
(2008) 04 AHC CK 0242
In the Allahabad High Court

Microcomm India Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Citation : (2008) 3 AWC 2217

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—Heard learned Counsel for the petitioner, Dr. A.K. Nigam learned Additional Solicitor General appearing for respondent No. 1 assisted by Sri Anubhav Trivedi, learned Standing Counsel for respondents No. 2 and 3 and Sri Uma Kant, Advocate appearing on behalf of respondent No. 4.

2. The petitioner is aggrieved by the order dated 3.8.2006 (Annexure 28 to the writ petition) cancelling letter of allotment/letter of permission (for short "LOA/LOP") and dated 21.8.2006 (Anenxure 27) declining to extend the validity of LOA/LOP.

3. The facts in brief giving rise to the present dispute are that the petitioner, M/s Microcomm India Limited, in order to set up an export oriented unit at Noida Special Economic Zone (hereinafter referred to as "SET"), applied for LOA/LOP to Development Commissioner, Government of India in the light of Government policy notified for export and import for the period 2002-2007 by creating SEZ. The Development Commissioner vide letter dated 28.7.2003 granted permission subject to certain conditions as contained in paragraphs 2 to 8 thereof which are reproduced as under:

2 The above permission is subject to the conditions stipulated in Annexure in addition to the following conditions:

(i) The unit shall export its entire production, excluding rejects and sales in the

domestic tariff area as per provisions of SEZ scheme for a period of five years from the date of commencement of production. For this purpose the unit shall furnish the requisite legal undertaking as prescribed in the SEZ scheme to the Development Commissioner, Noida Special Economic Zone (NSEZ). Before signing the LUT it should have its own operational Web-site and permanent E-mail address. The unit would have the option to renew its SEZ status or opt out of the scheme in per industrial policy in force at that time in relation to items of production.

(ii) The unit would be required to achieve Net Foreign Exchange (NFE) as prescribed in the SEZ scheme for a period of five years from the commencement of production, failing which it would be liable for penal action.

(iii) It is noted that you require imported Capital Goods valued at Rs. 131.88 Lakhs (Rupees one crore thirty one lakh eighty eight thousand only) for the proposed project.

(iv) Import/local purchase of all items except those listed in prohibited list for import/export will be permitted.

(v) Possession of allotted plot/SDF will be taken within a period of three months of issue of approval letter and construction of the factory building/implementation of project shall be started within next six months.

(vi) It is noted that no fee/royalty is to be paid for the foreign technology agreement.

(vii) Foreign Equity participation shall be as per RBI Guidelines.

(3) This letter of permission is valid for One year from its date of issue within which you should implement the project and commence production and would automatically lapse if an application for the extension of validity is not made before the end of the said period. Date of commencement of production shall be intimated to the Development Commissioner, NSEZ, Noida.

(4) The approval is based on the details furnished by you in your project application.

(5) You shall be required to enter into a Legal Agreement in the prescribed form (Appendix 14-IF) with Development Commissioner, Noida Special Economic Zone, Noida for fulfilling the terms and conditions mentioned in the LOP.

(6) You are requested to confirm acceptance of the above terms and conditions to the Development Commissioner, NSEZ, Noida (U.P.) within 45 days.

(7) If you fail to comply with the conditions stipulated above, this letter of approval is liable for cancellation/revocation.

(8) All future correspondence for amendments/changes in terms and conditions of the approval later or for extension of its validity if required may be addressed to the Development Commissioner, Noida Special Economic Zone, Noida(U.P.)

4. Para 3 of the said letter thus made it clear that the said LOA/LOP granted was valid for one year from the date of issuance thereof. It is said that agreement (Annexure 5) was also executed by the petitioner on 19.11.2003 with the Union of India acting through Development Commissioner. The petitioner was allotted plots No. 129-B and 129-C in the aforesaid SEZ for installation of his industrial unit and got possession thereof on 19.11.2003 (Annexure 8 to the writ petition). However, the petitioner could not commence his production and, in fact, could not even start construction of building within the validity period of LOA/LOP and, therefore, sought extension thereof vide application dated 25.8.2004 followed by a reminder dated 15.9.2004 whereupon the said period was extended upto 27.7.2005 vide letter dated 21.9.2004. A copy thereof has been placed on record as Annexure 11 to the writ petition. In respect to plots allotted to him the petitioner also executed sub-lease agreement with Government of India through Development Commissioner on 15.10.2004 (Annexure 12 to the writ petition). Again the petitioner sought further extension of validity period of LOA/LOP vide application dated 25.7.2005 which was allowed by the competent authority vide letter dated 29.7.2005 (Annexure 14) for a further period of six months, i.e., till 31.12.2005. Still nothing could progress and the petitioner vide letter dated 27.12.2005 sought extension of validity of LOA/LOP for a further period of one year. It is said that neither approach roads were made by the respondents nor any electricity or other facilities were made available, on account whereof, the petitioner could not commence construction and production and for the same, it could not be victimized or made responsible. Ignoring the aforesaid deficiencies on the part of the respondents, the Assistant Commissioner issued a show cause notice dated 13.2.2006 (Annexure 16) directing the petitioner to show cause as to why LOA/LOP dated 28.7.2003 be not cancelled. The said notice also mentions that the petitioner has failed to pay lease rent besides non-implementation of project within the stipulated period and, therefore, has violated the terms of LOA/LOP. The petitioner submitted reply vide letter dated 20.2.2006 (Annexure 17 to the writ petition) wherein he clarified that the work could not progress due to non-availability of basic infrastructure and facilities and, therefore, requested for extension of LOA/LOP for a further period of six months vide letter dated 27.2.2006 (Annexure 18 to the writ petition). The petitioner gave the following programme for implementation of his project:

a) Basic preparation like Building Plans etc. : Ready b) Completion of first phase of Building : 31.8.2006 c) Design of Products & Production Drawings : Ready d) Commence Production in temporary accom. : By 01.06.2006 e) Full Production : By 01.10.2006

5. The said letter shows that a sum of Rs. 4,20,898.00 was outstanding towards the petitioner on account of lease charges etc which he had paid subsequently as stated in the aforesaid letter. The authorities however, vide letter dated 9.3.2006 (Annexure 19 to the writ petition) granted extension to validity period of LOA/LOP upto 7.4.2006 with clear stipulation that other terms and conditions would remain unchanged. The petitioner could not complete the work and through his

letter dated 10.8.2006 (Annexure 21 to the writ petition) informed that some construction has already been made and the he is likely to complete First Phase of his building by the end of February 2007 whereafter full level production will commence in March 2007 and sought extension of validity period of LOA/LOP accordingly.

6. It is, however, not disputed that though the period of LOA/LOP was not extended after 7th April, 2006, the petitioner applied for extension thereof only on 10.8.2006. In the meantime, by order dated 3.8.2006 the Assistant Development Commissioner cancelled LOA/LOP dated 28.7.2003, and subsequently by order dated 21.8.2006 the petitioner was informed that his letter dated 10.8.2006 requesting for extension of time cannot be granted inasmuch as, Development Commissioner himself visited the spot on 17.8.2006 and found progress of work unsatisfactory and that not even 10% work was found complete. It is against these two orders, the petitioner has filed this writ petition contending that before passing the impugned order dated 3.8.2006 no opportunity was afforded to the petitioner and the impugned order is illegal and in violation of principles of natural justice.

7. On behalf of respondents No. 1, 2 and 3 detailed counter affidavits have been filed. On behalf of the respondents it is contended that the petitioner was given due notice as is evident from Annexure 16 to the writ petition and, therefore, the contention that the impugned order were passed without affording any opportunity is ex facie incorrect. It is contended that as per the conditions of LOA/LOP the petitioner was under an obligation to complete construction and start production within stipulated time but it failed even to raise construction over the premises in question. As such, the respondents had no option but to cancel LOA/LOP and the same has now been executed in favour of respondent No. 4. Learned Counsel for respondent No. 4 also advanced similar contentions.

8. Having heard the counsel for the parties, in our view, the writ petition deserves to succeed. It is no doubt true that as per LOA/LOP dated 28.7.2003, the petitioner was required to start production within the prescribed period. The initial tenure of validity of LOA/LOP was one year, i.e., from 28.7.2003 to 27.7.2004. However, it was extended from time to time, i.e., upto 27.7.2005 vide letter dated 21.9.2004, upto 31.12.2005 vide letter dated 29.7.2005 and upto 7.4.2006 vide letter dated 9.3.2006. It is evident that the letters of extension were issued by the authorities concerned much after expiry of validity period and that too after exchange of some correspondence between the parties and almost for two years, the validity period of LOA/LOP after expiry of initial period, was extended. The alleged show cause notice dated 13.2.2005 (Annexure 16 to the writ petition) cannot be treated to be an opportunity for justifying the impugned orders, inasmuch as, thereafter competent authority extended the period vide letter dated 9.3.2006 upto 7.4.2006. From the manner the authorities have acted in this case, it is evident that expiry of validity period of LOA/LOP has never been taken sacrosanct to oust the petitioner or to treat his

LOA/LOP as cancelled or surrendered. Instead, it has passed extension orders from time to time even after expiry of the validity period. The record clearly shows that after expiry of last extended period on 7.4.2006 the respondents did not issue any letter to the petitioner or gave him any opportunity to show cause as to why the LOA/LOP be not cancelled. It appears that after 7.4.2006 the respondents on their own have proceeded to pass the impugned orders without giving any notice or opportunity to the petitioner. In the facts of this case in our view, principles of legitimate expectation are clearly attracted as the petitioner would have been justified in proceeding with the understanding that no order adverse to him would be passed without giving opportunity to show cause to it. In the past also, the respondents though issued notices from time to time but ultimately extended the period of validity of period of LOA/LOP and, therefore, the petitioner would have been justified in expecting this time also that before passing any order adverse to his interest, the competent authority shall afford opportunity to the petitioner which has not been done as a matter of fact. Moreover, even in August 2006 the respondents were not averse against the petitioner to grant him further extension as is evident from the letter dated 21.8.2006 wherein it has been stated that the Development Commissioner himself visited the spot on 17th August 2006 and found progress of work unsatisfactory and not even 10%. That being so, it was all the more necessary on the part of the authorities to apprise the petitioner of this inspection and findings and give him an opportunity before passing the order cancelling LOA/LOP.

9. The doctrine of legitimate expectation is now considered to be a part of principles of natural justice. If in the light of existing state of affairs, a party is given to understand that the other party shall not take away the benefit without complying with the principles of natural justice the said doctrine would be attracted in such a case and executive order visiting civil consequences would be liable to be assailed if the other party fails to observe such principles. The only exception which is recognised against the application of legitimate expectation is where the legislation is otherwise. In *Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others*, of the judgment the Court observed as under:

Legitimate expectation is now considered to be a part of principles of natural justice. If by reason of the existing state of affairs, a party is given to understand that the other party shall not take away the benefit without complying with the principles of natural justice, the said doctrine would be applicable.

10. In *Kuldeep Singh Vs. Govt. of NCT of Delhi*, the Apex Court held that, the doctrine of legitimate expectation operates both in procedural and substantive matters.

11. In *Poonam Verma and Ors. v. Delhi Development Authority* J.T. 2007(13) SC 604, the Apex Court observed that legitimate expectation has a positive concept and an endeavour should be made to invoke the same wherever it is found that a practice was prevailing which is sought to be deviated without any reason.

Legitimate expectation, of course, is not a legal right. It is an expectation of a benefit, relief or remedy that may ordinarily flow from a promise or established practice. It refers to a regular, consistent, practicable and certain process or activity of the decision making authority. What is required is that expectation ought to be legitimate, i.e. reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid, cannot be a legitimate expectation. On its own not being a right, it may not be enforceable as such, but it is a concept recognised by the courts for judicial review of administrative action. It is procedural in character based on requirement of a higher degree of fairness in administrative action, as consequence of promise made or promise established. Briefly, it can be said that a person is said to have legitimate expectation of a particular treatment if any right or promise is made by a party, either expressly or impliedly or if regular and consistent past practice of the authority had given room for such expectation in normal course. As a ground for relief the efficacy of this doctrine though vague, as it may be positioned just above "fairness in action" but far below the "promissory estoppel".

12. However, it may entitle an expectation of an opportunity to show cause before the expectation is dashed or to an explanation as to the cause for denial. In appropriate cases, the Court may direct the decision making authority to follow such procedure before taking an action otherwise. In the present case, as we have already noticed. after expiry of last extended period of 2006, i.e., 7.4.2006, the respondents have not been able to show that any notice or opportunity was given to the petitioner before passing the impugned orders.

13. In the result, we have no hesitation in holding that the impugned orders are in violation of principles of natural justice and. therefore, liable to be set aside.

14. The writ petition, therefore, succeeds and is allowed. The impugned orders are hereby quashed. Respondents No. 1 to 3, however, are at liberty to pass a fresh order in accordance with law after giving an opportunity of show cause to the petitioner. We further provide that till the respondents pass a fresh order after giving opportunity of hearing as directed above, the parties shall maintain status quo with regard to land in (sic).

15. There shall be no order as to costs.