
(1995) 12 AHC CK 0007
In the Allahabad High Court
Case No : C.M.W.P. No. 7161 of 1995

Miracle Sugar Factory and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 01-12-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 12 AHC CK 0007

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : S.U. Khan, for the Appellant;

Final Decision : Allowed

Judgement

D.K. Seth, J.—On an earlier occasion, the Petitioner had moved a writ petition being Writ Petition No. 36657 of 1994 against an inaction in respect of grant of licence for the year 1993-94 under the U.P. Khandsari Sugar Manufacturers Licensing Order, 1967 which was disposed of on 11th January, 1995 and in connection whereof the Petitioner had made the present application No. 429/74/95. Mr. V.K. Birla appearing for the Bareilly Sugar Mills, who has been permitted to intervene at a subsequent stage, submits that the said application has become infructuous. Mr. S.U. Khan Counsel for the Petitioner admits the position. Therefore, the said application is dismissed as infructuous.

2. Mr. S.U. Khan, counsel for the Petitioner, contends that the Petitioner had applied for licence for the year 1994-95 but the same was directed to be considered by the said judgment dated 11th January, 1995 by the appellate authority in the light of the observation made therein. Now the authority having rejected the prayer for grant of licence by an order dated 8th March, 1995, the Petitioner has come up by means of this writ petition assailing the said order.

3. In support of his contention, Mr. S.U. Khan contends that for the purpose of grant of licence, certain restrictions have been laid down in para 3 of the said

licensing order. Sub-para (4) of para 3 of the said order is relevant for our purpose and it is quoted herein;

(4) An application for the grant or renewal of a licence shall be disposed by the Licensing Authority expeditiously and shall not be rejected except where the application has not been made by the prescribed date or on the prescribed form or is incomplete or is not accompanied by proof of the payment of the requisite fee or the Licensing Authority is of the opinion that it is necessary or expedient so to do in the public interest with a view to--

(a) regulating the Khandsari Sugar Manufacturing Industry in the best interest of the industry; or

(b) avoiding uneconomic concentration of Khandsari units in any area ; or

This judgment would act as a great difference against executive illegalities, because they cannot take the plea that writ petition has become infructuous on account of the period for which licence was applied for and refused having expired.

(c) ensuring in a reserved or assigned area adequate supplies of sugarcane to a factory:

Provided that while disposing of an application for grant or renewal of a licence, the Licensing Authority may also take into consideration--

(a) the conduct of the applicant in carrying on any process of manufacture of Khandsari sugar prior to the date of application including the previous contravention, if any, or any provision of this Order, or conditions of the licence : and

(b) the total continuous period for which the applicant held licence under this order prior to the date of the application; and

(c) the default, if any, made by the applicant in payment of the dues under the U.P. Sugarcane (Purchase Tax) Act, 1961, (U.P. Act No. XXIV of 1961):

Provided further that no application for renewal of a licence shall be rejected without giving the applicant a reasonable opportunity of being heard unless such application is made after the expiry of the prescribed date or is not accompanied by satisfactory proof of the payment of the prescribed fee:

Provided also that where an application for the grant or renewal of a licence is not disposed of the commencement of the licensing year or within three months of the date on which the application is made, whenever is later, and in respect for licensing year 1982-83 by December 31, 1982.

4. One of the condition to be considered was "ensuring in a reserved or assigned area adequate supplies of sugarcane to a factory". He further submits that the area, in which the Petitioner is seeking his licence, is situated within 17 kms. for Bareilly Sugar Mills. The State Government has created a reserved area for

supply of sugarcane to the said Bareilly Sugar Mills for a distance of 40 kms. radius. Subsequently in the year 1993-94, a reserved area, as has been drawn by Mr. Khan, has been created within a radius of 25 kms. within which no such licence can at all be granted. The said total prohibited area was replaced by 30 kms. for the year 1994-95.

5. Drawing my attention to the observations made in the said order dated 11th January, 1995 passed in Writ Petition No. 36657 of 1994 which is Annexure 10 to the writ petition, Mr. Khan submits that the said policy has been interpreted in the said judgment to the extent that the literal meaning of the policy is not to be accepted. It has looked behind the object of the formation of the policy which was recorded in the said judgment. That the prime consideration would be to see whether the supply of sugarcane to the existing factory or sugar mill has not been adversely affected by the grant of licence under the said Licensing Order, therefore, the Respondents, while considering the claim of the Petitioner, were to reconsider in the light of the observation made therein.

6. After the said order was passed, while considering the same, according to Mr. Khan, the Respondents had overlooked or bypassed the clear mandate in the form of observation made in the said judgment though had made a passing reference to the said order. In effect though the order has been sought to be passed with reasons but in effect, according to Mr. Khan, those reasons are futile.

7. He had drawn my attention to paragraphs 28 and 51 of the writ petition. In paragraph 28 he has specified the total yield of sugarcane within the reserved area for Bareilly Sugar Mills for different years which shows that in the year 1993-94, the yield was 88.92 lacs quintals while that of 1994-95 estimated as 110 lacs quintals whereas in the year 1993-94, the said sugar mill had the consumption of 3 lacs quintals. It appears that the said paragraph have been dealt with in the counter-affidavit filed on behalf of the State in paragraph 22 where the production was shown as 88.92 lacs quintals in 1993-94 and 111 lacs quintals in the year 1994-95 and the consumption was shown at 4.58 lacs quintals and 13.05 lacs quintals for the years 1993-94 and 1994-95 respectively.

8. By the said submission. Mr. Khan asserts that the supply of sugarcane for the said Sugar Mill is for excess than what was consumed. Mr. Khan also drew my attention to paragraph 51 of the writ petition where he had pointed out that for the year 1994-95 a licence under the said licensing Order had been issued to M/s Radha Krishna Sugar Industries Village Tisua, Tahsil Faridpur, District Bareilly which is situated within 20 kms. from Bareilly Sugar Mills. While dealing with the said submission, the State Government in paragraph 39 of the counter-affidavit had pointed out that Villa Tisua is at a distance of 28.80 kms. Mr. Khan submits that even accepting that figure, the same was within the mischief area of 30 kms. which makes no difference with regard to the policy that such a licence though totally forbidden could not be granted. Therefore, it appears from the said fact that the Respondents had in effect been following a principle with regard to the policy which is similar to the observation made in the said

judgment by Hon"ble M. Katju, J. The Respondents themselves are not following the policy literally. Such grant can easily be presumed to have been made on the basis of the question of availability of surplus sugarcane even after ensuring adequate supply to the Bareilly Sugar Mills.

9. Mr. Birla while supporting the case of Bareilly Sugar Mills draws my attention to the impugned order. In the very first paragraph, the order dated 11th January, 1995 has been referred to and the authority had proceeded keeping in view and mind the observations made in the said judgment and had considered the availability of surplus sugar for ensuring adequate supply to Bareilly Sugar Mills and has come to a finding on the basis of the datas available with them that there was no available surplus of sugarcane which might facilitate the grant of licence to the Petitioner. He has taken me through the said order with meticulous care and had attempted to show that the said order had been passed following the law laid down in the order dated 11th January, 1995. Relying on the judgment in the case of Tata Cellular Vs. Union of India, . Mr. Khan contended that the Jurisdiction under Article 226 of the Constitution cannot be used as that of an appellate court. The restriction of exercise of this Jurisdiction is that of a revisional court against a Judicial review. Therefore the Court has to keep in its mind the observations that have been made in the said judgment while quoting from the case of Chief Constable of the North Wales Police v. Evans 1986 AC 240 : (1986) 1 All ER 199, where Lord Brightman had, touched his views in the following expression:

Judicial review as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

Judicial review is concerned, not with the decision, but with the decision making process. Unless that restriction on the power of the Court is observed, the Court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.

10. In the said judgment, in paragraph 77, the guideline for exercising judicial review has been laid down in the following manner:

77. The duty of the Court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision making authority exceeded its powers?
- 2 Committed an error of law,
3. Committed a breach of the rules of natural Justice,
- 4 Reached a decision which no reasonable tribunal would have reached, or
5. Abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only

concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by Judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R.V. Secretary of State for the Home Department, ex Brind, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention.

11. Mr. Birla supports his contention by referring to the decision in the case of S.R. Bommai and others Vs. Union of India and others etc. etc., , where in paragraph 211 a similar view has been expressed.

12. It is now an accepted and established principle of law that while exercising jurisdiction under Article 226, the power that is exercised is more in the nature of revision or review and not that of an appellate authority. This has been the consistent view of all the High Courts in India and has been so held by the Supreme Court on many earlier occasions and this view has been consistently followed. Therefore, it needs no reiteration.

13. Relying on the impugned order, Mr. Birla pointed out that the authority has taken into account that the said Bareilly Sugar Mills had already purchased a vast tract of land which has already been surrounded by boundary wall for the purpose of expanding production by establishing new unit and thereby raising the total consumption of sugarcane to 45 lacs quintals. It has also taken into account that the Government is considering the grant of licence to some other sugar mills within the said reserved area. Therefore, the authority had taken into account the available surplus sugarcane in future. These findings cannot be set aside in exercise of Jurisdiction under Article 226 of the Constitution.

14. As has been observed earlier, if the authorities can grant permit to one more person, they cannot fix a different standard for the Petitioner. That apart the consideration which has been looked into is still in the womb of the future. There are many gaps between the cups and lips. We do not know what would be the situation in future. From paragraph 28 of the writ petition, which has been dealt with in paragraph 22 of the counter-affidavit, it appears that there is a trend of increase in the production of sugarcane in the reserved area. The policy is not one sided. While it ensures adequate supply to the mills, at the same time, it also ensures that the farmers who produce sugarcane, their interest is

adequately secured. Admittedly, the total production at the moment being almost more than 8 times, it cannot be said that there is no adequate supply. The entire calculation appears to have been made on the basis of future requirement which we can safely presume to be based on surmises. It cannot be said that there is adequate data in arriving at the calculation that there is no surplus production at the moment. Even then from the expression in paragraph 4 of the said order that normally farmers' expectations for advance payment are much while payment of sugarcane given to the sugar mills for consumption is given after much time shows that they had also taken into account certain extraneous consideration which cannot weigh with the question of availability of surplus. It is also said that two other units having 2500 TCD (Tons capacity per day) are going to be established within the said area and that was one of the consideration on which Petitioner's prayer was refused.

15. The question of grant of licence is to be considered on the basis of a situation available on the day when the consideration is being made. It cannot depend on certain future facts or events which are yet uncertain and there is no methodology to determine the certainty of those questions. Therefore, such consideration is wholly irrelevant for the present purpose. Therefore, the said question cannot form the basis for consideration.

16. This question is a question which relates to the process of decisionmaking. The process behind the making of the decision does not appear to be a correct procedure that has been followed. Therefore, the same can very well be reviewed in exercise of writ Jurisdiction.

17. Now turning to the question on which Mr. Birla had laid great stress that the petition has become infructuous since the question relates to the grant of licence for the year 1994-95. He draws my attention to the prayers made in the writ petition. The second prayer is for grant of licence for the year 1994-95 while the first prayer is for setting aside the order by which the same was refused. The period for which the licence is being sought having been expired there cannot be any question of grant of licence for the said purpose.

18. Mr. Khan opposing the said prayer submits that the Petitioner had similarly applied for licence for the year 1993-94 and the resultant process for getting the relief after pursuing the remedies available, the period had expired and similarly the period 1994-95 had also expired. The procedure laid down for vindicating the right of the Petitioner is a long drawn one which survives more than a year. If such a situation is accepted, in that event, the Petitioner would have to resort to repeated exercises in futility.

19. To my mind, it appears that there is much force in the submission made by Mr. Khan. Before us at least we have two instances. Inasmuch as for the year 1993-94, the entire exercise has rendered in futility because when the judgment was delivered on 11th January, 1995, not only the period 1993-94 had expired but also the period 1994-95 was on the verge of expiry. In the meantime, during

the pendency of the earlier writ petition in which refusal of licence for the year 1993-94 was pending, the Petitioner had applied for licence for the year 1994-95 which again was refused and the same was considered only after the judgment dated 11th January, 1995 was passed according to the observation made therein and the same having been refused, now the Petitioner has come up by means of this writ petition which was filed on 27th March, 1995. The said order itself was passed on 8th March, 1995 while the period of licence asked for was due to expire on 31st March, 1995. Therefore, the situation would lead to a position that the Petitioner would have to go on undertaking futile exercises year after year without getting the relief.

20. The jurisdiction under Article 226 is extra-ordinary in nature and has invested the Court with such power so as to correct such actions within the ambit as laid down by different High Courts relating to the principle for such purposes. The Court cannot close its eyes and remain a idle onlooker to a circumstance which leads to futility and unwholesome technicalities. The procedures are hand-maid of justice. The procedure cannot imprison justice so as to drive a citizen to undertake an exercise which would ultimately result in futility and the relief remains ever elusive to him. Technically, the period might have expired, the Petitioner may not get the licence for the said period, but the procedure followed in processing the licence that can be corrected so as to enable the authority to follow the correct procedure for the next occasion. At the same time, this Court has jurisdiction to declare that the refusal to grant licence was not in accordance with law. May be the Petitioner may not have got the actual relief. But his right has been established. Therefore. in my view, in the facts and the circumstances of the present case, the writ petition cannot be said to have become infructuous at least for the purpose of correcting the process followed for the purpose of granting the licence by the Respondents. Though admittedly, the Petitioner cannot get the licence for the year 1994-95, but the observations made above may be considered to be a guideline for purpose of considering the question of grant of licence to the Petitioner if he so applies for the current year or for future.

21. For all these reasons, the writ petition succeeds and is allowed. Accordingly a certiorari issue quashing the order contained in Annexure "11" to the writ petition, with the modification as indicated above with regard to the grant of licence. No order as to costs.