

(1983) 03 PAT CK 0027

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1779 of 1981 (R)

Dinesh Roller Flour Mill and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-03-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 77(3)

Industries (Development and Regulation) Act, 1951 — Section 12, 12(1)

Registration and Licensing of Industrial Undertakings Rules, 1952 — Rule 17

Citation : AIR 1983 Patna 293

Hon'ble Judges : Satyeshwar Roy, J; Anand Prasad Sinha, J

Bench : Division Bench

Advocate : Shree Nath Singh, G.C. Bharuka and P.D. Agrawal, for the Appellant; Debi Prasad, Standing Counsel to the Central Govt., A. Sahay, Jr. Counsel to the Standing Counsel to the Central Govt. and Indrani Chowdhury, for the Respondent

Final Decision : Allowed

Judgement

Satyeshwar Roy, J.—The Central Government had issued a licence to the petitioners to establish a new industrial establishment. The licence so granted was revoked by an order dated 23rd April, 1981, Annexure "9" to this application. In this writ application the petitioners have prayed for quashing Annexure "9".

2. The petitioners, petitioner 1 is a firm registered under the Indian Partnership Act and petitioner 2 is one of the partners, applied for Kraut of an industrial licence under Industries (Development and Regulation) Act, 1951 (the Act) for setting up a Wheat Roller Flour Mill, at Bokaro. The Central Government issued the licence on 20th April, 1974 which is Annexure 1 to this writ application. In terms of Annexure 1, the undertaking was required to be completed and commercial production to start within the period of two years from the date of the order of the licence. The petitioners were also under Annexure "1" required to furnish returns in Form "C" outlining the progress in implementation of the,

licence for each half year to the Central Government with a copy to the Director of Industries. Bihar, who is to monitor the implementation of the licence. The petitioners, however, could not establish the undertaking within the stipulated period and the licence was extended up to 31st December, 1976 which is Annexure "2" to this writ application. The petitioners applied for allotment of a plot of land in Bokaro Industrial Area to the Bokaro Industrial Area Development Authority and land was allotted to it. By Annexure "3" the possession of the land was handed over to the petitioners. According to the petitioners the delivery of possession was merely a paper transaction as the land in question was in occupation of members of the Scheduled Tribes and their eviction could have caused serious question of law and order. The petitioner, therefore, purchased a piece of land by private agreement on 5-11-1979 for a consideration of Rs. 48,500 (Rupees fortyeight thousand five hundred). The petitioners had already got fabricated steel structures for the factory premises. It also invested about Rs. 30,00,000 (Rupees thirty lakhs") for construction of the building premises, setting up machinery and for other ancillary jobs for establishing the industry. As the industrial licence of the petitioners had not till been revoked by the Central Government and as some more time was required to complete setting up the industrial establishment and for it to go into production, the petitioners on the 10th March. 1980 applied to the Central Government for extending the above licence for a further period of twelve months. In that application the petitioners had stated that in spite of taking effective steps by them towards setting up the industrial project, the undertaking could not be completely set up. The Central Government requested the State Government to verify the actual position with regard to the setting up the industry by the petitioners to enable the former to consider the question of extending the licence. The request of the Central Government was made by letter dated 6-5-1980, which is Annexure "5" to the writ application. It however, appears that before the petitioners applied for extending the licence, the State Government by its letter dated 18-6-1977 had written to the Central Government to cancel the licence of the petitioners. But on receipt of the letter from the petitioners that they were taking effective -steps to establish the undertaking, the State Government requested the Central Government to treat its letter dated 18-6-1977 as withdrawn and to allow the licence to stand in the name of the petitioners. These facts appear from Annexure "4" to the application dated 9-7-1977. However, according to the, respondents Annexure "4" was not received by the Central Government. In reply to Annexure "5" the State Government requested the Central Government to consider the application for extension of licence keeping in view that the petitioners had taken effective steps to establish the industry. The Central Government by Annexure "7" dated 26-6-1980 issued a notice to the petitioners to show cause why the licence should not be revoked. By Annexure 8, the petitioners filed its show cause. By Annexure "9" the Central Government revoked the licence of the petitioners. According to the petitioners Annexure "9" was issued by the Ministry of Agriculture. Department of Food, Government of India which had no jurisdiction to issue the same. Further, in view of the fact that

the petitioners had taken effective steps to set up the industry and also in view of the fact that the delay in setting up the industry was beyond its control, the Central Government could not have revoked its licence.

3. A counter-affidavit has been filed on behalf of the respondents. According to the respondents. Annexure "4" i.e.. the letter dated 9-7-1977 written by the State Government to the Central Government withdrawing the earlier letter dated 18-6-1977, by which the cancellation of the licence of the petitioners was recommended, had not been received by the Central Government. In the counter-affidavit it has been stated that the Ministry of Agriculture, Department of Food, Government of India had jurisdiction to revoke the licence of the petitioners.

4. The order of revocation of the licence has been challenged on various grounds. The first ground on which its validity was challenged was that the order revoking the licence was not a speaking order. The order was also challenged on the ground that there had been non-application of mind to the material facts. The third ground on which the order was challenged was that Ministry of Agriculture. Department of Food. Government of India had no jurisdiction to pass the order.

5. It was contended on behalf of the petitioners that they had informed the Central Government the reasons why it could not set UP the industry within the stipulated time. The Central Government was bound to take into consideration those facts before revoking the licence and as the order does not show that those facts were considered, the order of revocation of the licence was bad in law. It was urged that the Central Government has failed to take notice of all relevant facts.

6. The relevant portion of Section 12 of the Act reads as follows:--

"12. Revocation and amendment of licences in certain cases--

(1) If the Central Government is satisfied either on a reference made to it in this behalf or otherwise, that any person or authority, to whom or to which a licence has been issued u/s 11, has, without reasonable cause failed to establish or to take effective steps to establish the new industrial undertaking in respect of which the licence has been issued within the time specified therefore or within such extended time as the Central Government may think fit to grant in any case, it may revoke the licence."

Rule 17 of the Registration and Licensing of Industrial Undertakings Rules, 1952 (the Industrial Undertakings Rules) reads as follows:--

"17. Revocation of licences.-- The Ministry of Industrial Development shall before exercising its power of revocation of a licence under Sub-section (1) of Section 12 of the Act. give an opportunity to the licensee to state his case."

The order contemplated in this section is a quasi judicial order. Although there are no two parties with opposing claims and the contest is between the authority proposing to revoke licence and the subject opposing it and before final

determination the subject is required to be heard, the order so passed will be a quasi judicial order. This was laid down by the Supreme Court in Province of Bombay Vs. Kusaldas S. Advani and Others, . This was reiterated in The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, . The order of revocation is a quasi-judicial order has also been accepted by the Central Government in Annexure "B", circular dated 6th October. 1976. If the proceeding is quasi-judicial and if the authority makes an order in exercise of its quasi-judicial function. It must record its reasons in support of the order it makes. Such order must be sufficiently clear and contain explicit reasons in support of the order. This is part of the principle of audi alteram partem. Keeping in view this legal position, let us analyse Annexure "9". In this Annexure there are recitals of the fact to the effect that the licence was granted to the petitioners, that the licence was extended, that the licensee failed to take effective steps before the expiry of the licence, that the licensee has failed to establish the new industrial undertaking within the time limited by the licence and the Central Government after giving an opportunity to the licensee to state his case is satisfied that the licensee has without reasonable cause failed to establish the new industrial undertaking within the time specified, the Central Government revoked the licence in exercise of power u/s 12(1) of the Act. Since Annexure "9" is rather big, I have given the gist of it. In Annexure "9", therefore, there are two parts, the introductory and the operative. The order does not show that the Central Government took into consideration the circumstances enumerated in Annexure "8", the show cause, and the reasons for not accepting the same,

7. It was contended on behalf of the respondents that the authority noticed the show cause filed by the petitioners and as it was not satisfied with the circumstances stated in the show cause the licence was revoked. It is true that there is recital in Annexure "9" that the petitioners had showed cause. But it does not contain the circumstances nor it contains the reasons why the authority was not satisfied. A quasi-judicial order must contain the reasons why proceeding was drawn up the grounds relied upon by the subject and the reasons for not accepting the grounds.

8. By Annexure "B" the Central Government issued a guideline to the authority competent to revoke the licence. In this it has been stated that the order must contain causes specifically pleaded by the licensee for its failure to establish the undertaking in accordance with the licence, the reasons why the licensee's plea has been repelled and a pointed finding on the question of the licensee's failure. The competent authority, therefore, was made aware of the legal position by Annexure "B" and yet it did not Pass a speaking order. For these reasons, petitioners' contention must be accepted.

9. It was urged on behalf of the petitioners that there has been complete non-application of mind in passing the order inasmuch as before passing the order the relevant facts have not been noticed and also the circumstances which arose after 2-6-1977 have also not been considered.

10. Before taking up this point, it will be necessary to dispose of one submission made on behalf of the respondents. It was contended that after the expiry of 31-12-1976 i.e., the period within which the industry was required to be established, the licence automatically stood revoked and no order was required to be Passed u/s 12 of the Act. This point was not taken in the counter-affidavit, but it was a pure question of law, we allowed to make this submission. There is no provision in the Act for automatic revocation of the licence rather there is specific provision in the Act for revocation of licence under certain conditions as provided in Section 12 of the Act. That the licence is not automatically revoked is also supported from the fact that the Central Government issued notice to show cause to the petitioners as to why the licence should not be revoked. Section 12 of the Act read with Rule 17. Industrial Undertakings Rules, enjoins that the licence could be revoked only after the licensee fails to satisfy that there was no reasonable cause for not establishing the industry or without reasonable cause failed to take effective steps to establish the industry. If the licensee can satisfy the Central Government on any one of the grounds stated above the licence cannot be revoked. I, therefore, find no merit in the submission made on behalf of the respondents that the licence stood automatically revoked after 31-12-1976.

11. It is accepted position that the State Government within which the new industry is to be established, monitors the progress of the project at State, level. By letter dated 18-6-1977 the State Government recommended the Central Government for revocation of the licence of the petitioners. By letter dated 9-7-1977, the State Government requested the Central Government to treat its letter dated 18-6-1977 as withdrawn. The letter dated 18-6-1977 has not been filed, but the contents of that, letter has been, noticed in Annexure "4", letter dated 9--7-1977. The request of the State Government to treat its letter dated 18-6-1977 as withdrawn was because of the fact that the petitioners had taken effective steps to establish the industry. The respondents in their counter-affidavit have denied the receipt of this letter. I, therefore, exclude Annexure "4" from consideration. The petitioners on 10-8-1980 wrote to the Central Government that they had taken effective steps for establishing the industry and had prayed for extending the licence. By Annexure "5" dated 6-5-1980 that letter of the petitioners was forwarded by the Central Government to the State Government with a request to verify the actual position to enable the former to consider the question of extending the licence. This was replied by the State Government by Annexure-"6", letter of August, 1960. In Annexure-6" it was stated that as the land which was allotted in the industrial area to the petitioners was in occupation of the, members of the Scheduled Tribes, effective possession of the same could not be given to the petitioners. It further stated that the petitioners had purchased another plot of land by private negotiation and after the purchase the construction Of the factory was started and steps had been taken to procure the required machinery. The State Government requested the Central Government to decide the extension of licence keeping in view these facts. The receipt of Annexure "6" has not been denied by the respondents.

However, before Annexure "6" (August, 1980) was received by the Central Government, it issued the notice to show cause for revocation of the licence on 26-6-1980 (Annexure "7"). In Annexure "7" it was stated that any step taken by the petitioners for setting UP the industry after August, 1977 would not be taken into consideration. This date-line was fixed perhaps because of the fact that on an earlier occasion on 2-8-1977 a notice to show cause for revocation of the licence had been given to the petitioners. According to the petitioners, it did not receive that notice. This fact it also stated in its show cause. Annexure "8". In the counter-affidavit there is no specific assertion of the fact that the notice dated 2-8-1977 had been received by the petitioners.

One fact, however, is clear and that is that the Central Government did not set on the basis of the notice dated 2-8-1977 inasmuch as it ignored that notice and issued a fresh notice as contained in Annexure "7". When Annexure "9" was issued, the finding of the State Government " as contained in Annexure "6" was before the Central Government. It may be noted that Annexure "7", the notice to show cause was issued by Sri Udho Ram and Annexure "9" the order impugned was passed by him. Annexure "5" the letter by the Central Government to the State Government dated 6-5-1980 was issued by Sri Udho Ram and the reply to the same by the State Government (Annexure "6") was addressed to Sri Udho Ram. Further when the Central Government did not act on the basis of the notice to show cause dated 2-8-1977 and decided to issue a fresh notice. I find no reason, why the Central Government could exclude the effective steps if any, taken by the petitioners after that date i.e. after 2-8-1977.

The satisfaction u/s 12 of the Act must be formed on the circumstances existing when the order was made. The existence or non-existence of circumstances is open to the judicial review, though the satisfaction formed by the authority is not amenable to review by the courts. In other words, if it is shown that the circumstances did not exist for passing an order of revocation or that there has been non-application of mind to the relevant facts, this court can interfere with the order. It was contended on behalf of the petitioners that on the facts and circumstances of the case, we should hold that the circumstances did not exist for revocation of the licence. I am unable to go so far. From the facts of this case, it appears that the petitioners tried to make out a case that there was reasonable cause for which they had failed to establish or to take effective steps to establish the industry and those facts were not taken into consideration by the Central Government. I therefore, hold that the order contained in Annexure (9) is bad in law as the Central Government has failed to take into consideration the circumstances brought to its notice by the petitioners which were beyond their control and for which they failed to establish the industry within the period stipulated in the licence. The order of revocation can be passed only if no reasonable cause is shown, for the, failure to establish the industry or to take effective steps to establish it. From Annexure "9" it appears that the order of revocation has been passed on the first ground. The petitioners in their show cause. Annexure "8" have stated that they had taken effective steps to establish

the industry. The order does not, show that the Central Government considered whether the steps taken by the petitioners can be said to be effective steps within the meaning of the definition of "effective steps" in Rule 2 till. Industrial Undertakings Rules.

12. The order as contained in Annexure "9" must, therefore, be held to be bad because no reason has been assigned for revoking the order and also because there has been non application of mind to the circumstances staged by the petitioners in their show cause.

13. This brings us to the third contention made on behalf of the petitioners that Annexure "9" was passed by the Ministry of Agriculture. Department of Food, Government of India who had no jurisdiction to pass the order. According to the petitioners the order for revocation could have been passed by the Ministry of Industrial Development, Government of India and that having not been done, the order was without jurisdiction. In the counter-affidavit it has been staged that, in exercise of the powers conferred under Article 77(3) of the Constitution on the 10th December. 1976, the President amended the Government of India (Allocation of Business) Rules. 1961. Under the amended rules the Department of Food Ministry of Agriculture was competent to issue Annexure 9,

14. The relevant rule in this connection is Rule 17. Industrial Undertakings Rules, which has been quoted above. It will appear from that rule that the power of revocation has been given to the Ministry of Industrial Development. According to the respondents, in view of the amendment in the rules of the allocation of business, the power from December, 1976 rests in the Ministry of Agriculture Department of Food. Rule 17, Industrial Undertakings Rules, according to the respondents, must be held to have been amended by the amendment of the rules of allocation of business.

15. Article 77(3) of the Constitution empowers the President to make rules for more convenient transaction of the business of the Government of India and for the allocation among the Ministers of the said business. Under the Industrial Undertakings Rules, the Ministry for the Industrial Development has been stated to be the Ministry to which applications for registration and for licence have to be made. The licence has to be granted by the Ministry of Industrial Development and it is that Ministry which can refuse it. Variation or amendment in the licence can be made by that Ministry. The revocation of licence is also to be done by that Ministry. The Industrial Undertakings Rules have been framed under the Act. The rules so framed have nothing to do with the rules framed by the President under Article 77(3) of the Constitution. By amending the rules of allocation of business, the President has exercised power vested in him by the Constitution. By legislative enactment, that is by Industrial Undertakings Rules, the constitutional power of the President cannot be curtailed. The rules framed under Article 77(3) of the Constitution must prevail over Industrial Undertakings Rules. That being the position it must be held that the Ministry of Agriculture. Department of Food Government of India, was competent to pass the order as contained in Annexure

9.

16. In the result, the application is allowed and Annexure 9, the order of revocation, is quashed. The concerned Ministry, if it decides to proceed against the petitioners, shall dispose of the proceeding in accordance with law. Parties will bear their own costs.

Anand Prasad Sinha, J.

I agree.