारखाना यांच्याकडून  
दि.12/4/2017 नुसार वांधकाम परवानगी मागणी अर्ज व  
नकाशा.  
10) कार्यकारी संचालक, श्री. सिध्देश्वर सहकारी साखर कारखाना  
यांना जा.क्र.न.अ.वा.प.54, दि.6/5/2017 व  
नुसार दिलेले उत्तर.  
दि.25/7/2017  
11) श्री. सिध्देश्वर सहकारी साखर कारखाना चेअरमन व कार्यकारी  
संचालक यांनी दि.11/8/2017 नुसार दिलेले हमीपत्र.  
12) महाराष्ट्र महानगरपालिका अधिनियमातील कलम 478 अन्वये  
नोटीस क्र. 347 दि.11/11/2019 अन्वये चेअरमन व  
संचालक श्री.सिध्देश्वर सहकारी साखर कारखाना,  
दिलेली नोटीस.  
13) महाराष्ट्र महानगरपालिका अधिनियमातील कलम 478 अन्वये  
नोटीस क्र. 347 दि.11/11/2019 अन्वये कारखान्यास  
नोटीसीबाबत कारखान्याला त्यांचे म्हणणे  
मुनवणीकामी हजर राहणेकरीता पत्र क्र.137,  
दि.18/12/2020 अन्वये कळविले.  
14) दि.28/12/2020 रोजी आयुक्त यांच्या समोर चेअरमन व  
कार्यकारी संचालक श्री. सिध्देश्वर सहकारी साखर कारखाना  
यांच्या उपस्थित झालेली मुनवणी.  
15) मा.उच्च न्यायालयात म.न.पा.विरुद्ध रिट पिटीशन (ST)  
क्र.29268/2019 दाखल केले होते. यात मा. उच्च न्यायालयाचे

कार्यकारी  
कुमठे यांना

दिलेल्या  
मांडण्याकरीता

दि.21/12/2020 चे आदेश.

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**वाचा क्र.1 व 2 :-** ज्या अर्थी चेअग्रमन व कार्यकारी मंचालक मिधेश्वर महाकारी साखर कारखाना यांनी आयुक्त, सोलापूर महापालिका यांना उद्देशून कारखान्यास वीज निर्मिती प्रकल्पासाठी व गाळण क्षमता विस्तारीत करण्यासाठी ना-हरकत दाखला मिळण्याबाबत दि.25/12/2012 व दि.8/8/2016 रोजी विनंती अर्ज सादर केला होता सदर अर्जास अनुमूलन नगर अभियंता, विभागाकडून जा.क्र.न.अ.वा.प.419, दि.01/02/2013, क्र.398 व दि.18/8/2016 अन्वये शर्ती व अटीस आधीन राहून ना-हरकत प्रमाणपत्र देण्यात आले. सदर शर्ती व अटी खालीलप्रमाणे आहेत.

1. या प्रकल्पाच्या उभारणीसाठी त्यास अनुषंगीक सर्व कायदे व नियम यांचे क्रमोत्तरे पालन केले जाईल.
2. विविध सरकारी सोलापूर महानगरपालिकेकडून प्रकल्प संबंधात आवश्यक असणाऱ्या सर्व परवानगी व मंजूरी घेतल्या जातील.

**वाचा क्र.3 :-** ज्या अर्थी स्टेशन इन्चार्ज एअरपोर्ट एंथॉरिटी ऑफ इंडिया एअरपोर्ट, सोलापूर यांनी क्र.ए.ए.आय./एस.ओ.एल/ए.पी.सी./ऑव्स्टेकल/2013-14/12-13/18/02/2014, दि.18/2/2014 अन्वये जिल्हाधिकारी, सोलापूर यांना विमान उडाणामध्ये चिमणीचे अडथळा होत असल्याने व एअरपोर्ट एंथॉरिटीचे मान्यता न घेता चिमणीचे काम चालू असल्याने सदरचे काम तात्काळ थांबविण्यात यावे व चिमणी निष्काशित करावी असे कळविले.

**वाचा क्र.4 :-** नगर अभियंता विभागाकडून स्वळ पाहणी करून सदर जागेतील विनापरवाना केलेल्या बांधकामास कार्यकारी मंचालक श्री. मिधेश्वर साखर कारखाना लि., कुमठे यांना क्र.6496 दि.24/2/2014 अन्वये वी.पी.एम.सी.एॅक्ट 1949 चे कलम 478 अन्वये नोटीस देण्यात आली.

उपरोक्त नोटीसीबाबत म्हणणे मांडण्याकरीता कार्यकारी मंचालक श्री. मिधेश्वर साखर कारखाना यांनी दि.3/3/2014 रोजी अर्ज देवून महानगरपालिकेने दि.24/2/2014 रोजीच्या नोटीसीमध्ये तमूद केलेली 7 दिवसाची मुदती एवजी म्हणणे मांडण्याकरीता 90 दिवसाची मुदत वाढवून द्यावे अशी विनंती केली. त्यानुसार कारखान्यास 30 दिवसाची मुदत देण्यात आली.

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आणि ज्या अर्थी जिल्हाधिकारी, सोलापूर यांनी कारखान्यास सोलापूर महानगरपालिकेकडून देण्यात आलेले मुं. प्रा.महाअधिनियम 1949 चे कलम 478 अन्वये दिलेली नोटीसीनुसार कोणतीच कारवाई झाल्याचे दिग्गुन येत नाही व मा. विभागीय आयुक्त, पुणे विभाग पुणे यांनी दि.30/7/2016 रोजीच्या दौऱ्याच्यावेळी प्रस्तुत विषयी तात्काळ कारवाई करण्यास गुनना दिलेली आहेत. तरी मुं.प्रा.अधिनियम 1949 चे कलम 478(2) अन्वये कारवाई पूर्ण करून त्याचा अहवाल सादर करणेबाबत कळविले.

आणि ज्या अर्थी आवर सचिव सामान्य प्रशासन, महाराष्ट्र यांनी त्यांचेकडे पत्र क्र.एम.ए.डी.सी-2012/प्र.क्र.449/28 अ, दि.15/3/2017 अन्वये जिल्हाधिकारी, सोलापूर यांना उददेशून केंद्र शासनाच्या रिजीनल कनेक्टिव्हिटीमध्ये पहिल्या टप्प्यात राज्यातील 10 विमानतळांचा समोवश करण्यात आले आहे. त्यामध्ये सोलापूर (होटगी) या विमानतळाचा समावेश सदर विमानतळ भारतीय विमान पतन प्राधिकरणाकडे हस्तांतरीत करावयाची आहे. तथापी विमानतळ नजीक असलेल्या साखर कारखान्याचा चिमणीचा (धुराडे) विमान उड्डाणामध्ये अडथळा येत असल्याने सदर कारखान्याची चिमणी (धुराडे) हटविण्याबाबत राज्यशासनाने धोरणात्मक निर्णय घेतलेला आहे. सत्रव सदरची चिमणी हटविण्याबाबत तीन महिन्यांच्या आत कार्यवाही करावे व याबाबतचा अहवाल सादर करावा असे कळविले होते.

उपरोक्त प्रमाणे कार्यवाही करण्याबाबत मा. जिल्हाधिकारी, सोलापूर यांनी पत्र क्र.1629 दि.6/4/2017 अन्वये आयुक्त महानगरपालिका यांना कळविलेले आहे.

आणि ज्या अर्थी कार्यकारी संचालक श्री. सिध्देश्वर साखर कारखाना यांना दि.12/4/2017 अन्वये महाराष्ट्र प्रादेशिक व नगर रचना अधिनियम 1966 चे कलम 44,45,58 व 59 आणि मुं.प्रा. अधिनियम 1949 चे कलम 253 व 254 अन्वये बांधकाम परवानगी करीता प्रस्ताव सादर केलेला होता.

सदर प्रस्तावास अनुसरून खालील कारणांस्तव चिमणी अनुज्ञेय होत नसल्याबाबतचे पत्र क्र.54, दि.6/5/2017 अन्वये श्री. सिध्देश्वर सहकारी साखर कारखान्यास कळविले आहे.

1. अवर सचिव सामान्य प्रशासन विभाग यांचे दि.15/3/2017 चे पत्रानुसार

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Regional Connectivity मध्ये सोलापूर हौदची विमानतळाचा समाविष्ट करण्यात आलेले आहे व विमानतळ तज्जीक असल्याने मिधेश्वर सहकारी साखर कारखाना चिमणी हटविण्याबाबत राज्यशासनाने धोऱ्यात्मक निर्णय घेतलेला आहे.

2. एअरपोर्ट एंथोरिटी इन इंडिया याच्याकडून दि.17/2/2017 नुसार दिलेल्या ना-हरकत दाखल्यामध्ये चिमणीची उंची 493.96 बजा 463 (Permissible top Elevation - site Elevation) - 30.96 मीटर इतकी अनुज्ञेय होत आहे. श्री. मिधेश्वर सहकारी परंतु प्रस्तावात विद्यमान चिमणीची यापेक्षा जास्त आहे त्यामुळे चिमणीची बांधकाम अनुज्ञेय होवू शकत नाही.
3. सुधारित मंजूर विकास आराखड्याप्रमाणे औदयोगिक विभागाक समाविष्ट आहे व ते पूर्वेस 60 मीटर रुंदीच्या रस्त्याने व भुखंडातून दक्षिणोत्तर 9.00 मीटर सेवा रस्त्याने व त्यास लागून सलग 30 मीटर रुंदीच्या रस्त्याने बाधित होत आहे. मध्य भुखंडामध्ये श्री. मिधेश्वर शुगर फॅक्टरी असे नमूद आहे.
4. उक्त भुखंड हा स्टेट हायवे मन्मुख असल्याने संबंधीत तसेच जरूर त्या खात्याची एन.ओ.सी. त्याप्रमाणे प्रस्तावित कामासाठी नियमाप्रमाणे आवश्यक असलेली ना-हरकत असलेले दाखले आवश्यक आहे.
5. उपरोक्त ठिकाणी प्रस्तावित प्रमाणे विकास परवानगी द्यायची झाल्यास मा. शासनाचे तसेच संबंधीत खाते यांचे निर्णयानुसार परवानगी देणे आवश्यक ठरते.
6. वर नमूद जमीनीच्या नियमानुसार विकसन परवानगा अभिन्यास घेणे आवश्यक आहे.

वरीलप्रमाणे वृत्ती असल्याने बांधकाम परवानगी देता येत नाही असे कळविण्यात आले.

तदनंतर मिधेश्वर कारखान्याकडून दि.13/7/2017 नुसार पत्र देवून बांधकाम परवानगी मिळणेबाबत विनंती अर्ज सादर केला होता. तथापी वर नमूद कारणांमत्तव परवानगी देत नसल्याबाबत कळविले आहे. तथापी कारखान्याम पत्र क्र.1306, दि.25/7/2017 अन्वये परवानगी देता येत नसल्याबाबत पुनः कळविण्यात आले.

तसेच मिधेश्वर सहकारी साखर कारखाना यांनी कारखान्याची चिमणी पाडण्यात येवू नये याकरीता वेगवेगळ्या न्यायालयात खालील नमूद केल्याप्रमाणे दावे दाखल केले होते मद्रचे दावे व मा. न्यायालयाने फेटाळलेले आहेत.

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तसेच सदरचे चिमणीवावत मा. डेप्युटी डायरेक्टर जनरल ऑफ मिन्हील एव्हीएशन एंथोरिटी यांनी दि.24/8/2019 अन्वये आदेश पारित करून चिमणीची उंची 498.4 AMSL पर्यंत म्हणजेच 30 मीटर पर्यंत कमी करणेबाबत अंतिम आदेश पारित केलेले होते व तसेच आपण सदर आदेशाविरुद्ध मा. डायरेक्टर मिन्हील एव्हीएशन एंथोरिटी यांचेकडे अपील केलेला होता सदर अपीलावर मा. डायरेक्टर ऑफ मिन्हील एव्हीएशन यांनी दि.3/12/2019 अन्वये आदेश पारित करून मा. डायरेक्टर ऑफ मिन्हील एव्हीएशन एंथोरिटी यांनी दि.24/8/2019 अन्वये दिलेले आदेश अंतिम केलेले आहेत त्याअर्थी आपण चिमणीची उंची कमी करणेबाबत कार्यवाही करणे आवश्यक होते परंतु आपण याप्रमाणे कार्यवाही केलेले नाही.

उपरोक्त न्यायालयीन निर्णय व मा. शासन व जिल्हाधिकारी, सोलापूर यांनी वेळोवेळी कळविल्यानुसार सदरची चिमणी पाडकामाकरीता सोलापूर महानगरपालिकेकडून निविदा मागवून व निविदा निश्चितीनंतर चिमणी पाडकामाचे नियोजन करून दि.11/8/2017 रोजी मत्सेदारी "विहान कन्स्ट्रक्श" यांचे मजूर व मशिनरी तसेच म.न.पा. शासकीय नियंत्रणेसह पाडकामाकरीता गेले असता सदर ठिकाणी कामगाराची विरोध व इतर बाबी यामुळे पाडकाम होवू शकला नाही. परंतु सदर पाडकामास विरोध करणाऱ्यांवाबत एम.आय.डी.पोलीस ठाणे येथे एफ.आय.आर नोंदविण्यात आले.

यावेळेस कारखान्याचे चेअरमन व कार्यकारी मंचालक यांनी दि.11/11/2017 पूर्वी सर्व नियमांचे पालन करून व विमान उडानाम अडथळा होणार नाही अशा रितीने कारखान्याने बांधण्यात आलेले चिमणीचे पर्यायी व्यवस्था करित आहे असे हमीपत्र लिहून दिले. तथापी आजतागायत कारखान्याने हमीपत्राप्रमाणे कार्यवाही केलेली नाही.

तदंतर महानगरपालिकेकडून महाराष्ट्र महानगरपालिका अधिनियमातील कलम 478 अन्वये क्र 347 दि.11/11/2019 अन्वये अनाधिकृत विनापरवाना बांधकाम निष्कामनाबाबत नोटीस देण्यात आली. सदर नोटीसीच्या विरोधात माखर कारखान्याने मा.उच्च न्यायालयात म.न.पा.विरुद्ध रिट पिटीशन (ST) क्र.29268/2019 दाखल केले होते.

दरम्यान उपरोक्त नोटीसी अनुषंगाने चेअरमन व कार्यकारी मंचालक निश्चेश्वर महकारी माखर कारखाना यांना त्यांचे म्हणणे मांडण्याकरीता क्र.137

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दि.18/12/2020 रोजी पत्र देवून दि.28/12/2020 रोजी मुनावणी करिता उपस्थित राहणेबाबत कळविण्यात आले होते.

दि.28/12/2020 रोजी दुपारी 12.00 वाजता मा. आयुक्त यांच्या दालनात मुनावणी झाली. मदार मुनावणी करिता श्री. धर्मराज काडादी चेअरमन मिधेश्वर सहकारी साखर कारखाना व कार्यकारी मंचालकश्री. समीर सक्कार हे उपस्थित होते.

मदार मुनावणीत आयुक्त यांनी, श्री. मिधेश्वर सहकारी साखर कारखान्यास एअरपोर्ट एंथॉरिटी ऑफ इंडिया यांनी दि.3/12/2019 रोजी आदेश देवून मदार चिमणीची उंची कमी करण्याचे आदेश देवूनही आपण अद्याप कोणतीच कार्यवाही का केली नाही ? याबाबत विचारणा केली त्यावर चेअरमन व कार्यकारी मंचालक मिधेश्वर सहकारी साखर कारखाना यांनी खालील प्रमाणे समक्षतेत मुददे उपस्थित केले.

1. मिधेश्वर सहकारी साखर कारखाना गळीत हगाम चालू आहे त्यावर को-जनरेशन बर्क प्लॉट व कारखाना प्लॉट वेगवेगळे नाहीत मदार चिमणी पाडल्यास साखर कारखाना बंद होऊ शकतो.
2. हॉटगी विमानतळासाठी रनवे क्र.15 व रनवे क्र.33 असे 2 रनवे आहेत. किंगफिशर विमानाने रनवे 15 चे वापर केला होता. रनवे क्र.15 वरून उड्डाण केल्यास चिमणीचा अडथळा होत नाही. याप्रमाणे आम्ही एअरपोर्ट एंथॉरिटी ऑफ इंडिया यांच्याकडे म्हणणे मांडणार असून चिमणी करिता ना-ह्रकत प्रमाणपत्र मिळणेबाबत पुनश्च विनंती करणार आहोत. तसेच मध्या कारखान्याचे गाळप चालू असून ते माहे एप्रिल अखेर चालणार असल्याने तो पर्यंत चिमणीचे पाडकाम करण्यात येवू नये.
3. आमच्या कारखान्याची चिमणी वाहतुकीस अडथळा आहे ? परंतु हेतु:पूरसर आमच्या चिमणी बाबतचा कार्यवाही चालू आहे.
4. आमचा कारखाना 1971 मध्ये सुरू केले असून हॉटगी विमानतळ 1986 साली सुरूवात झालेली आहे.
5. बोरामणी विमानतळासाठी 550 हेक्टर जमीन खरेदी केली असून शासनाने 2019 मध्ये 42 कोटी रुपये अनुदान दिलेले आहे. तसेच 2013 चा जी.आर. पहावा मदारचा जी.आर. Self Explainnatary आहे, असे मांगून आपण याबाबत मोठे आणलेले लेखी म्हणणेही मादर केले होते.

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दरम्यान कारखान्यास सोलापूर महानगरपालिकेकडून महाराष्ट्र महानगरपालिका अधिनियमातील कलम 478 अन्वये क्र 347 दि.11/11/2019 अन्वये अनाधिकृत विनापरवाना बांधकाम निष्कासनाबाबत नोटीस देण्यात आलेल्या नोटीसवर कारखान्याने मा.उच्च न्यायालयात म.न.पा.विरुद्ध स्टि पिटीशन (ST) क्र.29268/2019 दाखल केले होते. त्यामध्ये मा. उच्च न्यायालयाने महाराष्ट्र महानगरपालिका अधिनियम 1949 चे कलम 478 नुसार देण्यात आलेले नोटीस, त्यावर आपणांस आपल्याला म्हणणे मांडण्याकरीता संधी देण्यात आलेली होती त्यानुसार दि.28/12/2020 रोजी आपण सुनावणीत उपस्थित राहून सादर केलेले आपले म्हणणे ग्रहण धरता येत नसल्याने फेटाळण्यात येत आहे.

ज्याअर्थी मा. सर्वोच्च न्यायालयातील एस.एल.पी. 30/415/2018 यामध्ये दिलेले निर्णय व त्याआधारे मा. डेप्युटी डायरेक्टर ऑफ सिव्हील एव्हिएशन, एअरपोर्ट एंथॉरिटी ऑफ इंडीया (ए.ए.आय.) यांनी क्र.ए.व्ही.20025/05/17-ए.एल.दि.24/8/2019 अन्वये दिलेल्या अंतिम आदेश मा. डायरेक्टर एअरपोर्ट एंथॉरिटी ऑफ इंडीया यांनी दि.3/12/2019 अन्वये डेप्युटी डायरेक्टर यांचा निर्णय अंतिम केला आहे.

ज्याअर्थी सोलापूर महानगरपालिकेकडून आपणांस महानगरपालिकेकडून महाराष्ट्र महानगरपालिका अधिनियमातील कलम 478 अन्वये क्र 347 दि.11/11/2019 अन्वये अनाधिकृत विनापरवाना बांधकाम निष्कासनाबाबत नोटीस आणि त्यावर आपणांस आपल्याला म्हणणे मांडण्याकरीता संधी देण्यात आलेली होती त्यानुसार दि.28/12/2020 रोजी आपण सुनावणीत उपस्थित राहून सादर केलेले आपले म्हणणे फेटाळण्यात येत आहे.

तसेच ज्याअर्थी आपणांस देण्यात महानगरपालिकेकडून महाराष्ट्र महानगरपालिका अधिनियमातील कलम 478 अन्वये क्र 347 दि.11/11/2019 रोजी विनापरवाना अनाधिकृत चिमणी पाडकामाबाबत दिलेल्या नोटीसवर आपण मा.उच्च न्यायालयात म.न.पा.विरुद्ध स्टि पिटीशन (ST) क्र.29268/2019 दाखल केले होते. त्यामध्ये मा. उच्च न्यायालयाने दि.21/12/2020 रोजी चिमणी पाडकामाकरीता 4 आठवड्याची स्थगिती आदेश दिलेले आहे. मा. उच्च न्यायालयाने दिलेले स्थगिती आदेश दि.18/01/2021 रोजी संपत आहे त्याअर्थी खालीलप्रमाणे आदेश पारित करण्यात येत आहे.

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आदेश

1. नगर अभियंता, विनापूरकडून जा.क्र.न.अ.वा.प.419, दि.01/02/2013, क्र.398 व दि.18/8/2016 अन्वये महानगरपालिकेकडून देण्यात आलेले नव्वन हरकत नसलेबाबत दिलेले ना-हरकत प्रमाणपत्र हे अस्पष्ट असून प्रमाणपत्रातील शर्ती व अटींची आपण आजतागायत पूर्तता केलेली नाही त्यामुळे सदरचे ना-हरकत प्रमाणपत्र रद्द करण्यात येत आहे.
2. तसेच उपरोक्त सर्व बाबी विचारात घेता, मदर ठिकाणी केलेले विनापरवाना चिमणीचे बांधकाम हे अनाधिकृत ठरत आहेत. तरी आपण मदरचे विनापरवाना अनाधिकृत चिमणीचे बांधकाम दि.22/01/2021 अखेरपर्यंत स्वतःकडून निष्काशित करावे अन्यथा दि.23/01/2021 नंतर महाराष्ट्र महानगरपालिका अधिनियम 1949 चे कलम 478(2) नुसार विनापरवाना करण्यात आलेले चिमणीचे बांधकाम निष्काशित करणेची कार्यवाही सोलापूर महानगरपालिकेकडून करण्यात येईल व मदर कामी यापूर्वी आलेला, आता येणारा खर्च व याकरीता 3% सुपरव्हीजन चार्जेस आपल्याकडून वसूल करण्यात येईल.

Digitally signed by मि. शिवशंकर, भा.प्र.से  
P.SIVASANKAR आयुक्त,  
Date: Fri Jan 15 17:17:23 IS सोलापूर महानगरपालिका,  
2021  
Reason: Approved

सोलापूर

प्रति,  
चेअरमन व कार्यकारी संचालक,  
श्री. सिध्देश्वर सहकारी साखर कारखाना लि., कुमठे,  
मोलापूर, पोस्ट टिकेकरवाडी, ता. उत्तर मोलापूर, जि. मोलापूर  
दुरध्वनी क्र.0217-2601543.  
ई-मेल-siddheshwarsugar@yahoo.com.

TRUE COPY  
ADVOCATE

46. On 27<sup>th</sup> January, 2021, Petitioner once again made an application to the Secretary, Urban Development Department of the State seeking stay of notice dated 11<sup>th</sup> November, 2019.

47. Vide communication dated 11<sup>th</sup> February, 2021, the Under Secretary, Urban Development Department, State of Maharashtra directed the Respondent - Corporation not to demolish the chimney and to wait until the receipt of opinion from the Law and Justice Department.

48. On 16<sup>th</sup> November, 2021 the Respondent No.2 Under Secretary, Urban Development Department, State of Maharashtra directed the Respondent - Corporation to take immediate action of demolition of the chimney as per law.

49. Thereafter, on 17<sup>th</sup> November, 2021 the Assistant Director, Town Planning, Solapur Municipal Corporation being Respondent No.4, directed Petitioner to demolish the said chimney within a period of 7 days, failing which the demolition would be carried out by the Respondent-Corporation and the expenses would be recovered from Petitioner. The said notice is quoted as under:-

“

Exh c.c  
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सोलापूर महानगरपालिका, सोलापूर.  
सहायक संचालक, नगररचना यांचे कार्यालय, सोलापूर

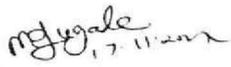
जा.क्र. - सरसंवर/नर/११५८  
प्रातः  
चेअरमन व कार्यकारी संचालक  
श्री. सिध्देश्वर सहकारी साखर कारखाना लिमिटेड  
कुमठे, ता. उत्तर सोलापूर,  
जिल्हा सोलापूर  
मो.क्र. ०२१७ २६०१५४३  
ई-मेल आयडो- siddheshwarsugar@yahoo.com

विषय:- सिध्देश्वर सहकारी साखर कारखाना होटगो रोड स.नं. २१/४ व २१/५, कुमठे  
सोलापूर येथील को जनरेशन वक चिमणी पाडकामाबाबत.  
संदर्भ :- अवर सचिव महाराष्ट्र शासन यांचेकडील क्र. टी.पी.एस -  
१७१९/२२३७/प्रक्र२१६/१९/नवि३ दि. १६/११/२०२१ चे पत्र.

सोलापूर महानगरपालिकेकडून सिध्देश्वर सहकारी साखर कारखाना को जनरेशन वक चिमणी  
पाडकामाबाबतची टेंडर प्रक्रिया पूर्ण केलेली असून मकनेदार यांना सदर पाडकामाची वक आर्डर दि.  
०८/०९/२०२१ नुसार देण्यात आलेली आहे.

प्रकरणे सदरभाष्ये अवर सचिव महाराष्ट्र शासन यांचे पत्र प्राप्त झाले असून प्रस्तुत प्रकरणे विहित  
न्यायालयाचे आदेश एअर पोर्ट अथॉरिटी यांनी वेळोवेळी पारित केलेले आदेश विचारात घेऊन सोलापूर  
महानगरपालिकेन सदर कारखान्याची बेकायदेशीर चिमणी पाडकामाबाबत नियमानुसार आवश्यक कारवाई त्वरित  
करावी असे कळविले आहे. मा.आयुक्त, महोदय सो.म.पा यांची सर्व कामकाजावर देखरेख असल्याने त्यांनी  
दिलेल्या आदेशानुसार कार्यवाही करण्यात येत आहे.

तरी आपणास कळविण्यात येते की, सदर नोंदीस मिळाल्यापासून ०७ दिवसांच्या आत सदर चिमणी  
आपण स्वतःहून निष्काषित करावी व आपण सदर चिमणी विहित मुदतीत पाडकाम नाही केल्यास सदर  
चिमणी निष्कासन/पाडकाम कारवाई सोलापूर महानगरपालिकेमाफत करण्यात येईल व त्यासाठी मकनेदार यांना  
दयावा लागणारा खर्च आपणाकडून व त्यावरील सुपरव्हिजन चाजेस आपणाकडून वसूल करण्यात येतील. याचो  
नोंद घ्यावी.

  
सहा. संचालक नगर रचना  
सोलापूर महानगरपालिका, सोलापूर

- प्रतः 1) मा.जिल्हाधिकारी सोलापूर यांना माहितीस्त्व सादर  
2) विमानतळ यवस्थापक, भारतीय विमानपत्तन होटगी रोड, सोलापूर यांनी माहितीस्त्व सादर  
3) विभाग प्रमुख, अतिक्रमण विभाग, सो.म.पा यांना माहितीस्त्व सादर व पुढील कार्यवाहीस्त्व सादर  
4) मकनेदार विनियाम कौन्टेक्ट प्रा.लि बेंगलोर यांना माहितीस्त्व व पुढील कार्यवाहीस्त्व सादर

50. It is submitted that the order dated 16<sup>th</sup> November, 2021 passed by Respondent No.1 directing demolition and vacating the stay was without any hearing to Petitioner.

51. Aggrieved by the aforesaid, Petitioner filed Writ Petition No. 7872 of 2021 on 22<sup>nd</sup> November, 2021 challenging (i) the order dated

15<sup>th</sup> January, 2021 issued by the Respondent No. 1 cancelling the NOC dated 29<sup>th</sup> January, 2013 and 10<sup>th</sup> August, 2016 issued by the Respondent No. 2- City Engineer, Solapur Municipal Corporation, and (ii) Notice dated 17<sup>th</sup> November, 2021 issued by the Respondent No. 3- City Engineer, Solapur Municipal Corporation directing Petitioner to demolish the said chimney within a period of 7 days.

52. In Writ Petition No. 9446 of 2021, the order 3<sup>rd</sup> December, 2019 passed by the DGCA, order dated 10<sup>th</sup> August, 2018 passed by the Airport Incharge and order dated 24<sup>th</sup> August, 2019 passed by Dy. DGCA have been challenged seeking the following reliefs:-

*“(a) Call for the relevant records and proceedings and after going into the legality of the same quash and set aside the impugned Order dated 3<sup>rd</sup> December, 2019 passed by the Respondent No.2 -the Director General of Civil Aviation, Government of India in Appeal under section 6A of the Aircraft (Demolition of Obstructions caused by Buildings and Trees etc.) Rules, 1994 arising out of the Orders dated 10<sup>th</sup> October 2018 passed by the Respondent No.4 - Airport In-Charge, Airport Authority of India, Solapur Airport, Order dated 24<sup>th</sup> August, 2019 passed by the Respondent No.3- Deputy Director General of Civil Aviation, Government of India and declare the entire process as illegal, null and void;*

*(b) Pending the hearing and final disposal of this Petition, the operation and/or execution and/or implementation of the impugned Orders dated 10<sup>th</sup> October, 2018 passed by the Respondent No.4 - Airport In-charge, Airport Authority of India, Solapur Airport, Order dated 24<sup>th</sup> August, 2019 passed by the Respondent No.3-Deputy*

*Director General of Civil Aviation, Government of India and Order dated 3<sup>rd</sup> December, 2019 passed by the Respondent No. 2 - the Director General of Civil Aviation, Government of India in Appeal under section 6A of the Aircraft (Demolition of Obstructions caused by Buildings and Trees etc.) Rules, 1994 by stayed”*

53. In Writ Petition No. 7872 of 2021 the order dated 15<sup>th</sup> January, 2021 of the Solapur Municipal Corporation and order dated 16<sup>th</sup> November, 2021 of the State Government and order / letter dated 17<sup>th</sup> November, 2021 of the Solapur Municipal Commissioner are challenged for the following reliefs:-

*“(a) Rule be issued;*

*(b) issue a writ of certiorari or writ in the nature of certiorari or any other writ, order or direction quashing and setting aside said impugned Order dated 15<sup>th</sup> January, 2021 issued by the Respondent No.1, thereby cancelling the No Objection Certificates dated 29<sup>th</sup> January 2013 and 10<sup>th</sup> August 2016 issued by the Respondent No. 2 - City Engineer, Solapur Municipal Corporation in favour of the Petitioner;*

*(c) issue a writ of certiorari or writ in the nature of certiorari or any other writ, order or direction quashing and setting aside said impugned Notice dated 17<sup>th</sup> November 2021 issued by the Respondent No. 3, thereby directing the Petitioner to demolish the said Chimney within the period of 7 days from receiving the said notice;”*

54. The abovesaid orders dated 15<sup>th</sup> January, 2021 are collectively referred to as the “impugned orders”.

55. Mr. Sakhre, learned Senior Counsel on behalf of Petitioner in both the Petitions submits that the impugned orders are bad in law. He would submit that his arguments in support of the Petitions would revolve around the following areas:-

- (i) Breach Of The Principles Of Natural Justice
- (ii) Permissions Already Obtained
- (iii) Earlier Decisions Of This Court Not Binding
- (iv) No Obstacle By Petitioner's Third Chimney
- (v) Discrimination By Grant Of Noc To Ntpc Chimney
- (vi) New Airport At Boramani
- (vii) Adverse Financial Implications On Petitioner
- (viii) Hardship

#### **BREACH OF THE PRINCIPLES OF NATURAL JUSTICE**

55.1. Assailing the impugned order dated 3 December 2019 passed by Respondent No. 2- Director General of Civil Aviation, arising out of orders dated 10 October 2018 passed by Respondent No. 4-Airport In-Charge and order dated 24 August 2019 passed by Respondent No.3- Deputy Director General of Civil Aviation, as well as notice dated 17 November 2021 issued by the Respondent No.3-The City Engineer, directing Petitioner to demolish the said chimney within a period of 7 days from its receipt and with respect to the order dated 15<sup>th</sup> January 2021 issued by the Respondent Corporation cancelling the NOCs, dated 29<sup>th</sup> January 2013 and 10<sup>th</sup> August 2016 issued by the Respondent No.2 in favour of Petitioner, Mr Sakhare, learned Senior

Counsel for Petitioner would submit that the impugned order dated 3<sup>rd</sup> December, 2019, is a complete non application of mind, does not disclose any reasons while being completely discriminatory against Petitioner. He would submit that the concerned Respondents have failed to appreciate that the obstacle survey conducted in the year 2017 by the Airports Authority of India has not been supplied to Petitioner nor has the said survey report been brought on record. He would further submit that no physical verification of the chimney was carried out by the Airport Authority as no physical verification report was provided to Petitioner. He also submits that none of the arguments made on behalf of Petitioners have been considered by the Respondent -Authority nor the same have been dealt with in the said order. He would therefore submit that there has been a clear breach of the principles of natural justice and on this ground alone, the impugned notices/orders be quashed and the petitions be allowed. He relies upon the decisions in the case of (i)Assistant Commissioner, Commercial Tax Department Works Contract and Licensing Kota v. Shukla and Brothers [(2010) 4 SCC 785] and (ii) Kranti Associates Private Ltd. And Anr v. Masood Ahmed Khan and Ors. [(2010) 9 SCC 498]

**PERMISSIONS ALREADY OBTAINED**

55.2. Learned Senior Counsel submits that Petitioner has obtained permission in respect of the subject chimney vide NOC dated 17<sup>th</sup> February, 2017, which is valid until 16<sup>th</sup> February, 2024. He submits that apart from that Petitioner already has the NOC dated 10<sup>th</sup> August, 2016 from Respondent-Corporation as well as permission from the MPCB dated 28<sup>th</sup> January, 2014, from the sugar Commissioner, Pune dated 7<sup>th</sup> May, 2013 and as such the construction of the subject chimney is lawful. He submits that earlier the NOC from the Municipal Corporation was dated 29<sup>th</sup> January, 2013, the construction had commenced in the year 2013 and completed in the year 2017-18 and in 2014 itself Petitioner had applied for NOC from the Airport Authority which, as mentioned above was granted on 17<sup>th</sup> February, 2017. On 7<sup>th</sup> March, 2017, Petitioner had requested for reconsideration the height clearance but despite persistent efforts and correspondence the same did not come through and an Appeal was filed on 28<sup>th</sup> July, 2017 to the DDGCA which after the order of the Hon'ble Supreme Court came to be decided by final order dated 24<sup>th</sup> August, 2019. He submits that in view of the said final order, the Hon'ble Supreme Court vide order dated 29<sup>th</sup> August, 2019 had

observed that the High Court decision dated 6<sup>th</sup> August, 2018 had become redundant. He submits that aggrieved by the final order dated 24<sup>th</sup> August, 2019, Appeal was filed before the DGCA which has summarily dismissed the Appeal of Petitioner without giving any reasons and confirmed the order of demolition dated 24<sup>th</sup> August, 2019. He submits that despite approvals granted by the authorities, the Respondents are seeking to unlawfully demolish Petitioner's third chimney.

#### **EARLIER DECISIONS OF THIS COURT NOT BINDING**

55.3. With respect to the decision of this Court dated 6<sup>th</sup> August, 2018 in Writ Petition No. 5253 of 2017 dismissing Petitioner's Petition, learned Senior Counsel would submit that, in view of the decision of the Hon'ble Supreme Court dated 29<sup>th</sup> August, 2019, the same cannot be looked into as the same has become redundant and in that sense the decision of the Bombay High Court cannot be said to be binding for the purposes of the challenge in these Petitions. Coming to the decision dated 21<sup>st</sup> December, 2020 of this Court in Writ Petition Stamp No. 29268 of 2019, learned Senior Counsel would submit that the same was withdrawn in view of the Government Resolution dated 29<sup>th</sup> October, 2020 to take out appropriate proceedings and therefore,

the same cannot be treated as a binding precedent.

#### **NO OBSTACLE BY PETITIONER'S THIRD CHIMNEY**

55.4. Learned Senior Counsel also submits that the Respondent-Airport Authority failed to appreciate that in the last few years i.e. in the year 2016 - 2017 and 2018 - 2019, flights safely landed and departed at Solapur report without causing obstacles interfering the obstacle limitation surfaces (OLS). He would submit that the apprehension of the Airport Authority is unfounded and without any basis.

#### **DISCRIMINATION BY GRANT OF NOC TO NTPC CHIMNEY**

55.5. Learned Senior Counsel refers to the approval granted by the Airport Authority, Western Region dated 13<sup>th</sup> November, 2012 to submit that the Respondent-Authorities have granted permission/NOC to the chimney constructed by the NTPC Ltd for height of 278.50 meters AGL, which is also close to the airport and 740 m above mean sea level. He submits that Respondent-Authorities have rejected a similar application made by the Petitioner. Learned Senior Counsel refers to a survey report with respect to runway-33 involving the NTPC chimney and submits that even the NTPC chimney and top elevation 736 meters AMSL is in the path near to the centre line of the runway whereas what is needed is 553 meters

AMSL for the chimney which is away from the centre line. It is also mentioned in the notes that the aircraft will not be able to land on runway-33 because of the NTPC chimney. They have failed to appreciate that the NTPC chimney height is more than 278 m and as a matter of record NTPC chimney height is 3 times more than Petitioner's chimney and on the ground of parity the impugned orders deserve to be set-aside as null and void. Learned Senior Counsel submits that this argument raised by Petitioner in its appeal has not been dealt with by the DGCA and that the appeal has been passed without considering all the material on record.

#### **NEW AIRPORT AT BORAMANI**

55.6. It is submitted that notice dated 12<sup>th</sup> November 2018 and order dated 10<sup>th</sup> October, 2018 are in contravention of the Government of Maharashtra's order bearing No. 271/PK 123/28 dated 21 August 2013 which clearly suggests that the existing Hotgi Airport would be closed down after construction of the new airport at Boramani, Tandulwadi. Referring to the said GR, learned Senior Counsel submits that after construction of the new airport at Boramani, the airport at Hotgi will be used for commercial purposes and when the said airport is going to be used for commercial purpose, there is no need to reduce

the height of chimney of Petitioner's Sugar factory. Learned Senior Counsel further refers to the GR No. MAD-1619/case No. 55-A dated 29<sup>th</sup> October, 2020 to submit that vide the said GR revised administrative and financial approval for the acquisition of additional land for Solapur airport at Boramani has been granted. He submits that land admeasuring 549.31 hectares is already acquired for the airport at Boramani. That vide the said GR, the approval for acquisition of additional land ad-measuring 29.94 hectares is granted by the Government of Maharashtra. He would submit that in view of this, it is clear that the Government of Maharashtra is going to use the old airport at Hotgi exclusively for commercial purpose and no flights will be taking off from there after the construction of the new airport at Boramani. It is submitted therefore that there is no need to reduce the height of the chimney of the Petitioner's sugar factory and the the proposed demolition is uncalled for.

#### **ADVERSE FINANCIAL IMPLICATIONS ON PETITIONER**

55.7. Learned Senior Counsel submits that Petitioner has taken huge loans for expansion and operations of the sugar factory which is to the tune of 620 crores from Bank of Baroda, National Co-operative Development Corporation and Solapur Janta Sahakari Bank for

construction of cogeneration plant and expansions of the existing plant. He also submits that Petitioner has given advances to transporters, harvesters etc. to the tune of around 22 crores for the crushing season 2020 - 2021. He submits that if the impugned orders are implemented and the chimney height is reduced to 52.2 m, the entire set of cogeneration plant, sugar factory and distillery will become non-functional leading to a closure of the said plant.

#### HARDSHIP

55.8. Learned Senior Counsel would submit that there are 28655 shareholders/farmers who are subscribers to Petitioner's sugar factory, who supply sugarcane to the factory, these are farmers from the districts of Maharashtra and Karnataka. He submits that around 33,300 hectares of sugarcane was registered with the factory by the said farmers for this crushing year. He submits that the crushing season is in progress and if the chimney is pulled down it will result in a closure of the sugar factory and shutting down the sugar factory which will create survival questions for farmers and workers of the factory as well as the livelihood of 15,000 cane cutters, 1200 workmen, 500 contractors and 1000 transport employees whose survival and livelihood is entirely dependent on the sugar factory.

56. In this view of the matter, learned Senior Counsel submits that the impugned notices/orders ought to be set aside and the concerned Respondent-Authorities be directed to regularise the construction of the third chimney.

57. Shri.Anil Singh, learned Additional Solicitor General has made submissions on behalf of Respondents No.1 to 3 in Writ Petition No.9446 of 2021.

58. Learned Additional Solicitor General refers to the decision of this Court dated 6<sup>th</sup> August, 2018 in Writ Petition No. 5253 of 2017 along with connected Writ Petitions and submits that the said decision squarely covers the issues raised in these Petitions. He submits that the earlier, communication dated 17<sup>th</sup> May, 2017 was challenged by Petitioner and the Kamgar Union wherein identical issues were raised and this Court after considering NOC dated 17<sup>th</sup> February, 2017 from the Airport Authority as well as communication dated 7<sup>th</sup> March, 2017 from Petitioner to the Airport Authority, the Airport Authority's decision dated 10<sup>th</sup> April, 2017, 17<sup>th</sup> May, 2017, where Petitioner's request was reexamined and after referring to the notification dated 30<sup>th</sup> September, 2015 issued by the Ministry of Civil Aviation and after

considering the Aircraft Rules, the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 and after examining the various provisions therein observed that Petitioner could not have claimed that its Chimney of 90 meter height does not in any manner violate or breach the Rules. This Court in paragraph 12 observed that from a bare perusal of the NOC from the Airport Authority, it was evident that the permissible top elevation was restricted to 493.96 meters AMSL and the same was conditional NOC. This Court questioned as to how Petitioners still asserted before the State Government that it had an NOC to construct a Chimney of 90 meters. It was held that far from such a permission, Airport Authority of India by the said communication, styled as NOC, restricted the height.

59. This Court also considered the issue of discrimination raised by the Petitioners therein including Petitioner herein with respect to NTPC Chimney and accepted the explanation that the existing NTPC Chimney was at a far place and not would impact the RCS operation at Solapur or obstruct or pose threat to the safety of Aircraft operations there and therefore, no parity could be claimed by Petitioner. This Court in paragraph 31 has held that in the face of the conditional NOC

restricting the height of Petitioner's Chimney to 493.96 meters, it is apparent that Petitioner has erected the structure contrary to law which is unauthorized beyond the limits specified. This Court upheld and reiterated the terms of the conditional NOC dated 17<sup>th</sup> May, 2017 holding that once everything that Petitioner attempted to do and has been unsuccessful and the Airport Authority of India reiterated the terms of its conditional NoC dated 17<sup>th</sup> May, 2017, then as to how Petitioner can request for making any order contrary to the Rules.

60. With respect to the contention of the Petitioner regarding new Airport at Boramani, in the judgment of this Court dated 6<sup>th</sup> August, 2018 in Writ Petition No. 5253 of 2017 it was observed that this was a matter of policy decision and the Court should never be seen as interfering with policy matters.

61. Learned Additional Solicitor General also relied upon the two orders of the Hon'ble Supreme Court dated 7<sup>th</sup> December, 2018 and 29<sup>th</sup> August, 2019 to submit that it is pursuant to the orders of the Hon'ble Supreme Court that the Airport Authority of India proceeded in the matter in accordance with law uninfluenced by any observations and the DDGCA passed order dated 24<sup>th</sup> August, 2019

and thereafter in Appeal, the DGCA passed its order on 3<sup>rd</sup> December, 2019 in accordance with the Aircraft Act and the Aircraft Rules after conducting a physical verification at the site based on Obstacle Survey - 2017 after confirming the penetration of the offending Chimney and after granting personal hearing to the Petitioner and considering the submissions made on their behalf. Learned Additional Solicitor General submits that it is in view of the order dated 24<sup>th</sup> August, 2019, passed by the DDGCA which was also based on the Obstacle Survey - 2017 as well as physical confirmation of the offending penetration of the said Chimney by 52.2 meters and after granting personal hearing to the Petitioner / Authorized Representative passed a reasoned order directing reduction of the Chimney height which was confirmed in Appeal by order dated 3/12/2019. He would submit that it is in this background, that the Hon'ble Supreme Court observed that the subject matter of challenge in the said Special Leave Petitions had become redundant and the same cannot be said to have made the decision of this Court dated 6<sup>th</sup> August, 2018 dealing with all the issues raised herein redundant.

62. Without prejudice to the above, learned Additional Solicitor General refers to the impugned order dated 3<sup>rd</sup> December, 2019

passed by the DGCA and submits that the Petition is hopelessly barred by delay and laches as having been filed on 29<sup>th</sup> October, 2021 which is almost 16 months after the passing of the said order. He submits that there has been no explanation offered for this delay and on this ground alone, the Writ Petition ought to be dismissed.

63. Learned Additional Solicitor General submits that the impugned order dated 3<sup>rd</sup> December, 2019 has been passed by the Respondent No.2 in Appeal under Section 6A of the said Rules which has confirmed the demolition / reduction in height in order dated 24<sup>th</sup> August, 2019. He relies on the said orders and submits that the said orders have been passed after following the principles of natural justice and after affording an opportunity of hearing to Petitioner. The said orders are well speaking orders and well reasoned orders, which have been passed after following the principles of natural justice as can be seen from a plain reading of the said orders.

64. He submits that the Solapur Airport at Hotgi commenced operations from the year 1987. That the offending Chimney was constructed by Petitioner beyond the permissible height in the year 2014 without the permission / NOC of the Airport Authority in

complete breach of the Rules. He submits that though time was granted to Petitioner to obtain permission / rectify by demolishing the said structure upto the permissible height, despite the same, Petitioner failed and neglected to do so and has invited the impugned orders.

65. He would submit that the said Chimney owned by Petitioner was identified by the Airport Authority as the critical obstacle infringing O.L.S. of the Solapur Airport based on Obstacle Survey - 2017 which is penetrating the approach surface of RWY-33 by 52.2 meters against the permissible top elevation of 493.96 meters AMSL. Learned Additional Solicitor General would also submit that pursuant to an order of physical verification issued to Petitioner under Rules 3 and 4 of the Air Craft Rules, 1994 pursuant to a physical verification carried out by the Airport Authority at the site and after verification, the Airport Authority confirmed penetration of the said Chimney by 52.2 meters and forwarded the details to Deputy DGCA.

66. He would submit that in accordance with Rule 6 of the Aircraft Rules, 1994, a personal hearing was granted to the owner of the Chimney by DDGCA on 31<sup>st</sup> May, 2019. After the said hearing, it was

established that the Chimeny was penetrating approach surface of RWY-33 by 52.2 meters. Thereafter, in exercise of the powers conferred under the said Rule 6, Petitioner was directed by the DDGCA by the order dated 24<sup>th</sup> August, 2019 to reduce the height of the Chimeny to 493.96 meters AMSL within 60 days from the date of the issuance of the said order.

67. Learned Additional Solicitor General submits that being aggrieved by the said order dated 24<sup>th</sup> August, 2019, Petitioner filed an Appeal under Rule 6A of the Air Craft Rules, 1994 on 22<sup>nd</sup> October, 2019 before the Appellate Authority i.e. the DGCA.

68. It is submitted that the DGCA heard the Appeal on 3<sup>rd</sup> of December, 2019 when Mr.Dharmraj A Kadadi - President and Mr.Sameer Bhagwat Salgar - Managing Director of Petitioner attended the hearing at the Headquarters of DGCA and made submissions that final order dated 24<sup>th</sup> of August, 2019 passed by the DDGCA was contrary to the principles of justice and equity and that the Appeal be dismissed.

69. Pursuant to the aforesaid hearing, the impugned order dated 3<sup>rd</sup> of December, 2019 came to be passed by the DGCA under the

provisions of Rule 6A of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994 confirming the final order dated 24<sup>th</sup> August, 2019 passed by the DDGCA. By the said order dated 3<sup>rd</sup> December, 2019, Petitioner was directed to reduce the height of the offending Chimney to 498.4 meters AMSL within 60 days of issue of the said order. He submits that therefore, the order passed by DGCA is proper and lawful and does not call for any interference by this Court.

70. Learned Additional Solicitor General submits that the first set of Rules deal with obtention of NOC and the second set deals with the power to demolish. He submits that the enquiry under the Aircraft Rules, 1994 is limited.

71. He draws our attention to Section 9A of the Aircraft Act, 1934 and submits that the Central Government has power to prohibit or regulate construction of buildings, planting of trees etc., if it is of the opinion that it is necessary or expedient to do so for the safety of Aircraft operations. He would submit that it is under these powers that the building or structure within a radius not exceeding 20 k.m. from the aerodrome reference point is permitted to be constructed or

erected and that the Airport Authority has power to direct the owner or the person having control over such building or structure to demolish the offending building or structure. He submits that not only that even the power to regulate the height of the building or structure has been invested in the Authority pursuant to Section 9A with power to prohibit the construction or erection of a building or structure higher than a specific height and also to direct the owner or a person having control over such an offending building or structure to reduce the height upto the specified height. He would submit that all these Rules and Regulations are on the basis of the nature of the Aircraft operating as well as the international standards and practices. He would submit that it is mandatory as per the said Section for every person to comply with any direction contained in the notifications issued pursuant to the said Section. He submits that as can be seen the powers contained in Section 9A are wide enough.

72. Learned Additional Solicitor General submits that pursuant to the Aircraft Act, 1934, the Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994 for implementation of the said Section 9A of the Aircraft Act, 1934, refers to the procedure to be followed with respect to buildings and structures. He submits

that the Rules clearly provide for the procedure for service of the notification, details to be furnished by the owner, the procedure for physical verification, passing of the final order pursuant to the details of the offending structure i.e. the structure which violates the provisions of the notification after giving an opportunity of hearing to the owner, the procedure for Appeal against the final order, obligation of the owner to comply with the orders and as to how the non compliance thereof is to be reported to the District Collector.

73. Learned Additional Solicitor General submits that the owner is also entitled to claim compensation under Section 9B of the Aircraft Act. He submits that Section 11B also provides for penalty for failure to comply with the directions issued under Section 9A of the Aircraft Act which include not only mandatory penalty but also punishment with imprisonment for a term of upto two years. He submits that pursuant to Section 11B(2), in the event of failure of the owner to comply with the direction contained in the orders, the authorized officer would be competent to demolish such building or structure or reduce the height to the specified height.

74. Learned Additional Solicitor General submits that the impugned order dated 3<sup>rd</sup> December, 2019 has been passed after following the provisions of the Aircraft Act as well as Rules and the same is therefore proper.

75. Learned Additional Solicitor General submits that the conduct of Petitioner is not clean. He submits that it is an admitted position that Petitioner constructed the offending Chimney without the permission of the Airport Authority as required under the Aircraft Act and the Rules. He submits that the said construction beyond 498.4 meters was prohibited and Petitioner was aware of the same and despite that, he erected the said Chimney beyond the specified height. He would submit that Petitioner applied for the said permission but was not granted, therefore, the construction of the Chimney is not only illegal as it violates the statutory provisions but also an offence under the Aircraft Act. He submits that the subsequent permission granted was upto a particular height and therefore, Petitioner was directed to reduce the height which it has failed and neglected to do inviting the impugned orders and directions upon itself.

76. The Airport Authority of India has filed an intervention Application No. 4274 of 2021 to be impleaded as a party in Writ Petition No. 7872 of 2021. It is submitted by Ms Shilpa Kapil, learned Counsel for Airport Authority of India that without obtaining the permission from other Government Authorities as required under the Corporation's in principle NOC, the Petitioner-sugar factory started and completed the construction of the offending structure viz. the third chimney, during the year 2014.

77. Learned Counsel for the Airport Authority would submit that the Solapur Airport is operational and there is training and non-scheduled operational flights on daily basis. However, due to the presence of major obstacle of Petitioner's third chimney there are no current scheduled operations.

78. She would submit that two old chimneys of Petitioner were obstacles in the year 2009-10 and the runway threshold was shifted to 600 meters. One end of runway is called 15 and the other end is 33. At that time Kingfisher Airlines operated with ATR-723 aircraft having passenger capacity of 90-100 passengers. However, in the year 2014, when the new chimney was constructed Kingfisher had stopped

operations. She would submit that landing of aircraft is as per wind direction. If while landing the aircraft there is disbalance, the aircraft takes off again and has to again land. This take off again is not possible due to the presence of Petitioner's third chimney at the end of runway 33. The aircraft cannot go around for taking off while landing due to the presence of two chimneys on the right side making the said runway inoperational.

79. Learned Counsel would submit that the total runway length is 2009 meters, however, due to the location of the third chimney, landing distance available is only 842 meters. No aircraft can land in this distance. The Petitioner's chimney is at a distance of 900 meters i.e., less than 1 km away from runway 33 end and falls exactly in the approach path.

80. It is submitted on behalf of the Airport Authority that since the Petitioner was erecting a steel structure at the approach path zone of runway 33 end of the airport, the Airport Authority of India vide communication dated 18<sup>th</sup> February, 2014 intimated to the Collector of Solapur that the Petitioner sugar factory was erecting a steel structure which would be a severe obstacle to the aircrafts during

landing/taking off on the runway which violates the airport norms. It was also informed that Petitioner was erecting the said structure without taking any NOC from the Airport Authority and requested the Collector to take appropriate steps to demolish the said structure immediately.

81. Thereafter, the Airport Authority of India issued a letter dated 1<sup>st</sup> May, 2014 to the Petitioner objecting to the permissible height for construction in respect of which the Airport Authority suggested the Petitioner to give an undertaking/sanction plan within 90 days. It is submitted that the said letter was not an NOC.

82. The Airport Authority of India issued a letter dated 12<sup>th</sup> September, 2014 to the Prant Tehsildar, Collector Office, Solapur, with a copy to the Petitioner stating that NOC was not granted to the Petitioner for erection of chimney. It is stated in the said letter that the Airport Authority had issued a letter to the Petitioner for reconstructing the height only upto 41 meters AGL requesting stoppage of construction of chimney and for which Petitioner was required to submit an undertaking within 90 days. The Tehsildar was requested by the Airport Authority to take necessary action for stoppage of work as no NOC was granted for the said construction.

83. The Airport Authority of India issued NOC for height clearance dated 17<sup>th</sup> February, 2017 and NOC for height clearance dated 17<sup>th</sup> May, 2017 only upto the height of 30 meters AGL, whereas Petitioner had already constructed the chimney with a height of 90 meters AGL in the year 2014 itself. The permissible top elevation as per NOC for height clearance is 493.96 meters AMSL and the site elevation in meters AMSL as submitted by the Petitioner was 463 meters. It is submitted on behalf of the Airport Authority that Petitioner cannot commence construction without obtaining the NOC from the Airport Authority of India, Ministry of Civil Aviation, Government of India and other appropriate authorities.

84. Learned Counsel for the Airport Authority submits that the NOC given by the Respondent No.2-Solapur Municipal Corporation was subject to Petitioner obtaining NOC from all appropriate Government Authorities, whereas Petitioner had constructed the offending chimney of 90 meters AGL during the year 2014 itself without Noc/permission from Airport Authority and the NOCs issued by the Airport Authority were dated 17<sup>th</sup> February, 2017 and 17<sup>th</sup> May, 2017 and that too only for a height of 30 meters AGL. She submits that this itself shows that Petitioner is in gross violation of the terms and

conditions of the NOC granted by the Respondent No.2-Corporation.

85. With respect to Petitioner's objection regarding discriminatory treatment, learned Counsel submits that the location of NTPC chimney is at a distance of 8981 meters i.e., approximately 9 km away from the runway strip and in no way poses an obstacle for flight operations at the Solapur Airport at Hotgi.

86. In this view of the matter, she submits that the unauthorised construction by Petitioner affects air safety and therefore, same cannot be permitted to retain and ought to be demolished in compliance with the DGCA order, orders dated 24<sup>th</sup> August, 2019 confirmed by order dated 3<sup>rd</sup> December, 2019 as well as decision of this Court in various Writ Petitions and the orders of the Hon'ble Supreme Court of India.

87. Learned Counsel submits that the Airport Authority of India is a necessary party and deserves to be impleaded as a party to the Petition(s).

88. She submits that in view of the clear violation and breach of the NOC granted by the Airport Authority and the Respondent-Corporation, the offending structure ought to be demolished. She, submits that the Petitions deserve to be dismissed and the impugned notices/orders ought to be sustained.

89. Mr Bodake for Respondents Nos. 2, 3, 4 in Writ Petition No. 7872 of 2021 filed by Petitioner essentially against the impugned orders passed by the Respondent Solapur Municipal Corporation, would submit that the Petition is barred by *res judicata*, in view of the order dated 21<sup>st</sup> December, 2020 in Writ Petition (ST) No. 29268 of 2019 whereby the very same Petitioner on the very same challenge has withdrawn the said Writ Petition in view of GR dated 29<sup>th</sup> October 2020. The said order also records that the Appeal against the order dated 24<sup>th</sup> August, 2019 of the Deputy DGCA has been dismissed by the DGCA by its order dated 3<sup>rd</sup> December, 2019 and Petitioners have been directed to reduce the height of the chimney to 498.4 m AMSL, within 60 days from the date of the order. He would submit that once Writ Petition challenging the earlier notice dated 11<sup>th</sup> November 2021 is withdrawn that the 2<sup>nd</sup> notice dated 17<sup>th</sup> November, 2021 is consequential and Writ Petition filed challenging the 2<sup>nd</sup> notice is not

maintainable. Therefore, in view of the order of this court the present Writ Petition No. 7872 of 2021 is completely barred pursuant to the principle of *res judicata*.

90. He submits that these notices have been issued by the Corporation as the planning authority. He submits that the boiler has to be stopped to demolish the chimney.

91. He refers to the undertaking dated 11<sup>th</sup> August 2017 given by Petitioner (at pg 469 of the said Writ Petition) pursuant to which the petitioner would before 11<sup>th</sup> November, 2017 in compliance with the aircraft rules and without breaching the same would make an alternate arrangement with respect to the newly constructed chimney. He submits that petitioner has not abided by the said undertaking to the Corporation.

92. Learned counsel submits that thereafter 3 reminder letters were sent to petitioner to comply. Ld. counsel refers to the reminders on pages 471, 472 ending with the notice dated 11<sup>th</sup> October, 2020 on page 473. However, Petitioner has failed and neglected comply with the same.

93. The learned Counsel then takes us to pages 498 and in particular to page 500 referring to directions by the Maharashtra Pollution Control Board dated 29<sup>th</sup> November, 2021 to close down the Petitioner's Sugar factory.

94. Learned Counsel informs this Court that the bids have been floated inviting tenders for demolition of the subject chimney and work order also has been issued. He urges that the notice of demolition is legal. The Writ Petition ought to be dismissed as petitioner is not entitled to any relief. He, therefore, submits that upon this court dismissing the Writ Petition Respondent-Corporation will be able to go ahead and demolish the offending structure.

95. In this view of the matter learned Counsel submits that the Petitions ought to be dismissed.

96. Mr. Ramdas Sabban, appearing for the intervenor in Interim Application No. 171 of 2022 in Writ Petition No. 7872 of 2021 would submit that that there are 3 chimneys in the Petitioner's sugar factory and we are concerned with the last one. He would submit that apart from the airport at Hotgi, there is no other airport facility in Solapur as argued or submitted on behalf of Petitioner.

97. Learned Counsel draws the attention of this Court to the decision of this Court dated 21<sup>st</sup> December, 2020 in Writ Petition(ST) No. 29268 of 2019 to submit that the said decision challenging the notice issued by the Respondent - Corporation dated 11<sup>th</sup> November, 2019 under section 478 of the MMC Act to demolish/pull down the chimney was withdrawn in view of Government Resolution dated 29<sup>th</sup> October, 2020, wherein Petitioner was given a period of 4 weeks until which time the Respondents would not demolish the chimney. It was further recorded in the said order that Petitioner would not move this court for any extension. He submits that this decision has not been challenged anywhere and has therefore attained finality.

98. Learned Counsel also refers to the decision of this Court dated 6<sup>th</sup> August, 2018 in Writ Petition No. 5253 of 2017 along with connected Writ Petitions and submits that the said Petition was dismissed by this Court with strictures and refers to page 91 to submit that Petitioner was held to be arrogant, adamant wrongdoer. He, therefore, submits that in public interest no further time should be granted to Petitioner to bring down the chimney.

99. In this view of the matter learned Counsel submits that the Petitions ought to be dismissed.

100. Mr. Shrishail Sakhare, learned Counsel representing the intervenors in Interim Application No. 296 of 2022 and in Interim Application (ST) 512 of 2022 would submit that this is the 3<sup>rd</sup> round of litigation by Petitioner. He would submit that in the 1<sup>st</sup> round all issues have been considered. It is submitted that the decision dated 6<sup>th</sup> August, 2018 in Writ Petition No. 5253 of 2017 along with connected Writ Petitions has not been set aside by the Hon'ble Supreme Court nor has it been rendered redundant as claimed on behalf of Petitioner. Learned Counsel refers to paragraph 29 of the said order which is quoted as under:

*"29. Our attention was also invited to the fact that on 28-7-2007 the petitioners sought to rely upon an order of the National Green Tribunal or its requirements to increase the height above the ground level to 90 metres. Pertinently, on such an application made as on 28/2017, the AAI has not altered its stand. It has been also urged by the petitioners that there is construction of a Chimney by National Thermal Power Corporation Limited ("NTPC" for short) and of the same height. That is also an industry. That construction is made pursuant to the NOC of 13-9-2012. However, the Chimney has been constructed, according to the Additional Solicitor General, by this Corporation at a far off place and that does not obstruct or pose any threat to the safety of aircraft operations at the concerned Airport. Hence no parity can be established insofar as this Corporation is concerned."*

101. Learned Counsel then refers to the order dated 21<sup>st</sup> December 2020 in Writ Petition(ST) No. 29268 of 2019 to submit that the said Writ Petition challenging the notice of demolition and dated 11<sup>th</sup> November, 2019 issued by the Respondent- Corporation under section 478 of the MMC Act was withdrawn in view of Government Resolution dated 29<sup>th</sup> October, 2020 and therefore there is no question of Petitioner once again challenging the consequent demolition orders. Learned Counsel submits that Petitioner was allowed the erection of the chimney only up to 498.4 mts but it has gone ahead and breached the said condition. He refers to pages 19 to 24 of the Interim Application in support of his case. He submits that the site inspection report with respect to the said chimney at the Petitioner's Sugar Factory conducted on 23<sup>rd</sup> February, 2014 clearly indicates the breach pursuant to which, notice dated 24<sup>th</sup> February, 2014 by the Respondent-Corporation under Section 478 of the MMC Act, 1949 came to be issued to Petitioner calling upon the Petitioner to bring down unauthorized construction within a period of 8 days failing which, prosecution / proceedings would be initiated against the Petitioner and the Respondent-Corporation would also take steps to demolish the said unauthorized construction. Learned Counsel further submits that thereafter, notices dated 6<sup>th</sup> April, 2017 came to

be issued from the Collector of Solapur as well as by Solapur Municipal Corporation informing Petitioner of the permissible height and requesting Petitioner to remove the Chimney or bring its height within a permissible limits within a period of one month, failing which, coercive steps would be taken. Further, learned Counsel also refers to communication (on page 24 of the said Interim Application) by Additional Secretary, General Administration Department - Government of Maharashtra to Petitioner of the permissible height and the aforementioned communications with a request to bring down the same. He submits that by the said communication Petitioner was also informed that pursuant to the regional connectivity scheme of the Centre, as a first step, the Airport at Hotgi has been made operational and the aim would be to increase the air traffic and as the Airport at Boramani will take a long time therefore, during such period, it would not be possible to reduce the air traffic at Hotgi. Petitioner was therefore, requested to remove the said Chimney.

102. In this view of the matter learned Counsel submits that the Petitions ought to be dismissed.

103. With respect to the allegation of delay and laches, it is stated that in paragraph-10 of the Petition No. 9446 of 2021, it is stated that after the impugned order was passed on 3<sup>rd</sup> December, 2019, the matter was placed before the Board of Directors for taking decision to take further course of action under the aforesaid order. The Board of Directors had decided to challenge the said order before this Court. However, in the meanwhile, the Government of India declared lockdown from 25<sup>th</sup> March, 2020 due to Covid-19 pandemic and thereafter time and again the State Government has imposed lockdown like restrictions in the State of Maharashtra till August-2021. Therefore, Petitioner could not approach this court and there was delay/ laches in approaching this Court.

104. It is further submitted that the said delay/laches caused in filing the Petition is neither intentional nor deliberate and the same has been caused due to unavoidable circumstances, therefore, it is necessary in the interest of justice to condone the delay caused in filing the Petition. It is submitted that if the delay / laches is not condoned, Petitioner will suffer irreparable loss and prejudice. And there will not any loss or prejudice to the Respondents.

105. We have heard learned Counsel for the parties and with their able assistance we have perused the papers and proceedings in the matter. We have considered the said contentions and given our thoughtful consideration to the matter.

106. Let us first deal with the issue of delay and laches in filing Writ Petition No. 9446 of 2021, raised by Respondents. We note that that after the impugned order was passed on 3<sup>rd</sup> December, 2019, the matter was placed before the Board of Directors for taking decision to take further course of action pursuant to the aforesaid order. It is stated that the Board of Directors then decided to challenge the said order before this Court. The Government of India declared lockdown from 25<sup>th</sup> March, 2020 due to Covid-19 pandemic and thereafter from time to time the State Government has imposed lockdown like restrictions in the State of Maharashtra till August 2021. The W.P. No. 9446 of 2021 has been filed on 30.10.2021.

107. In our view, the delay caused in filing the Petition can be said to be neither inordinate nor intentional nor deliberate having been caused due to unavoidable circumstances. In fact the suo moto order dated 10<sup>th</sup> January, 2020 of the Hon'ble Supreme Court in MA No. 21

of 2022 in Ma No. 665 of 2021 in Sua Moto Writ Petition (C) No. 3 of 2020 have excluded the period between 15<sup>th</sup> March, 2020 till 28<sup>th</sup> February, 2022 due to Covid-19 for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicials. Considering the overwhelming factual background of the matter thus far involving the COVID-19 pandemic and its impact on all the stakeholders including farmers, public financial institutions, in the interest of justice we condone the delay caused in filing the Petition.

108. Mr. Sakhare, learned Senior Counsel for the Petitioners has vehemently canvassed that the impugned order dated 3<sup>rd</sup> December, 2019 in Writ Petition No. 9446 of 2021 has been passed in gross violation of the principles of natural justice, which has of course been denied by Respondents. It would therefore, necessary first to examine the issue whether the impugned order dated 3<sup>rd</sup> December, 2021 has been passed by DGCA in violation of the principles of natural justice and are therefore liable to be quashed and set aside.

109. A perusal of the impugned order dated 3<sup>rd</sup> December 2019, indicates that in paragraph No. 2 it is recorded that the

Appellate Authority has identified the Chimney owned by Petitioner as a critical obstacle infringing obstacle limitation surface of Solapur Air Port based on Obstacle Survey of 2017. It is stated that the Chimney is penetrating the approach surface of Runway -33 by 52.2 mtrs against the permissible top elevation of 498.4 mtrs above mean sea level.

110. However, there does not appear to be any discussion on the contents of obstacle survey of 2017 nor as to how and based on what parameters the said survey has identified the Chimney as a critical obstacle infringing obstacle limitation surface and Runway-33.

111. One of the grounds of Appeal raised are that the physical survey Report has also not been furnished to Petitioner nor is there any discussion with respect to the same to reach the conclusion on how the said Chimney infringes/penetrates approach Runway-33. This, in our view would be a concern with respect to the principles of natural justice that authorities in appeal ought to scrupulously be conscious of.

112. In paragraph No. 3 of the said order, it is recorded that the order of physical verification was issued to the owner of the said Chimney under Rules 3 and 4 of the Aircraft Obstruction Demolition Rules, 1994 with a direction to furnish a plan showing the said Chimney and its dimensions, etc. Statedly, a physical verification was carried out at the Chimney site and after the verification about the penetration of the said Chimney by 52.2 mtrs was confirmed by the Airport Authority, the same was forwarded to the DGCA.

113. Again we do not find any physical verification report or document nor any discussion on these findings as to how and on what basis the said penetration of Chimney by 52.2. mtrs was arrived at. There are no details mentioned nor any reasoning. In our view, considering that this is an order in Appeal, the least that the Appellate Authority could have done is to furnish the details of the process and procedure as to how the said verification was carried out, what, how and when was the said verification forwarded to DGCA.

114. Although, the presence of Mr. Dharmraj A. Kadadi, President of Petitioner and Mr. Sameer Salgar, Managing Director of Petitioner, who had attended the hearing and the submissions that the final

order dated 24<sup>th</sup> August 2019 (which had been the subject matter of the challenge in the said Appeal) was against the principles of justice and equity, is recorded, there are no details or record of the submissions made by them nor has the Appellate Authority dealt with any of them nor has it dealt with the grounds in the Memo of Appeal, including the non furnishing of the Obstacle Survey Report of 2017, the Physical Verification Report, that several successful landings had taken place between 2016 and 2019 or with the ground that other necessary permissions from State of Maharashtra, Solapur Municipal Corporation, Sugar Commissioner, MPCP had been obtained by the Petitioner, the impracticality and non viability of shifting of the Chimney at a distance of 800 meters and beyond, the GRs indicating the State Government's decision to shift Solapur Airport to Boramani and Tandulwadi, and the conversion of the Hotgi complex to a commercial project.

115. All that we see recorded in paragraphs No. 4 and 5 of the said order is that personal hearing was granted to Petitioner by the Deputy Director General of Civil Aviation while passing the order dated 24<sup>th</sup> August, 2019 and after hearing it was established that the Chimney was penetrating the approach surface of Runway-33 by 52.2

meters and in exercise of the powers under Rule 6 of the Aircraft Demolition Rules 1994, the Deputy Director General of Civil Aviation had directed Petitioner to reduce height of the chimney to 498.4 mtr. AMSL within 60 days from the date of the said order dated 24<sup>th</sup> August 2019 and that under Rule 6-A of the Aircraft Demolition Rules, 1994, the Appeal had been filed by Petitioner on 22<sup>nd</sup> October 2019 against the order dated 24<sup>th</sup> August, 2019.

116. The concluding paragraph No. 7 of the said order simply records that in view of Rule 6A of the Aircraft Rules 1994, the Director General of Civil Aviation confirmed the final order dated 24<sup>th</sup> August 2019 passed by the Deputy Director General and directed Petitioner-Appellant therein to reduce height of the Chimney to 498.4 mtrs AMSL within 60 days of the issue of the order.

117. We observe that an order in Appeal considering the order of Deputy Director General merely confirms the said order of the lower authority directing reduction of the height of the Chimney, without even dealing with any of the contentions of Petitioners made in the memorandum of Appeal and passes an order without any reasons. Passing of such cryptic orders by the Appellate Authorities, in our

view cannot be permitted. There is a duty of judicial, quasi judicial authorities, administrative authorities to record reasons before passing orders. Reason is the soul of an order. Principles of natural justice involve notice and opportunity of hearing to a person who is likely to be adversely affected and also the giving of reasons for arriving at any conclusion. Reasoning shows proper application of mind and violation of the same vitiates such an order.

118. In the facts of the case at hand we observe that though the hearing was given to Petitioner but no reasons have been given by the DGCA for arriving at the conclusion confirming the order of Deputy Director General. No reasons have been recorded to justify the contents of the order in paragraph No. 7.

119. In this case, there has been no discussion or reasoning whatsoever in the said order dated 3<sup>rd</sup> December, 2019.

120. In this context, the decision of the Supreme Court in the case of *Assistant Commissioner, Commercial Tax Department Works Contract and Licencing, Kota Vs. Shukla and Brothers* (supra) is relevant. Paragraphs No. 8, 14, 17 and 19 of the said decision are

quoted as under:-

*“8. As is evident from the facts narrated in the Revision Petition and the grounds raised besides raising the question of law, a factual controversy was also raised going to the very root of the case, that the rolling shutters & doors fixed by the respondent on the shops were not manufactured of tax- paid material. Thus, question of law, mixed questions of law and facts were not examined by the High Court in some detail, but as already noticed, by one line order the Revision Petition was dismissed. During the course of hearing, we were informed that arguments were also addressed with reference to judgments of this Court which were also cited before the Board. However we find no mention thereof in the impugned Order. It was also contended that similar questions do arise in number of other cases, thus it was expected of the High Court to deal with the contentions rather than pass a cryptic order.*

*14. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders.*

17. In *Gurdial Singh Fijji v. State of Punjab* while dealing with the matter of selection of candidates who could be under review, if not found suitable otherwise, the Court explained the reasons being a link between the materials on which certain conclusions are based and the actual conclusions and held, that where providing reasons for proposed supersession were essential, then it could not be held to be a valid reason that the concerned officer's record was not such as to justify his selection was not contemplated and thus was not legal. In this context, the Court held -

"18. ... "Reasons" 'are the links between the materials on which certain conclusions are based and the actual conclusions.' The Court accordingly held that the mandatory provisions of Regulation 5(5) were not complied with by the Selection Committee. That an officer was "not found suitable" is the conclusion and not a reason in support of the decision to supersede him. True, that it is not expected that the Selection Committee should give anything approaching the judgment of a Court, but it must at least state, as briefly as it may, why it came to the conclusion that the officer concerned was found to be not suitable for inclusion in the Select List."

*This principle has been extended to administrative actions on the premise that it applies with greater rigor to the judgments of the Courts.*

19. In the cases where the courts have not recorded reasons in the judgment, legality, propriety and correctness of the orders by the court of competent jurisdiction are challenged in absence of proper discussion. The requirement of recording reasons is applicable with greater rigor to the judicial proceedings. The orders of the court must reflect what weighed with the Court in granting or declining the relief claimed by the applicant. In this regard we may refer to certain judgments of this Court."

121. Also decision of the Hon'ble Supreme Court in the case of *Kranti Associates Private Ltd and Anr. Vs. Masood Ahmed Khan and Ors.* (supra) is relevant. It has been observed in this case that there is a duty to record reasons and a cryptic, non reasoned order is unsustainable as reasons have virtually become an indispensable component of decision making process by not only judicial and quasi judicial bodies but even by the administrative bodies. Paragraphs No. 14, 15, 16, 17 and 18 are relevant and are quoted as under:

*“14. The expression “speaking order” was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of the writ of certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See pp. 1878-97, Vol. 4, Appeal Cases 30 at 40 of the Report).*

*15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the “inscrutable face of a sphinx”.*

*16. In Harinagar Sugar Mills Ltd.v. Shyam Sunder Jhunjhunwala[AIR 1961 SC 1669] , the question of recording reasons came up for consideration in the context of a refusal by Harinagar to transfer, without giving reasons, shares held by Shyam Sunder. Challenging such refusal, the transferee moved the High Court contending, inter alia, that the refusal is mala fide, arbitrary and capricious. The High Court rejected such pleas and the transferee was asked to file a suit. The transferee filed an appeal to the Central Government under Section 111(3) of the Companies Act, 1956 which was dismissed. Thereafter, the son of the original transferee filed another application for transfer of his shares which was similarly refused by the Company. On appeal, the Central Government quashed the resolution passed by the*

*Company and directed the Company to register the transfer. However, in passing the said order, the Government did not give any reason. The Company challenged the said decision before this Court.*

*17. The other question which arose in Harinagar [AIR 1961 SC 1669] was whether the Central Government, in passing the appellate order acted as a tribunal and is amenable to Article 136 jurisdiction of this Court.*

*18. Even though in Harinagar [AIR 1961 SC 1669] the decision was administrative, this Court insisted on the requirement of recording reason and further held that in exercising appellate powers, the Central Government acted as a tribunal in exercising judicial powers of the State and such exercise is subject to Article 136 jurisdiction of this Court. Such powers, this Court held, cannot be effectively exercised if reasons are not given by the Central Government in support of the order (AIR pp. 1678-79, para 23). ”*

122. In our view, the reasons must be recorded to support conclusion.

123. Further, it has been submitted by Petitioner that neither the Obstacle Survey Report of 2017 nor the Physical Verification Report has been furnished to Petitioner, which has not been disputed by the Respondents.

124. In this view of the matter, we have no hesitation in holding that impugned order dated 3<sup>rd</sup> December 2019 in Writ Petition No. 9446 of 2021 is in violation of principles of natural justice and deserves to be set aside.

125. The impugned order dated 3<sup>rd</sup> December, 2021 in Writ Petition No. 9446 of 2021 is therefore quashed and set aside. However, in the interests of justice, we remand the matter back to the DGCA for a fresh hearing and after giving Petitioner an opportunity of being heard.

126. Petitioner shall appear before the DGCA on 27<sup>th</sup> June, 2022 at 11.00 a.m. and the DGCA shall pass a speaking order with reasons within 8 weeks thereof. In the event the decision is adverse to Petitioner's interest, the said order shall not be implemented for a period of four weeks thereafter for Petitioner to take out appropriate proceedings.

127. In Writ Petition No. 7872 of 2021, the order dated 15<sup>th</sup> January, 2021 by the Solapur Municipal Corporation and the notice dated 17<sup>th</sup> November, 2021 issued by the Town Planning of Solapur Municipal Corporation is under challenge. The order dated 15<sup>th</sup> January, 2021 refers to the subject of demolition of the subject Chimney. We observe from the order dated 15<sup>th</sup> January, 2021 that the said order has been passed after considering the impugned order dated 3<sup>rd</sup> December, 2019 by the DGCA which has been impugned in Writ Petition No. 9446

of 2021 which order we have set aside today and remanded the matter for fresh consideration by the DGCA. We note that there are references to the notice dated 11<sup>th</sup> November, 2019 under Section 478 of the MMC Act. After considering the reply of Petitioner who was represented at the said hearing, the Commissioner of Solapur Municipal Corporation has passed the order cancelling the "in principle no objection certificate" and holding that the said Chimney has been constructed without permission and the construction is illegal / unauthorized, thereby calling upon the Petitioner to demolish the same by 22<sup>nd</sup> January, 2021 failing which, after 23<sup>rd</sup> January, 2021, action of demolition of the said Chimney having been constructed without permission under Clause 478(2) of the MMC Act would be undertaken by the Respondent-Corporation at the expense of Petitioner.

128. The impugned notice dated 17<sup>th</sup> November, 2011 refers to *inter alia* the order of the Airport Authority as well as the Court orders and it is stated therein that the Respondent-Corporation has been directed by the State Government of Maharashtra to take a quick essential action regarding demolition of the illegal Chimney of the Factory. It is stated that the demolition is being supervised by the Commissioner

and the action of demolition is being taken as per order given by him. It is further stated therein that if the said Chimney is not demolished within a period of seven days from the date of receipt of the notice, the action of demolition will be undertaken by the Respondent-Corporation and the expense paid to the contractor and the supervision charges would be collected from Petitioner.

129. As can be seen from the factual matrix narrated above, the Impugned Order and Notice, in Writ Petition No. 7872 of 2021 have their genesis in the Impugned Orders and proceedings and orders preceding the same in the above remanded appeal and would have a bearing on any proceeding in respect of the challenge in Writ Petition No. 7872 of 2021. We therefore deem it proper to set aside the said order dated 15<sup>th</sup> January, 2021 and notice dated 17<sup>th</sup> November, 2021 with a direction to the concerned Respondents therein including the Solapur Municipal Corporation to hear Petitioner afresh and to pass a speaking and reasoned order expeditiously. In the event the decision is adverse to Petitioner, the said order shall not be implemented for a further period of four weeks from the date of communication of the said order for Petitioner to take out appropriate proceedings, if so advised.

130. In view of the above, we do not deem it necessary to deal with the other issues/ rival contentions of the parties. All contentions are kept open.

131. Petitions are disposed of in the above terms with no order as to costs.

132. All concerned to act on an authenticated copy of the order.

(ABHAY AHUJA, J.)

(A. A. SAYED, J.)

GOVERNMENT OF INDIA



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भारत सरकार

महानिदेशक नगर विमानन का कार्यालय  
साफदरजंग एयरपोर्ट के सामने  
नई दिल्ली - ११० ००३

Ref No : C-18011/06/22  
Dated : 19.09.2022

**ORDER****Background**

1. Solapur airport is listed at S.No.88 in Schedule III of Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015, published vide GSR 751(E), as an aerodrome operated by Airport Authority of India, under the category of "Aerodromes operated by Airports Authority of India and joint venture companies" and is an unlicensed aerodrome. The Aerodrome Operator submitted the Obstacle Survey Report vide its letter dated 28.09.2018 after carrying out obstacle survey in 2017. On the basis of this survey report the obstacle removal process was initiated and demolition of Chimney of Shree Siddeshwar Sahakari Sakhar Karkhana Ltd. (SSSSK Ltd.) was ordered vide Final Order dated 24.08.2019 issued by the then DDG, Shri D.C. Sharma, under rule 6 of the Aircraft (Demolition of Obstructions Cause by Buildings and Trees Etc.), Rules, 1994. The SSSSK Ltd. preferred an appeal under rule 6A of the said rules and after examining the submissions made by the appellant and the documents on record, the appeal was dismissed and the Final order was confirmed vide Appeal order dated 03.12.2019. Against the appeal order dated 03.12.2019, the SSSSK Ltd. filed a Writ Petition No. 7872/2021, in the High Court of Bombay. Hon'ble High Court of Bombay, vide its order dated 31.05.2022, passed in subject Writ Petition, set aside the Appeal order dated 03.12.2019 and directed to hear the matter afresh.
2. In furtherance of directions issued by Hon'ble High Court, the notice for fresh appeal hearing were issued and the initial hearing was scheduled on 27.06.2022. The representatives of appellant i.e. Shree Siddeshwar Sahakari Sakhar Karkhana Ltd. (referred to as 'the appellant' hereinafter), Aerodrome Operator and No Objection

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Certificate Cell (NOC issuing authority referred to as "NOC Cell" hereinafter) of Airport Authority of India, appeared in the hearing. The appellant submitted that since their advocates are not available as of now due to vacation in Supreme Court, they need some time to submit their Written Appeal. The request of appellant was accepted and next date of hearing was scheduled on 19.07.2022. On 19.07.2022, the appellant again submitted orally that their written submissions are not yet finalised and they need another 04 weeks' more time to submit their Written Appeal and this opportunity may be considered as last opportunity to submit written submissions by appellant. The request of appellant partially accepted and directed to file written submission by 03.08.2022 as last opportunities. The appellant filed their written submission on 03/08/2022 after serving the copy of written submission through email to all concerned stake holders. The written reply / response of Aerodrome operator, Solapur Airport and AAI NOC Section was received through email on 10.08.2022. The copy of such written submissions were forwarded to the Appellant. Further to verify the claim of the appellant, site inspection was ordered and the same was carried out by a team of DGCA officers in presence of representatives of the appellant, NTPC and AAI. During this site visit and obstacle survey of two chimneys i.e. Chimney of the appellant which is declared as Obstacle by the Airport Operator and the Chimney of NTPC, which has been granted NOC by the AAI, was carried out again by the Airport Operator in presence of DGCA team.

3. The appellant raised following grounds in its written appeal dated 22.10.2019:

(a) *The impugned notice dated 12th November 2018 and impugned order dated 10th Oct 2018 are nothing but an "colorable exercise of power" after the issue of the notice dated 15th March 2017 by the State of Maharashtra and notice dated 6th April 2017 issued by Collector of Solapur.*

(b) *Obstacle survey conducted in 2017 and survey report is not supplied to the appellant and No physical verification of the chimney was carried out by the Airport authority of India and no report was provided to appellant.*

(c) *In last few years i.e. 2016-2017, there were 450 flights safely landed and departed from Solapur airport without causing obstacles infringing the Obstacle Limitation surface at Solapur airport. The notices issued by Airport authority of India are barred by laws of limitation and law of acquiesce.*

(d) *The appellant has obtained necessary permissions from concerned authorities Solapur Municipal Corporation, sugar Commissioner State of Maharashtra and Maharashtra pollution control board. The appellant has taken huge loans from banks for expansion of project.*

(e) NTPC Chimney height is more than 278 meters, and as matter of record NTPC chimney height is 3 times tall in height then appellant chimney and the suggestion of Airport authority of India to shift chimney by 800 meters and beyond, is not viable as per technical experts.

(f) The notices dated 12th November 2018 and 10th October 2018 are in contravention of State Government of Maharashtra order dated 21.08.2013 which clearly stipulates the closure of existing Solapur airport and proposal for construction of new airfield at Village Boramani and tandulwadi for which and 550 hectare lands are already acquired.

(g) The social contribution of the appellant in the upliftment of farmer and in securing accidental and death insurance of the 28000 farmers (shareholders).

(h) Power in the existing plant thereby reducing the green house emission and consumption of fossil fuel immensely helping in controlling global warming and sustainability of the ecological balance of environment. Govt. of Maharashtra has entered in power purchase agreement dated 27.07.2018 with appellant and supplying 30 MW of electricity @ 4.99 per unit to state Government of Maharashtra.

(i) The public flight services connecting Solapur to other major cities in India were never operative except in the year 2009-2010. Impugned final order is contrary the principles of justice, equity and good conscience.

4. Further in written submissions dated 02.08.2022 the appellant raised following grounds:

(a) That, Appellant has taken huge loans for expansion and operations of the sugar factory which is to the tune of 620 crores from Bank of Baroda. National Co-operative Development Corporation and Solapur Janta Sahakari Bank for construction of cogeneration and expansions of the existing plant. Further, Petitioner has given advances to transporters, harvesters etc. to the tune of around 40 crores for the crushing season 2022 - 2023. If the impugned orders are implemented and the chimney height is reduced to 52.2 m, the entire set of cogeneration plant, sugar factory and distillery will become non-functional leading to a closure of the said plant.

(b) That there are 28,908 shareholders/farmers who are subscribers to Petitioner's sugar factory, who supply sugarcane to the factory, these are farmers from the districts of Maharashtra and Karnataka. That around 30,000 hectares of sugarcane was registered with the factory by the said farmers for this crushing year.

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(c) That the crushing season is in progress and if the chimney is pulled down it will result in a closure of the sugar factory and shutting down the sugar factory which will create survival questions for farmers and workers of the factory as well as the livelihood of 15,000 cane cutters, 1200 workmen, 500 contractors and 1000 transport employees whose survival and livelihood is entirely dependent on the sugar factory.

5. Further after oral arguments on 22.08.2022, the following written submissions were filed by the appellant:

(a) The present Appeal impugns final order dated 24<sup>th</sup> August 2019 passed by the Deputy Director General of Civil Aviation in the proceeding under Rule 6 of the Aircraft (Demolition of obstruction caused by Building or Trees etc.) Rule, 1994.

(b) Solapur Hotagi road existing airport is about 2.5 KM from Solapur city. The Airport was built by Indian Defence Authorities in 1948 during the police action operation on the ex-Hyderabad state. The base, however was not maintained after the operation and it was re-built in 1987 by Airport Authority of India. The Shree Siddheshwar Sahakari Sakhar Karkhana Ltd, Kumathe has been constructed in the year 1969 and the airport came into existence only in the year 1987 after being rebuilt. Hence, when the project was underway (pertaining to the airport), the Sugar factory was already in existence and functional as well as operational & two chimneys were in existence before establishment of airport. It is therefore submitted that at the relevant time, appropriate measures should have been taken by the competent authority with regards to the runway of the airport.

(c) Since the concerned airport is located in the city limits, there is limitation for expansion of this existing Hotagi road Airport as one side of airport is city and other side is The Shree Siddheshwar Sahakari Sakhar Karkhana Ltd. Kumathe. The competent authority has also decided to construct another new green field airport at Boramani and the present airport is to be used/utilised only till the New Boramani green field airport is fully operational and functional. Once the same is achieved, the present airport will not be utilised for the present purposes at all. Even the second airport is hardly 20 km away from the present one and therefore the same will not cause any prejudice to the airport authority at all. Hence Government of Maharashtra through Maharashtra Airport Development Company decided to develop a green field airport at Boramani. The same is apparent from the government resolution of the year 2008, 2013 and 2020.

(d) The Appellant had applied for NOC on 19.03.2014, however, no decision was taken for 4 years by Airport Authority of India and the application was kept pending but at the same time it was informed that the said authority had powers to

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issue approval only to the maximum height of 41 mts. At the same time, NOC was issued in favour of NTPC by same authority for 278 meters chimney. The Airport Authority of India had issued approval/ NOC for 30.96 meters in February 2017 only, where after, the Appellant filed appeal for 90 mtrs height, which also came to be rejected and ultimately leading to the present ground of litigation. As per the contention of the Appellant and physical verification report, both the Factory and NTPC chimney, are in funnel. To the dismay of the appellant, different set of treatment is being extended to the Appellant and NTPC. Hence, on the said ground of discrimination alone, the present appeal deserves to be allowed with permission to increase the height till 90 mtrs.

(e) The issue of discrimination has also been highlighted by the appellant in the earlier written submissions. At the cost of repetition, it is again submitted that in the year 2012 the Airport Authority has given clearance for NTPC plant in the same vicinity which has a chimney of 278 m in height. However, in spite of the Sugar factory being elder by more than two decades than the airport itself, the chimney of the Sugar factory is being stated as in the breach of the so-called requirement of the runway - 33. This action of the airport authority is therefore not only discriminatory but also arbitrary as it is treating another government organization with different norms and the appellant - a Multistate Co-operative Sugar factory, with different norms.

(f) Considering the above conspectus, it is appropriate that the airport authority utilises the present runway 15 till the second airport is fully functional and operational. The authority can always utilise or use the runway 15 for one way landing and one way take off, without disturbing the functioning of the appellant in any manner. However, the airport authority is not considering the same and therefore the present action is not only arbitrary but also malafide. From 1987 to till date one side operation from Runway 15, for landing and take-off, is in practice; by this, one way operation is possible till shifting of Airport at Boramani.

(g) Apart from the above, admittedly there are about other 18 obstacles/hurdles which come in the way of operation of runway 33 and the same was pointed out to the officers of the airport during the course on authority during the course of survey that is conducted on 17th August 2022. It may be noted that, the obstacles also include high tension power lines which are crossing through the area of the airport making runway 33 practically impossible for operation

(h) As noted by the Hon'ble High Court in its 31st May 2022 order even the earlier period of 02.03.2017 to 12.03.2017 physical and obstacles survey report has not been provided to the appellant for effective adjudication of the present ap-

peal. It is therefore apparent that the conduct of airport authority is not at all cooperative or to sub serve the process of justice but is arbitrary, discriminatory and malafide. The Authority has failed to appreciate that the obstacle survey conducted in the period of 02.03.2017 to 12.03.2017 by Airports Authority of India is not supplied to the Appellant nor the said survey report is brought on records thus in absence of the survey report 2017 the impugned order need to be set aside and declared as null and void.

(i) It is also apposite to mention here that the report of 17th August 2022 was not supplied to the appellant even on the day when hearing took place on 22.08.2022. What was supplied to the appellant was only site plan/map prepared during the course of physical verification of obstacles however, no report was given at the time. The said report of 17th of August 2022 has been subsequently supplied to the appellant and on perusal of which it is amply clear that apart from chimney of appellant and NTPC, there are several other obstacles as mentioned in clause (II) of the report. Further, the report also makes it amply clear that even if either of the obstacle created by chimney of a plant or NTPC, the Runway 33 will be usable or not or it will still remain unidirectional only due to the other obstacles. From 1987 to till date one side operation from Runway no. 15 for landing and take-off is operation by this one way operation is possible till shifting Airport at Boramani. As per interim order of your office due number of obstacles on runway no.33 approach surface, present operations at the Airport are restricted to the unidirectional on (from runway no. 15). However, it is not certain/ clear as whether after demolition of only one obstruction i.e. the ne chimney of our Shree Siddheshwar Sahakari Sakhar Karkhana Ltd Kumathe sugar factory, the runway no.33 will be usable or not of approach or it will still remain unidirectional only due to other obstacles. The appellant craves leave to refer to the report date 17th August 2022 as part and parcel of the present supplementary written submissions.

(j) The present concerned airport, as per the government resolution of the year 2013, is to be utilized only till another Green Field Airport at Boramani is operational. Hence, it is amply clear that the present airport is nothing but a stopgap arrangement for which a fully functional sugar factory is not required to be disturbed at all.

(k) At the cost of repetition, attention of the appellate authority is also invited to do a resolution passed by government of Maharashtra in the year 2013 pertaining to the aspect of construction of new airport at a nearby place, namely village Boramani and once the same is operational, the present airport will be defunction as such, the present airport is nothing but a stopgap arrangement for which dismantling of chimney the appellant is completely unwarranted.

(l) There are number of Airports in country operating in one way direction i.e. Simla, Dehradun etc. So the Appellant contends that on the same ground Hotagi Airport shall be operated by runway no.15.

(m) For new Boramani airport status are that already 550 hectors land acquired by MADC and near about 33 hector forest land acquiring procedure is in process. The MADC has submitted the proposal at Nagpur Divisional office of Forest for the transfer of forest land we are herewith submitting the Government of Maharashtra 8A extract of 550 hectors land which is acquired by Maharashtra Airport Develop Company.

(n) As a matter of fact, the so-called contention of the airport authority that the appellant should reduce the height of its chimney is also violative of article 19 of Constitution of India since the cooperative society has full rights to manage its own business. If in case the directions of the airport authority are to be accepted resulting into lowering the height of the chimney, the same means that the entire operations and functioning of the sugar factory will have to be stopped. It may be appreciated that, there are more than 30,000 members of the Sugar factory who are solely relying on the functioning of the Sugar factory. The above number is apart from the employees working on the role of the sugar factory and if the sugar factory is closed, the same will create huge unemployment If that be so, the appellant Sugar factory is also entitled for compensation in terms of section 9-B of the Aircraft Act, 1934. The total assets and valuation of the Sugar factory would be more than Rs.1500 crores approximately. The same will also have to be determined by the competent authority in terms of section 9A.

6. In reply of appellant submissions, Aerodrome operator, Solapur airport denied the claims vide written objection dated 04.08.2022 and submitted that:

(a) That the contention raised regarding physical survey report are not true and correct as the joint survey of appellant and AAI officers is conducted on 5-6-2018 at appellant sugar factory and the appellant is well aware about it hence the contentions of the appellant are not true and correct. That the copy of said survey report is given to the appellant on 7-6-2018.

(b) That the contention regarding discrimination caused against the appellant is not true and correct same is hereby denies and same are not tenable and maintainable as the NOC issued to NTPC is issued as per rules and regulation. It is submitted, that the distance between Solapur Airport Runway end 33 and Chimney of NTPC is 8.9 KM and the illegal chimney of appellant is within just approach funnel area i.e. 999 mtrs. (0.9 km). Hence the authority has not made any discrimination while granting NOC to NTPC and rejecting the plea of appellant.

- (c) That the appellant is trying to misguide only to protect the illegal construction of chimney which is major obstacle at Solapur Airport and hence the RCS UDAN Scheme is not at all implemented though the AAI has made huge expenditure over infrastructure & other development work carried out at Solapur Airport.
- (d) That the NOC Height Clearance dt. 17-2-2017 and 17-5-2017 is issued as per WGS84 coordinate i.e. (17°36'50.2"N 075°56'49.1"E) and Ground Site Elevation is 463 mtrs submitted by the appellant as per the said Height Clearance permissible is 493.96 M (Restricted) AMSL only.
- (e) It is submitted that, as per OLS Survey 2017 that the chimney of appellant is located at WGS-84 coordinate i.e. (17°36'49.5307"N 075°56'48.7556"E). That the actual construction of chimney height is at 550.6 Mtrs AMSL as per OLS Survey 2017; and the maximum permissible top elevation at above said coordinate is 498.4 Mtrs AMSL; hence it clear that the appellant has made illegal construction of 52.2 Mtrs. That the said construction is major obstacles for implementation of RCS UDAN Scheme at Solapur Airport.
- (f) That the appellant has raised the ground of New Airport at Boramani and all submission made to that effect (Para 11 to 14 of written submission of appellant); it is contended that the appellant has no voice and locus-standi to use the policy decisions of state to protect the illegal construction made by them.
- (g) That the obtaining the required permission is procedural aspect; and hence the permissions and NOC issued by the different state authorities cannot be considered by AAI to protect the illegal construction.
- (h) The Sugar Factory i.e. appellant's premises is located within the limits of urban area of Solapur Municipal Corporation and the State Government has conducted the meeting at on 15-11-2016 and in the said meeting the minutes regarding closer of the Sugar Factory and demolition of chimney is decided.
- (i) the illegal construction of chimney is carried out by the appellant and the Airport Incharge Solapur Airport has issued letter to appellant on 13-2-2017 and copy is also issued to the Hon'ble District Collector, Solapur.
- (j) the contentions regarding adverse financial implications raised by the appellant cannot be considered by AAI as the subject of the appellant is about illegal construction chimney only and hence the illegal acts cannot be protected by considering the financial implications of the appellant factory. That the board of directors of the factory shall be held responsible for financial implications occurred due to illegal acts.

(k) the alleged action is initiated as per prevailing orders of DGCA and Court Orders and Legal Provisions and hence the action initiated is not exercise of "Colorable exercise of power" as contended by the appellant.

(l) As the said survey of 2017 is official act of AAI and same is carried for entire of Solapur Airport and same is not made only for Sugar Factory. It submitted that, as per OLS Survey 2017 that the chimney of appellant is located at WGS-84 coordinate i.e. (17°36'49.5307"N 075°56'48.7556"E). That the actual construction of chimney height is at 550.6 Mtrs AMSL as per OLS Survey 2017; and the maximum permissible top elevation at above said coordinate is 498.4 Mtrs AMSL; hence it is clear that the appellant has made illegal construction of 52.2 mtrs. That the said construction is major obstacles for implementation of RCS UDAN Scheme at Solapur Airport.

(m) That the para 22 of written submission of appellant regarding non obstacles of chimney is not true and correct and same is denied by AAI; it is submitted the flights arrived and departed through Solapur Airport during 2016-2021 are unscheduled flight, training flights, government movements, Navy and Air Force Helicopters, flights of state and central ministers etc. That all the flights arrived and departed at Solapur Airport are not scheduled Passenger flights and all the non-scheduled operators are operated as per declared distances of Solapur Airport Runway 15-33.

(n) That the declared distances of Runway 15 for LDA is 1817 mtrs, TORA is not usable, TODA is not usable, ASDA is not usable. The declared distances of Runway 33 for LDA is 842 mtrs, TORA, TODA & ASDA is 924 mtrs. That the total length of Runway 15-33 Solapur Airport is 2009 mtrs and due to illegal construction of Chimney of appellant Sugar Factory Runway Threshold points are shifted on both ends and hence the ATR-72 aircrafts are unable to land and take-off form Solapur Airport.

(o) As obtaining the required permission is procedural aspect; and hence the permissions and NOC issued by the different state authorities cannot be considered by AAI to protect the illegal construction.

(p) The NOC issued to NTPC is issued as per rules and regulation. It is further submitted, that the distance between Solapur Airport Runway end 33 and Chimney of NTPC is 8.9 KM and the illegal chimney of appellant is within just approach funnel area i.e. 999 mtrs. (0.9 km). Hence the authority has not made any discrimination while granting NOC to NTPC and rejecting the plea of appellant.

(q) As the illegal construction of chimney is carried out by the appellant in 2014 and the Airport Incharge Solapur Airport has issued letter to appellant from time to

*time and copy is also issued to the Hon'ble District Collector, Solapur. It is submitted that the public flight service in the year 2009-2011 is made available of Kingfisher Airlines but due to economic crises of Kingfisher Airline the public flight services are not continued.*

7. The team of DGCA officers submitted their report, which was shared with all concerned i.e. the appellant and the Aerodrome Operator. In the report the DGCA team raised the following queries:

(a) *NTPC Chimney is falling under the approach surface of RWY 33 and NOC is issued for height of 278 m above ground level. As per GSR 751(E) Schedule -II table 2.1 Slope of Runway meant for take-off surface is 2% up to 15000 meters and as per Table 2.2, Approach surface slope is 2.5 % in respect of second section length and further Horizontal section is applicable additional 8400 m from the end of second section length. If deemed appropriate, a clarification from NOC section Mumbai region may be sought to clarify the criteria adopted for issuing NOC of NTPC Chimney.*

(b) *In addition to the M/s SSSSK Ltd. Chimney, there are number of other obstacles on RWY 33 approach, which though are included at sl. 83, 84, 88, 89 & 92 in obstacle survey chart submitted by the airport operator but no action under rule 6 has been recommended by the Airport Operator in respect of these other obstacles. A clarification from the airport operator may be sought in this regards if deemed appropriate.*

(c) *Due to number of obstacle on RWY 33 approach surface, presently operations at the airport is restricted to unidirectional only (from RWY 15). However, it is not certain/clear as to whether after demolition of only one obstruction i.e. the new chimney of SSSSK Ltd, the RWY 33 will be usable or not, for approach or it will still remain unidirectional only due to other obstacles. If deemed appropriate, a clarification may be sought from the Airport Operator.*

8. A clarification from the Aerodrome Operator and AAI NOC Cell was sought in respect of these queries of DGCA team. Thereafter, the next hearing was scheduled on 22.08.2022 for arguments on the matter. Both the parties i.e. the appellant and the AAI made oral submissions and sought time to make written submissions. One week time i.e. up to 31.08.2022 was granted to make written submissions. Both the parties submitted their respective written submissions by 31.08.2022.

9. In reply to above queries in para 7 & 8, the Aerodrome Operator submitted the following:

- (a) *The following criteria was adopted for issuance of NOC of NTPC Chimney by NOC Department. Height calculations of NOC case no. SOLA/WEST/B/0524L2/OIO -*
- (i) *As per the applied site coordinates and site elevation submitted by the applicant, NOC case was processed through NOCAS.*
  - (ii) *Site coordinates 17 32 58N, 75 58 55E Site elevation 461.50 M AMSL.*
  - (iii) *The applied height was 740 M AMSL.*
  - (iv) *The height was not restricted by any criteria.*
  - (v) *The site falls at a distance of 10016.98 M from ARP (NOCAS Calculated distance).*
  - (vi) *The sights beyond take off, Approach, IHS and Conical area. Refer Annexure II of SO 84 (E).*
  - (vii) *The sight falls in OHS and AGA height is 782.8 M AMSL.*
  - (viii) *CNS height is 1202 M AMSL and IAL criteria is not applicable.*
  - (ix) *NOC letter for permissible height of 740 M AMSL was issued to the applicant.*
  - (x) *The Calculations have been done with reference to Runway length of 1365 meters (Code 3) as per Para 5b of S.O.84 E. and non-instrument runway.*
- (b) *The obstacle numbers 83, 84, 88, 89 & 92 are in approach funnel and in the premises of M/s SSSSK Ltd, Solapur as per OLS Survey-2017. The flight operations were carried out at Solapur Airport during 2008-2011. And the obstacle no. 83, 84, 88, 89 were already present during operation of the Airport. The total length of the RWY is 2009 meters, due the above said obstacles for VFR operations Runway 33 threshold has been shifted 659 meters. And the Available Landing distance was 1340 meters from Runway 33 side. Obstacle No. 92 came up late on.*
- (c) *A letter to Hon'ble commissioner, Solapur Municipal Corporation Ref No. AAI/SOL/APC/ATM/2OL8-L9|2O38-2040 dated 27.03.2018, that removal of obstacles surrounding Solapur Airport and submitted obstacles list which is significantly penetrating and requested that issue necessary directions to the concerned authorities/ departments to reduce the obstacles/ penetrations height within the permissible limit and no buildings/ structures shall be given permissions/ Approval for construction before applicant has obtained NOC from AAI (Height Clearance). Correspondence to this effect are also written to Govt of Maharashtra by MoCA also.*

(d) The obstacle committee meeting was conducted on 12.04.2018 11:30 at Solapur Airport the officials from ADTP, Solapur Municipal Corporation, MSEB Solapur and Solapur Airport In-charge were present. The committee inspected operational area of airport and seen encroachment on survey no. 64&71. Committee visited the areas surrounding the airport and inspected all the obstacles. The details of the owners of the buildings/ House have been noted by the officers of Solapur Municipal Corporations for future actions. MOM Ref No. AAI/SOVAPC/Obstacle/2018- 19/2048-50 dated 77.04.2018.

(e) Further, a meeting was conducted in the O/o Collector, Solapur dated 06.06.2018 regarding flight operations from Solapur Airport. Solapur airport had written a letter to The District Collector Solapur Ref No. AAI/SOL/APC/ATM /2078-19/2107 dated 13.06.2018, mentioning that to start flight operations from Solapur Airport works need to be carried out on priority basis and submitted Land encroachment details and obstacles which are infringing for flight operations in Day and Night operations. All the corresponding letters are attached herewith.

(f) With the demolition of new Chimney (obstacle No. 91) of M/s SSSSKL, RWY 33 can be used for scheduled operations with small aircraft with displaced threshold as was being done in 2008-2011, on both ends. However, with the demolition of other Obstacles No. 83,84,88,89 and 92 (present in the premises of M/s SSSSKL) also, bigger aircrafts operations are also feasible.

10. The appeal memo, written submissions, written arguments made and documents filed by appellant and Airport Operator/AAI have been examined. All the records / papers/ reports related to the matter during the appeal hearing proceedings have also been examined. From the proceedings and examination, the following emerges:

(a) Solapur airport is listed in Schedule III, S.no.88, as an aerodrome operated by Airport Authority of India, under the category of "Aerodromes operated by Airports Authority of India and joint venture companies" as per Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015, published vide GSR 751(E). In the previous applicable notification i.e. S.O. 84 (E) dated 14.01.2010, the airport was included in Annexure-III A at Sl.No.56.

(b) However, the available length of runway has kept on varying.

(c) As per G.S.R. 751 (E) dated 30.09.2015, the length of runway reflected was 1365m. In the previous applicable notification i.e. S.O. 84 (E) dated 14.01.2010 also the length of runway was 1365m.

(d) The obstacle survey which is under consideration herein was carried out in 2017, when G.S.R. 751(E) was in force. Thus, the length of runway which should have been considered for determining the infringement is 1365m whereas from the submission of AAI/ Airport Operator, it emerges that the length of runway which has been considered for determining the total infringement is 2009m.

(e) The new chimney of SSSSK Ltd was constructed in 2014 without obtaining the NOC from the AAI. Hence, the Chimney has been constructed in violation of the provisions of G.S.R. 751(E) and hence is an obstruction, which is required to be removed/lowered within permissible limits. However, in view of the fact that the obstacle survey was carried out in 2017 and in 2017, the provisions of G.S.R. 751(E) were applicable and as per G.S.R. 751(E), the length of the runway was 1365m whereas the infringement has been measured while considering the runway length as 2009m but the runway length of 2009m was published in G.S.R. 770 (E) dated 17.12.2020 i.e. much later than the date of obstacle survey. In view of these details, the amount of infringement as determined by the Airport Operator as 52.2m needs review.

(f) As per obstacle survey, NTPC Chimney is existing in approach surface of Runway 33 at distance of 8.981 Km with height of 736.0 m AMSL. The NOC has been granted for construction up to 740m AMSL. For issuance of this NOC the provisions of S.O. 84 (E) have been considered and in S.O. 84 (E) the length of runway reflected is 1365m and the runway has been considered as " Non instrument runway" whereas for the new Chimney of SSSSK Ltd. The runway length has been considered as 2009m and the runway has been considered as "Instrument Runway". Thus, from the submissions made by the AAI it also emerges that different criteria have been adopted by the AAI for determining the permissible height and the infringement. The same needs to be reviewed.

(g) Chimney owned by M/s SSSSK Ltd was identified as obstacles in obstacle survey at distance of 999 m from runway strip in approach surface of Runway 33 with existing height of 550.6 m in AMSL against the permissible top elevation of 498.4 m AMSL. The permissible top elevation was determined as per reference Runway length 2009 m (Aerodrome reference code 4) at 2% slope whereas in 2017 the applicable G.S.R. was GSR 751(e). As per GSR 751, the runway having length from 1200 to 1800m is categorized as Code 3 runway and if the same is considered as non- instrument runway then the slope also would be 3.33% instead to 2%. In view of these facts and also in view of the fact that the GSR 770 which prescribes the runway length as 2009m, came in to force in 2020 i.e. after completion of construction of chimney in 2014 and obstacle survey in 2017, the height of infringement determined by the AAI needs to be reviewed.



(h) In addition to the new chimney of SSSSK Ltd, there are many other obstacle numbers 83, 84, 88, 89 & 92 as indicated in Obstacle survey 2017 are in approach funnel and in the premises of M/s SSSSK Ltd, Solapur as per OLS Survey-2017. While providing clarification the AAI has replied that the flight operations were carried out at Solapur Airport during 2008-2011 and these obstacles as detailed at sl. no. 83, 84, 88, 89 were already present during operation of the Airport. The total length of the RWY is 2009 meters, due the above said obstacles for VFR operations from Runway 33, the threshold of RWY 33 was displaced 659 meters and due to this displacement the Available Landing distance was 1340 meters from Runway 33 side. This displacement also appears to be determined on the basis of slope of 3.33%. Whereas, the runway length of 2009m came only in 2020 after promulgation of GSR 770(E). Further from the submissions of AAI that RWY has been displaced considering VFR operation, it emerges that in respect of these obstructions, the AAI has considered the runway as Non Instrument whereas for new Chimney of SSSSK Ltd, the runway has been considered as Instrument Runway. These different considerations appears to be contradictory and therefore needs review.

(i) The Shree Siddheshwar Sahakari Sakhar Karkhana Ltd, Kumathe has been constructed in the year 1969 with two chimney 1st at distance of 965 meter with height of 518.3 meter (AMSL) and 2nd at distance of 894 meter with height 518.8 meter (AMSL). The airport was rebuilt in the year 1987 and was operational in 2009-10 with these obstructions in approach surface of runway 33 by displacing runway threshold of Runway 33. These obstacles are still existing in approach surface of Runway 33 and causing displacement of 659 meter from Runway 33 but have not been proposed for demolition by the Airport Operator. This aspect also needs review. If the operation at the airport is to be continued with displaced threshold then it will fall under the provisions of para 1.3.1.4 of GSR 751 (E) amended vide GSR 465 (E). Therefore, the issue of other obstructions vis-à-vis permanent displacement of threshold needs to be reviewed in the light of this amendment.

(j) The claims of both the parties in respect of construction of new green field airport at village Boramani and village Tandulwadi aprox. 20 Km distance from existing Sholapur Airport or shifting of Sugar factory from the Solapur city, respectively, can't be considered in the appeal as the same are beyond the purview of this Appellate Authority.

Thus, during the proceedings of this appeal hearing, from the submissions made by both the parties i.e. The SSSSK Ltd and AAI and also from the report of DGCA officers who visited site and from the documents on record, many new facts and issues have emerged, which have been detailed above and these issues needs detailed examination or investigation for proper adjudication of the matter. However, the authority which passed the Final Order dated 24.08.2019, had no opportunity to examine these issues as these issues didn't emerge before him but have emerged during the ongoing appeal proceedings. In view of this it will not be apposite to conduct detailed examination and investigation in appeal proceedings by the Appellate authority rather it would be appropriate that the same is done by the authority which examined the issue first and issued final order dated 24.08.2019 under rule 6 of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994.

Therefore, in the light of new facts and issues which have emerged during the appeal hearing and are detailed above, I am of the considered view that the issue can't be taken to a reasonable and logical conclusion without considering these new facts and issues and under these circumstances it will not be apposite to process the matter for demolition of obstruction. Therefore, I hereby set aside the final order dated 24.08.2019 and remand the matter back to Sh. D. C. Sharma, Joint Director General (the then DDG, who issued the final order under Rule 6 and which is impugned herein) to examine the whole issue afresh and in detail and pass final order afresh. If any party is aggrieved by such final order then that party may again prefer an appeal under rule 6A to the appellate authority.

With above directions the instant appeal stands disposed off.



(Arun Kumar)  
Director General of Civil Aviation

ITEM NO.32

COURT NO.8

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 9222/2022

THE CHAIRMAN AND DIRECTORS OF SHREE  
SIDDHESHWAR SAHAKARI SAKHAR KARKHANA LTD.

Appellant(s)

VERSUS

SANJAY BHIMASHANKAR THOBDE &amp; ORS.

Respondent(s)

(AS PER COURT MENTIONING DATED 15.12.2022 LIST ON 03.01.2023  
IA No. 198814/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENTIA No. 198902/2022 - PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURES

IA No. 198813/2022 - STAY APPLICATION)

Date : 03-01-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA  
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s)	Mr. Mukul Rohatgi, Sr. Adv. Mr. Dhruv Mehta, Sr. Adv. Mr. Satyajit A. Desai, Adv. Mr. Sudeep Dey, Adv. Mr. Siddharth Gautam, Adv. Mr. Abhinav Muktyalwar, Adv. Mr. Gajanan N. Tirathkar, Adv. Ms. Anagha S. Desai, AOR
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For Respondent(s)	Mr. K. V. Vishwanathan, Sr. Adv. Mr. Shashwat Goel, AOR
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UPON hearing the counsel the Court made the following  
O R D E R

Issue notice, returnable in the month of April, 2023.

Notices would be given dasti as well and can be served by  
all modes.

In the meanwhile, we are inclined to partly stay the operation of the impugned order, that is, the direction given in paragraph 30 restraining the appellant from crushing of cane till the time environment clearance is granted, subject to the condition that the appellant will not exceed crushing @ 5000 TCD (Tons of Cane per Day). We have passed this order as the appellants have relied upon Serial No. 5(j) of the schedule to the notification S.O. 1533 (E) dated 14.09.2006 of the Ministry of Environment and Forests.

We give liberty to the respondents to apply for modification of this interim order, if required.

Proceedings before the National Green Tribunal, Western Zone Bench, Pune, shall continue uninfluenced by pendency of the present appeal.

(DEEPAK JOSHI)  
COURT MASTER (SH)

(R.S. NARAYANA)  
COURT MASTER (NSH)