
(2008) 12 UK CK 0005

In the Uttarakhand High Court

Case No : Writ Petition No. 2483 of 2007 (M/S)

Haldiram Snacks Pvt. Ltd.

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 18-12-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2008) 12 UK CK 0005

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : V.K. Singh, assisted by, Sudhir Singh, for the Appellant; Alok Singh assisted by, Vipul Sharma, and K.P. Upadhyaya, Addl. Chief Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—By means of this writ petition, moved under Article 226 of Constitution of India, the Petitioner has sought writ in the nature of certiorari quashing the orders dated 07.07.2006 and 02.11.2007, passed by Respondent No. 3 (copies annexure-12 and 19 to the writ petition). By the impugned order dated 07.07.2006, allotment of industrial plot in favour of the Petitioner is cancelled, and by the impugned order dated 02.11.2007, representation of the Petitioner is rejected.

2. Heard learned Counsel for the parties and perused the affidavit, counter affidavit, rejoinder affidavit, supplementary affidavits, supplementary counter affidavits and supplementary rejoinder affidavits, on record.

3. Brief facts of the case are that Petitioner is a private Ltd. company, registered under Companies Act, 1956. State Industrial Development Corporation of Uttarakhand Ltd. (for short SIDCUL), is a company owned by the State Government. To attract industrial entrepreneurs in the State of Uttarakhand, SIDCUL invited applications for establishing industrial units in the State. In

response to said invitation, Petitioner also submitted its application and deposited necessary fee. Vide letter dated 15.04.2004 (copy annexure-2 to the writ petition), SIDCUL allotted plot No. 2-B in Sector 1 of the Industrial Integrated Estate (for short I.I.E.), Rudrapur, Pant Nagar, District Udham Singh Nagar. The Petitioner within a stipulated period, deposited land premium as per the terms of allotment, where after, SIDCUL delivered possession of the plot to the Petitioner on 21.08.2004 (copy of which is annexure-4 to the writ petition). Thereafter a lease deed was executed on 16.09.2005 (copy of which is annexure-7 to the writ petition) by the Respondent SIDCUL in favour of the Petitioner. It is pleaded that Petitioner had invested more than 5.5 crores of rupees in construction for setting up industry on the plot allotted to him. Meanwhile, Parliament while passing the budget for the financial year 2006-07, made certain changes in the tariff and excise duty relating to the food products. Since the Petitioner intended to avail exemption of the excise duty in the food products to be manufactured, by establishing unit in Uttarakhand, in the changed circumstances, the Petitioner decided to reschedule the production in its unit at I.I.E., Pantnagar. However, SIDCUL issued a letter dated 01.05.2006 (copy annexure-9 to the writ petition) advising the Petitioner to complete the construction and start production else allotment would be cancelled after 10.05.2006. In reply to aforesaid letter on 08.05.2006, the Petitioner sought extension of one year for commencement of his products, in the changed circumstances. It is alleged that SIDCUL on one hand, vide its letter dated 18.05.2006 (copy annexure-11 to the writ petition), granted further one year time to complete the product and on the other hand, without affording any opportunity of hearing, passed impugned order dated 07.07.2006 (copy annexure-12 to the writ petition), cancelling the allotment made in favour of the Petitioner on the ground that Petitioner has violated condition No. 14, which provided that production from the industrial unit must commence within two years of allotment. Earlier, the Petitioner challenged said order dated 07.07.2006 by filing writ petition No. 855 of 2006 (M/B), before this Court, which was disposed of vide order dated 21.08.2007, copy of which is annexure-17 to the writ petition. By said order, Division Bench of this Court directed Respondent SIDCUL to decide representation of the Petitioner on the lines of order dated 01.08.2007, passed in civil appeal No. 3402 of 2007 SIDCUL v. Jyoti Industries, by the Apex Court. In pursuance to the order dated 21.08.2007, passed by this Court in writ petition No. 855 of 2006 (M/B), a detailed representation is made by the Petitioner on 27.09.2007 (copy of which is annexure-18 to the writ petition), before Respondent No. 3. Said representation is rejected by Respondent No. 3, vide its impugned order dated 02.11.2007 (copy of which is annexure-19 to the writ petition). Challenging said order and the earlier order dated 07.07.2006, passed by Respondent No. 3, it is pleaded in the writ petition that no notice was given to the Petitioner, as required under Clause 1.1(a)(iv)(v) of the lease deed before determination of the lease. It is further pleaded that Petitioner's representation is rejected arbitrarily. It is also pleaded that Petitioner had no dishonest intention or motive in not starting production in the unit. It is

also stated by the Petitioner that the ground taken in the representation were not considered by Respondent No. 3. In para-55 of the writ petition, it is stated that Petitioner still wants to establish its unit for manufacturing the food products for which he had already invested 5.5 crores in setting up the industry.

4. A counter affidavit has been filed on behalf of the Respondents No. 2 and 3. It is stated in the counter affidavit that the industrial plots are developed by SIDCUL as industrial parks. It is further stated in the counter affidavit that the Petitioner has deliberately and wilfully violated the mandatory condition contained in the allotment letter, as it failed to complete the construction and start production within 24 months of allotment. It is admitted that letter dated 01.05.2006, was issued to the Petitioner. Regarding the letter dated 18.05.2006, it is stated that no extension sought by the Petitioner to start the production was allowed. In fact due to clerical error word "not" could not be mentioned before the expression "acceded to" but the entire contents of the letter make it clear that the extension was refused. In parawise reply to the writ petition it is stated that para-1 to 17 to the writ petition need no comments. As such, the allotment of plot in favour of the Petitioner, deposits made by him and letters issued by Respondent No. 3, are admitted. It is further stated on behalf of answering Respondents that the Petitioner's excuse that Parliament was reducing excise duty on the items intended to be manufactured by the Petitioner, cannot be accepted, as an excuse for not starting the production. As to the 60 days notice, pleaded by the Petitioner, it is stated in the counter affidavit that said 60 days were required to be given to the allottee to remove his material from the premises before termination of the lease. It is specifically denied by the Respondents that they acted arbitrarily against the Petitioner. It is stated that the Petitioner was given full opportunity of being heard before the impugned order dated 02.11.2007, is passed. It is further stated that all the grounds mentioned by the Petitioner were considered before rejecting the representation made by the Petitioner.

5. In the rejoinder affidavit the Petitioner has reiterated the facts stated in the writ petition. It is stated in the rejoinder affidavit that from the letter dated 18.05.2006, issued by Respondent No. 3, it was clear that period for production has already been extended till 31.03.2007, as such the Respondent No. 3 had no occasion to cancel the allotment on the ground that the production was not started within two years. A supplementary affidavit dated 17.12.2007, is filed on behalf of the Petitioner enclosing a copy of the representation dated 03.09.2007. Another supplementary affidavit dated 08.05.2008, is filed on behalf of the Petitioner stating that out of 45 industrial plots cancelled, of various entrepreneurs on 07.07.2006, in I.I.E. Pant Nagar, the SIDCUL, restored 29 allotments after taking bank guarantee of 5 lakhs and charging restoration levy at the rate of 7.5% at the then prevailing rates. However, the Petitioner was discriminated and was not given a similar facility though the Petitioner's case was much better to those whose allotment was restored by the Respondents.

6. In the supplementary counter affidavits, filed to the supplementary affidavits, filed on behalf of the Petitioner, it has been stated that decision for restoration of plots was taken on 10.08.2006 and restoration was required to be sought by the entrepreneurs within a period of 45 days but the Petitioner did not make any such application. In supplementary rejoinder affidavit, Petitioner has stated that he was not given any information of the decision taken by the Respondents relating to decision on restoration of allotment, taken on 10.08.2006. The Petitioner has further stated in the supplementary rejoinder affidavit that even in the counter affidavit, filed on 11.08.2006, by the Respondent SIDCUL in writ petition No. 855 of 2006 (M/B), disclosure in this regard was not made, as such, the Petitioner was wrongly deprived of getting restored the allotment.

7. Admittedly, in response to the SIDCUL's invitation to the entrepreneurs to establish industries in State of Uttarakhand, Petitioner moved his application and was allotted plot No. 2-B in Sector-1 in the industrial area in Pant Nagar, Udham Singh Nagar. A copy of said allotment order dated 15.04.2004, is annexed as annexure-2 to the writ petition. It is not disputed that the Petitioner made required deposits as per the terms of allotment and was delivered possession of the plot on 21.08.2004, and consequently issued possession certificate (copy annexure-4 to the writ petition). From para-17 of the writ petition, which is not denied in the counter affidavit, filed on behalf of the Respondents, it is dear that lease deed was executed on 16.09.2005, on behalf of the Respondents No. 2 and 3, in favour of the Petitioner in respect of the aforesaid plot. Also, there is no dispute between the parties that under the condition No. 14 agreed between the parties, the allottee was required to complete the constructions and start production of his unit within two years of the allotment. Needless to say that the entrepreneurs got attracted for establishing their industrial unit in State of Uttarakhand after the Government of India declared a scheme to exempt the new industrial units from certain taxes with an object to speed up the industrialization of the State of Uttarakhand. Petitioner's case, as stated in para-18 of the writ petition, is that in the year 2006-07, Parliament while passing budget, brought changes in excise duties of the food products, which were intended by the Petitioners to be manufactured in the unit, to be established in plot No. 2-B of Sector-1 of I.I.E., Pant Nagar. This made the Petitioner to rethink as to what other food products can be manufactured in the new industrial unit, and the construction work, which was on, got held up. As such, even this fact is admitted between the parties that the Petitioner could not start the production within 2 years of the allotment of the plot.

8. On behalf of the Respondents, Shri Alok Singh, Sr. Advocate, defending the cancellation of the allotment and rejection of the representation, made by the Petitioner, argued that since the Petitioner failed to start production within an agreed period of two years from the date of allotment, as such, the allotment was rightly cancelled by the authorities concerned vide impugned order dated 07.07.2006. It is further contended on behalf of the learned Counsel for the Respondents that all the points raised by the Petitioner in his representation,

which he made in pursuance to the order dated 21.08.2007, passed in writ petition No. 855 of 2006 (M/B), were considered and the representation was rightly rejected. Lastly, it is submitted on behalf of the Respondents that vide impugned order dated 02.11.2007, the Petitioner was given an opportunity to avail the facility of restoration but he failed to avail the same.

9. To appreciate whether the Respondents have rightly rejected the representation of the Petitioner and whether the Petitioner had been given an opportunity for restoration of his plot, it is necessary to look into the order dated 21.08.2007, passed by Division Bench of this Court in writ petition No. 855 (M/B) of 2006. It is pertinent to mention here that said writ petition was filed by the Petitioner in earlier round of litigation, challenging the order dated 07.07.2006. It appears that while said writ petition was pending, arisen out of some other writ petitions of other entrepreneurs, challenging the cancellation of their allotment, SIDCUL filed a civil appeal No. 3402 of 2007, State Industrial Development Corporation v. Jyoti Industries in the Apex Court with SLP No. 5351 of 2007, which was disposed of by the Apex Court vide its order dated 01.08.2007. The order of the Apex Court is being reproduced as under:

Leave granted in all the SLPs.

Having heard the learned Counsel for the parties, we are of the opinion that fordoing complete justice to the parties, the order of the High Court should be set aside and following directions be issued:

(1) Each of the entrepreneurs who were Respondents before us, shall file independent representation before the Managing Director of the Appellant-Corporation within two weeks from date questioning the legality or validity of the order of cancellation of allotment and/or for restoration of the properties, as the case may be.

(2) The Managing Director or the Appellant-Corporation shall hear the parties or their authorized representative, within two weeks thereafter. It will be open to the entrepreneurs to produce such evidence or evidences before the said authority as they may intend to do.

(3) The Department may also produce their evidences before the said authority.

(4) If found necessary, the Managing Director may inspect the site himself or cause it to be inspected by some other duly authorized officer in this behalf.

(5) The Managing Director shall pass appropriate speaking order in each case separately, within six weeks from the date of filing the respective representations.

(6) It will be open to the concerned entrepreneurs also to point out that in their cases, either possession had not been handed over or the lease deed/transfer deed had not been executed.

(7) Status quo in respect of the properties shall be maintained by the parties in the meantime.

The appeals are disposed of with the aforementioned directions and observations.

In view of the above order, passed by the Apex Court, in civil appeal No. 3402 of 2007, Division Bench of this Court, disposed of the writ petition No. 855 of 2006 (M/B), filed by present Petitioner, with the direction that "Respondent No. 3- Managing Director, State Industrial Development Corporation to consider and decide the Petitioner's representation by passing a speaking order within a period of six weeks from today after providing opportunity to the Petitioner, as mentioned in the above quoted order of the Apex Court". While disposing of the writ petition, the Division Bench further directed that parties shall maintain status quo till the disposal of the Petitioner's representation by Respondent No. 3. Copy of said order of the Division Bench is annexed as annexure-17 to the writ petition. Perusal of the impugned order dated 02.11.2007, passed by Respondent No. 3, shows that the representation of the Petitioner was considered but rejected because the Petitioner failed to start its production within a period of two years from the date of allotment. The reason mentioned by the Petitioner in the representation that due to change in excise duty there was hindrance in taking decision, as to which food products are to be manufactured could not appeal the Respondent No. 3. As to the letter dated 18.05.2006 by which the Petitioner had alleged that the Respondent had allowed him extension of one year for starting the production, it is mentioned in the impugned order that in fact word "not" before "acceded to" inadvertently left out as such, the Petitioner cannot take benefit of such letter.

10. Having heard learned Counsel for the parties and after going through the impugned orders and other relevant documents on record, this Court is of the view that the Respondent cannot take benefit of not mentioning the word "not" (though clerically left out) before the expression "acceded to" in their reply to the letter dated 08.05.2006, moved by the Petitioner for extension of time for the production. The terms and conditions of the lease deed do provide a clause under which the Respondent had power to extend the time to complete constructions and start production.

11. As far as the opportunity of restoration of plot is concerned, this Court finds that though it is apparent from annexure S.A. 2 to supplementary affidavit, filed on 08.05.2008, that on 10.08.2006, SIDCUL had taken decision to permit the entrepreneurs to move the restoration of cancelled plots but the Respondents, for the best reasons known to them, did not disclose this fact even in the counter affidavit filed thereafter in writ petition No. 855 of 2006 (M/B), as such, the Petitioner was definitely kept in dark by the Respondents that he had an opportunity to get cancelled plot, restored on certain terms. Annexure-S.A. 1 to the aforesaid supplementary affidavit dated 08.05.2008, further discloses that out of 45 cancellation of plots in respect of different entrepreneurs, 29 were allowed to get their plots restored by completing certain formalities. Learned Counsel for the Petitioner submitted that Petitioner has arbitrarily been discriminated at the hands of the Respondents, as he was denied the opportunity

of getting the plot restored, as against 29 other entrepreneurs whose plots were restored. And the action on the part of Respondents is violative to Article 14 of the Constitution of India. On the other hand, learned Counsel for the Respondents argued that the Petitioner could have seen the restoration scheme in the internet, and since he failed to move an application, as such, it cannot be said that he was deprived of facility to get his plot restored.

12. After hearing learned Counsel for the parties, this Court is convinced that Petitioner has not been given fair opportunity to get his plot restored in the manner the opportunity was given to others. Apart from this, perusal of the impugned order dated 02.11.2007, shows that before deciding the representation of the Petitioner, no inspection of the plot in question was made by the Respondent No. 3 or his nominee, as mentioned in direction No. 4 in order dated 01.08.2007, passed by the Apex Court in civil appeal No. 3402 of 2007. It is pertinent to mention here that quoting said order, Division Bench of this Court decided writ petition No. 855 of 2006 (M/B), filed by the Petitioner with the direction that Respondent No. 3 i.e. Managing Director of SIDCUL shall decide the Petitioner's representation by a speaking order after providing opportunity to the Petitioner "as mentioned in the above quoted order of Apex Court". As such, though the Petitioner was not a party in civil appeal No. 3402 of 2007, before the Apex Court, the representation filed by the Petitioner was to be disposed of in terms of the direction of the Apex Court, as directed by Division Bench of this Court in the above mentioned writ petition. This Court, thinks it just and proper to mention here that Respondent No. 3 while deciding the representation of the Petitioner, has completely ignored the fact that the Petitioner had already raised construction and spent a huge sum of Rs. 5.5 crores in establishing the factory and still he was not given proper opportunity to get its plot restored as against some other entrepreneurs who had not even raised any construction except the boundary wall in their plots within a period of two years by which they should have started their construction. This fact is evident from annexure-S.A. 1 to the supplementary affidavit dated 08.05.2008, filed by the Petitioner, which at its page 10 shows the names of 29 entrepreneurs whose plots were restored, after cancellation. The entrepreneur at serial No. 9 -M/s Real Innerspring Technology Pvt. Ltd, and allottee of plot No. 58 in Sector 6, had only done work up to the plinth level, entrepreneur at serial No. 11 Mohinder Sharma, allottee of plot No. 40, sector 6, had raised boundary wall upto plinth level only, serial No. 14-Mahalaxmi Associates, allottee of plot No. 5 of Sector 7, who had raised boundary wall only, serial No. 20 I.B. Services, allottee of plot No. 57 of Sector 6, had raised only boundary wall, and serial No. 24 -Seth Sham Narain Gupta & Sons, allottee of plot No. 92 in Sector IIDC, had done no construction work and only excavation, were allowed to get their plot restored. Learned Counsel for Respondent argued that the Petitioner had not complied by making formal application with prescribed undertaking, giving bank guarantee of Rs. 5 lakhs and depositing levy at the rate of 7.5 % at the rate prevailing rate, as such, he cannot claim parity with the 29 entrepreneurs, whose plots were restored.

However, as discussed above, this Court finds that Petitioner was not communicated of scheme of restoration (not even through the court by stating so regarding said fact in the counter affidavit in writ petition No. 855 (M/B) of 2006), it cannot be said that it failed to fulfill the conditions in getting its plot restored.

13. For the reasons as discussed above, this writ petition is allowed with the following directions:

1. The impugned order dated 02.11.2007, passed by Respondent No. 3, rejecting the representation of the Petitioner, is hereby quashed, and to that extent, the writ petition is allowed.

2. The Petitioner shall be allowed to move for restoration of his plot by making application with prescribed undertaking, bank guarantee of Rs. 5 lakhs, and depositing levy at the rate of 7.5% at the then prevailing rate (as accepted from the other 29 entrepreneurs) within a period of one month from today and the restoration of his plot shall be considered by Respondent No. 3 within a period of two months thereafter, in the manner other 29 entrepreneurs were allowed under policy dated 10th August 2007, a copy of which is annexure- S.A. 2 to the supplementary affidavit dated 08.05.2008.