(1976) 11 AHC CK 0025

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1115 of 1975

Mohammad Sharif Mohammad Ameeer, Moradabad — APPELLANT

Vs

Assistant Sugar Commissioner, Haldwani and another — RESPONDENT

Date of Decision : 22-11-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Khandsari Sugar Manufacturers Licensing Order, 1967 — Rule 3, 4

Citation : (1976) 11 AHC CK 0025

Hon'ble Judges : C.S.P.Singh, J and R.M.Sahai, J

Final Decision : Allowed

Judgement

C. S. P. Singh, J.

The petitioner owns a Khandsari unit. He had been granted licence for running the unit. It appears that certain arrears of purchase tax in respect of sugar cane purchased by him were due. When he applied for renewal of the licence for the year 197576. The ground on which renewal was refused was that the petitioner was in arrears of purchase tax. The petitioner has impugned this order by way of this writ petition.

The grant of licence to manufacture Khandsari Sugar is governed by the U. P. Khandsari Sugar Manufacturers'' Licensing Order, 1967. Rules 3 and 4 of the order runs:

"Grant of Licence. (1) No manufacturer shall, without obtaining from the Licensing Authority, a licence, in the form prescribed in Schedule I manufacture of Khandsari Sugar by means of a power crusher, bel orcentrifugal:

"Provided that no, licence shall be given to any person who is minor.

(2) An application for grant or renewal of a licence under subclause (1) shall be made to the Licensing Authority by the date prescribed in Schedule II in the form prescribed in Schedule III and accompanied by a satisfactory proof of the

payment "of the fee prescribed in Schedule IV.

In the case of a renewal of a licence, an application shall also be accompanied by the licence sought to be renewed, and if the licence is lost, destroyed, or misplaced, by an application under clause 5 for the issue of duplicate thereof.

(3) Notwithstanding anything hereinafter contained no application for the grant or renewal of a licence shall be considered unless it is made in accordance with the provisions of subclause (2).

(4) An application for the grant or renewal of a licence shall be disposed of by the Licensing Authority expeditiously and shall not be rejected except in case 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 Unit is in any area; or

(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 application in carrying on any process of manufacture of Khandsari sugar prior to the date of application including the previous contravention, if any, of 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:

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 by the commencement of the licensing year or within three months of the date on which the application is made, whichever is later, the licence shall be deemed to have been granted or renewed, as the case may be.

(5) An applicant aggrieved with the order of the Licensing Authority under subclause (4) may, within thirty days from the date of such order prefer an appeal to the State Government whose decision thereon shall be final.

(6) An applicant shall be entitled to a refund of licence fee paid

(a) On the rejection of his application; or

(b) Where an appeal has been preferred under subclause (5) on the rejection of the appeals:

Provided that the applicant shall not be entitled to the refund of late fee paid, if any.

(7) Where a licencee surrenders the licence granted to him within thirty days of its receipt by him and satisfies the Licensing Authority that he has not availed of it in any manner, he shall be entitled to a refund of threefourth of the licensing fee deposited by him.

4. Period for which licence are to be issued.

A licence granted or renewed under this Order shall be subject to the conditions prescribed in the form of licence set out in Schedule I and be valid for the entire licensing year or any party thereof as indicated in the licence by the Licensing Auhority." A bare perusal of these provisions show that a licence cannot be refused to be renewed on the ground that the person applying for renewal is in area is of purchase tax. The learned standing Counsel contended that the default in payment of arrears of purchase tax would be covered by clause (a) of the proviso Rule 3 extracted above. We see no substance in this contention. That clause is concerned only with the acts of an applicant in respect of the manufacturing process of Khandsari sugar. Payment of purchase tax is in no way connected with the process of manufacture of Khandsari Sugar. It relates to the purchase of sugarcane from which Khandsari is manufactured. It has not been brought to our notice that any condition of the licence postulates that the purchase tax for purchase of sugarcane has to be paid by the licensee. The order as such cannot be supported.

The petition is accordingly allowed. The impugned order of the licensing authority (Annexure II) dated 27111975, is quashed. The petitioner is entitled to his costs.