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(1996) 10 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 15480 of 1994

Hukam Chand Chauhan APPELLANT

Vs

Haryana State Industrial Corporation RESPONDENT

Date of Decision : 04-10-1996

Acts Referred:

Citation : (1997) 117 PLR 482 : (1997) 3 RCR(Civil) 306

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : K.S. Dadwal and R.K. Khaira, for the Appellant; R.S. Rai, for the Respondent

Judgement

V.K. Bali, J.—For the seeker of an industrial shed, this is a second bout of litigation. Petitioner Hukam Chand has been constrained to knock the doors of this Court for seeking an industrial shed which was allotted to him way back in the year 1983 but in ultimate analysis possession whereof was not given to him and, in fact, vide order dated 10.10.1994, the Letter of Intent issued to the petitioner had been withdrawn. Obviously, it is this order which is subject matter of challenge in this writ petition.

2. Haryana State Industrial Development Corporation respondent No.1 herein advertised certain industrial sheds type ''C in Sector 59, Industrial Area, Faridabad. In pursuance of the advertisement the petitioner submitted an application duly filled in all regards. As per the application, source of finance was also to be disclosed in the heading of Financial Parameters and it was mentioned that the petitioner would obtain loan from financial institutions. He attached 10% deposit with the application so required as per conditions stipulation in the advertisement. After considering the case of the petitioner for allotment of industrial shed, he was issued a letter for one industrial shed. A copy of the letter aforesaid has been annexed with the petition as Annexure P-2. On 2.3.1993, he received letter wherein tentative price of shed was mentioned as Rs. 6.22 Lacs and apart from Rs. 45,000/- the petitioner was required to remit a sum of Rs.

1,10,000/- towards the cost of shed so that Letter of Intent (hereinafter to be referred as LOI) be issued in favour of the petitioner. From the perusal of LOI it is apparent that after issuing the same adequate proof of availability of the funds to implement the project was to be given within three months and the petitioner was required to get the term loan disbursed against the costs of the shed from financial institution within 90 days and further extension for a period of three months could be sought subject to payment of nominal fee at the rate of Re. 1/- per sq. yard, After verification, the petitioner deposited an amount of Rs. 1,10,000/- on 5.4.1993. On 13.5.1993, respondent addressed letter to the petitioner endorsing the aforementioned payment and further informed that a sum of Rs. 693/-more should be remitted because of delay of ten days in making the payment and also advised him to actively pursue the matter with the financial institution for sanction of loan within nine months. The petitioner was pursuing his case for immediate sanction of loan with Haryana Financial Corporation but due to some formalities and other reasons, no loan could be got sanctioned by the petitioner. As per the requirement in Annexure P-3, the balance of 75% cost of shed was payable within three months from the (date of issue of LOI. On 1.9.1993, respondent No. 2re-qucsted the petitioner to complete the formalities of LOI. There after the petitioner made full and final payment details whereof has been given in paragraph 9 of the petition. All that is required to be mentioned here is that by 8.11.1993 the petitioner had paid the total tentative cost that was initially fixed by the respondents at Rs. 6,22,000/ and addressed a letter to the respondent to give possession of the shed. The petitioner was, however, asked to give proof of the loan sanctioned and in the meantime apply for grant of extension of three months upto 1.3.1994 failing which LOI shall be cancelled. On 8.2.1994 respondent No. 2 asked the petitioner to remit Rs. 936/- for extension of period of three months, which amount was sent vide demand draft dated 18.2.1994. Petitioner thereafter addressed a letter to respondent No. 2 for treating the application for scheme under Self Financing Project as no financial institution had advanced loan to him within the stipulated period. It was further clarified that for extension periods which were granted by the respondents treating the petitioner to be in the category of loanees, he was willing to pay interest on payment made during the extension period so that he could be considered for self-financing Project Scheme. Without considering the request of the petitioner, respondent vide letter dated 12.5.1994 declined his request for change from financing of unit by raising loan to self financing scheme and directed him to get the loan sanctioned within the extension period. The petitioner replied the letter aforesaid and again requested to consider his case under self-financing scheme for which he was willing to pay interest. This request was declined vide letter issued on that be-half by the respondent on 16.6.1994. The petitioner was informed that he should get the loan sanctioned before 31.7.1994 positively failing which LOT of the shed shall be cancelled without any notice. The petitioner, however, addressed another letter requesting not to cancel LOI especially when he was willing to make the payment of interest of the entire cost of shed. However, when the petitioner got no tangible result he was

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constrained to file first Civil Writ Petition No. 9870 of 1994 which it appears was disposed of at motion stage by passing the following order :-

"After hearing the learned Counsel for the petitioner, in the interest of justice we direct the respondents to consider the writ petition as well as Annexure P-14, as a representation on behalf of the petitioner and decide the said representation by passing a speaking order within one month from the date of receipt of copy of this order along with the copy of the writ petition, with its Annexures. In case the petitioner has already made the entire payment concerning the plot in question, then the allotment shall not be cancelled till the respondents decide the aforesaid representations. Copy of this order be given Dasti.

The writ petition stands disposed."

3. Representation of the petitioner in pursuance of the orders of this Court referred to above has been decided vide order dated 2.9.1994 (Annexure P-17). It has been stated in the order that keeping in view the Court order and petitioner''s keenness for setting up the unit, Corporation has considered his case under self-financing scheme as a special case provided he submits proof of his resources within seven days of issue of the said letter. It has further been stated in the order that the petitioner shall be required to pay interest of the due amount at the rate of 27% after expiry of three months period i.e. 1.6.1993 till the date of payment. It is the positive case of the petitioner that immediately on receipt of the order aforesaid he addressed a letter to the Estate Officer of the Corporation on 14.9.1994 (Annexure P-18) clarifying therein that there was no amount outstanding against him and that he shall make payment at the rate of 6% per annum because the rate of interest imposed was excessive. He demanded details of payment and also requested for handing over the possession of the shed which was 308, Sector 59, Industrial Area, Faridabad. The Estate Officer it appears on that very day i.e. 14.9.1994 obviously before receiving letter of the petitioner of even date addressed a letter to the petitioner reiterating therein that he should submit documentary proof of his liquid resources for financing of the unit along with a draft of Rs. 4,288/- immediately and in case documentary proof of the resources was not received within seven days, his case was to be processed for withdrawal of LOI. It is significant to mention here that nothing at all has been written therein that as to whether the petitioner was to submit reply within seven days from the receipt of the letter or the issuance thereof and it is again positive case of the petitioner that immediately on receipt of letter dated 14.9.1994 (Annexure P-19), he addressed a letter to the Estate Officer wherein he had given details of his resources. The details of resources have been given in Annexure P-21. In letter dated 8.10.1994 (Annexure P20) it has clearly been stated that the petitioner would send the details of liquid sources within 15 days, and he actually sent the details vide Annexure P-21 within the period asked for by him by writing letter Annexure P-20. It appears that before this letter and the details of liquid sources sent by the petitioner could reach the respondent-Corporation, the impugned order

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Annexure P-22 was passed. The said order has been passed on 10.10.1994. It has been mentioned that the case of the petitioner for setting up of the unit was considered under self-financing scheme as a special case provided he was to submit proof of his own resources and remit interest on delayed Payment @ 27% amounting to Rs. 42,881/- and that the petitioner had not submitted proof of his own resources nor remitted the interest despite letter dated 17.8.1994 and telegram 2.9.1994 and a reminder dated 14.9.1994 and therefore, LOI issued in his favour on 2.3.1993 stood withdrawn.

4. On the facts as have been fully detailed above, Mr. K.S. Dadwal, learned Counsel representing the petitioner vehemently contends that after the case of the petitioner was to be considered sympathetically in pursuance of the orders passed by this Court reference whereof has been given above and permitting the petitioner to convert his application in self-financing scheme, the respondents did not give any breathing time to the petitioner to comply with the terms and conditions which were made a condition precedent for converting the application of the petitioner into self-financing scheme. They have been simply writing a letter to comply with the terms and conditions within 7 days even without mentioning that the conditions were to be fulfilled within 7 days of the issuance of the letter or receipt thereof. The petitioner as and when received the letters and telegram addressed to him by the respondents had given reply thereto and had been meticulously complying with the directions mentioned in the order permitting the petitioner to convert his case into self-financing scheme and yet without waiting for the said replies/letters order Annexure P-22 was passed. The impugned order has been passed in utmost haste without giving the petitioner reasonable time to comply with the directions, contends the counsel for the petitioner.

5. The cause of the petitioner has been opposed and it has been mainly argued by Mr. R.S. Rai, learned Counsel for the Corporation that even though the case of the petitioner was sympathetically considered in pursuance of the order passed by this Court and that he was allowed to convert his application to self-financing scheme, the petitioner did not comply with the conditions precedent for permitting him the change and therefore, the respondent-Corporation was well within its right to cancel the LOI earlier issued in favour of the petitioner.

6. After hearing the learned Counsel for the parties and after going through the record of the case, this Court is of the view that the cause of the petitioner is meritorious and therefore, this petition must succeed. It is not disputed that the petitioner, once he came to know that he will not be able to secure loans from financial institutions, wherein it is no doubt true that all formalities had to be gone into within stipulated period, had requested the Corporation to convert his application into one of self-financing. It was on 2.9.1994 that the petitioner was permitted to change his application to self-financing scheme and within 12 days of the issuance of that letter irrespective of the date of its receipt, the petitioner submitted an application on 14.9.1994 clearly mentioning therein that he had

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already submitted information regarding his sources of income and in any case once again he was enclosing the copy of the same for consideration by the Corporation. It requires to be mentioned here that vide letter dated 17.10.1994 the petitioner had stated that he had the capacity to start the work and with a view to prove that he has mentioned various properties and against each property the value that he could fetch there from was also mentioned. The Estate Officer, it is apparent from the records of the case, before he had received the letter addressed to him by the petitioner, (Annexure P-18), had addressed a letter in turn to the petitioner on the same day .i.e. 14.9.1994, requiring the petitioner to submit documentary proof of liquid resources for financing his unit along with a draft of Rs. 42,881/-. It is not at all known as to when the petitioner received the letter dated 14.9.1994, even though as mentioned above, it is the positive case of the petitioner that immediately thereafter he addressed a letter to the Estate Officer on 8.10.1994 wherein he has mentioned that he had come to know through letter (Annexure P-19) dated 5.10.1994 that the details of liquid sources was demanded from him. In the letter aforesaid the petitioner has stated that he would send the details of liquid sources within 15 days and as a matter of fact he sent complete details of liquid sources (Annexure P-21) on 17.10.1994. However, as mentioned above, without waiting for the reply of the petitioner letter of Intent had already been withdrawn. The contention of Mr. Dadwal that the respondents decided the matter and withdrew the LOI in utmost haste is over whelmingly proved from the resume of facts given above. Even if the respondent-Corporation was demanding details of liquid resources from the petitioner, in considered view of this Court it should have been within the stipulated period of 7 days from the receipt of the letter by the petitioner. The positive case of the petitioner is that immediately on receipt of the letter from the Corporation requiring him to submit liquid sources, he had supplied the requisite information immediately. This assertion has to be believed in the absence of any proof brought by the respondent-Corporation that the letters written by it were received by the petitioner earlier in point of time than that is asserted by the petitioner. If 7 days were to be considered from the date of receipt of the letter written by the Corporation, then in clear view of the Court the petitioner had meticulously complied with the conditions precedent to convert his application for self-financing scheme. Looked from any angle, the impugned order annexure P-22 deserves to be set aside. So ordered. Let the possession of shed be handed over to the petitioner subject, of course, of his depositing the entire arrears that stand in his name inclusive of interest as ordered by the Corporation in order Annexure P-17. It may be mentioned that interest mentioned in Annexure P-17 is at the rate of 27% per annum and Mr. Dadwal has stated at the Bar that the petitioner is prepared to pay interest at the rate of 27% . The interest at the aforementioned rate would be paid till the date of payment and it is only on payment of this amount that the Corporation would hand over the possession of the shed to the petitioner. No order as to costs.

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