
(1999) 02 AHC CK 0068

In the Allahabad High Court

Case No : Civil Miscellaneous W.P No. 38342 of 1994

Keshav Mathur

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 04-02-1999

Acts Referred:

Industries (Development and Regulation) Act, 1951 — Section 11

Citation : (1999) 02 AHC CK 0068

Hon'ble Judges : D.S.Sinha, J and B.K.Sharma, J

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Heard Sri Vivek Kumar Birla, learned Counsel appearing for the petitioner, Sri Yashwant Verma, learned Counsel representing the respondent Nos. 4 and 5 and Sri S.G. Husnain, learned Addl. Chief Standing Counsel representing the respondent Nos. 6 and 7. No Counsel of Central Government representing the respondent Nos. 1,2 and 3, is present.

Facts of the case, briefly stated, are these:

2. By means of his application dated 2nd May, 1990, the petitioner applied to the Central Government for grant of licence under Section 11 of the Industries (Development and Regulation) Act, 1951, here in after called the "Act", for establishing a new Industrial Undertaking of Sugar Factory at Nawabganj in the district of Bareilly. It appears that the application was processed and certain additional information were called for from the petitioner which was supplied by him on 7th May, 1993.

3. According to the averments made in the petition, filed in November, 1994, the application of the petitioner was not being disposed of. Hence, this petition.

4. In the writ petition besides seeking requisite direction to the Central Government for deciding the said application, the petitioner has also made a prayer for quashing the order dated 13th January, 1994 granting similar licence to the respondent No. 4 and the order of the Central Government passed in July,

1994 where by it transferred licence granted to respondent No. 4 in favour of the respondent No. 5.

5. From Annexure "7" appended to the counteraffidavit filed on behalf of the respondent Nos. 4 and 5 and Annexure " 1 to the counteraffidavit filed on behalf of the respondent Nos. 1, 2 and 3, it transpires that the application of the petitioner dated 2nd May, 1990 praying for grant of licence under Section 11 of the Act had already been rejected by a reasoned order dated 24th May, 1994. Indeed, photo and typed copy have been filed. Annexure "7" to the counteraffidavit of the respondent Nos. 4 and 5 is the photo copy of the order dated 24th May, 1994 and Annexure T to the counteraffidavit of respondent Nos. 1, 2 and 3 is a typed copy of the order dated 24th May, 1994. Copies of the counter affidavits of the respondent Nos. 4 and 5 and of the respondent Nos. 1, 2 and 3 were served on the Counsel of the petitioner on 16th January, 1995 and 20th February, 1995, as is evident from the endorsement made by the Counsel on the counteraffidavits.

6. In view of the fact that the application of the petitioner dated 2nd May, 1990 has already been disposed of by the Central Government vide its order dated 24th May, 1994, the prayer of the petitioner for direction to dispose of the same becomes infructuous.

7. Learned Counsel of the petitioner submits that the order dated 24th May, 1994 is illegal and deserves to be quashed as it was never communicated to the petitioner.

8. Validity of the order dated 24th May, 1994 has not been challenged by the petitioner in any manner. No application challenging the said order has been moved. The submission of the learned Counsel of the petitioner that the petitioner did not receive the order dated 24th May, 1994 cannot be accepted for following two reasons:

(a) firstly photo copy and typed copy of the order dated 24th May, 1994 clearly shows that the order was sent to the petitioner under registered post. There is no challenge that the letter was not sent through registered post after giving correct address of the petitioner. There is no material before the Court to show that the registered letter containing the order dated 24th May, 1994 was returned back to the Central Government without delivery. Under the circumstances, the service of the order dated 24th May, 1994 has to be presumed to be sufficient; and

(b) secondly at any rate the petitioner acquired knowledge of the order dated 24th

May, 1994 through his Counsel on 16th January. 1995 and 20th February, 1995 when the copies of the counteraffidavit along with the copy of the order dated 24th May, 1994 were served on the learned Counsel of the petitioner, which is not in dispute.

9. Having acquired knowledge of the order dated 24th May, 1994 in the year 1995 itself, the petitioner kept on slumbering for a period of more than four years and he did not wake up even in the year 1999 to challenge the order dated 24th May, 1994. He cannot be allowed to do so now and that too on oral prayer.

10. Otherwise also, there is no occasion for the Court to intervene in the matter in view of the latest decision of the Central Government to delete sugar industry from the list of industries requiring compulsory licensing under the Act. (See, 1998 (4) Company Law Journal (Statutes) page 87). Learned Counsel appearing for the petitioner is not able to contradict this position and the learned Addl. Chief Standing Counsel representing the State of U.P. also affirms the position that sugar industry has been deleted from the list of industries requiring compulsory licensing under the Act.

11. So far as the prayer of the petitioner for quashing the order dated 13th January, 1994 granting licence under Section 11 of the Act to the respondent No. 4 and the subsequent order passed in July, 1994 transferring the said licence in favour of the respondent No. 5 is concerned, the Court is of the opinion that the said prayer cannot be granted in view of the fact that the order dated 24th May, 1994, where by the application of the petitioner for the grant of licence was disposed of, has become final and has not been challenged despite lapse of more than four years of its passing and communication thereof to the petitioner and, in the meantime the project in pursuance of the licence granted to them has already been implemented by the respondent No. 4 and crores of rupees have been invested there in, as is evident from the averments made in paragraph 6 of the supplementary counteraffidavit of Sri Ravindra Kumar Lamba filed on behalf of the respondents.

12. All told, the petition is devoid of merits and is hereby dismissed summarily.