(1995) 01 DEL CK 0031

In the Delhi High Court

Case No : Civil Writ Petition No. 1791 of 1994

M/s. Nupur Professionals Pvt. Ltd. and Another APPELLANT

Vs

M/s. Presteege Fibres Ltd. RESPONDENT

Date of Decision : 05-01-1995

Acts Referred:

Citation : (1995) 1 AD 642

Hon'ble Judges : D.P Wadhwa, J;Cyriac Joseph, J

Bench : Division Bench

Advocate : Mr. Arun Jaitley and Mr. Arjun Bhandari, Mr. Arjun Bhandari, Mr. Tripurani Ray and Ms. Suparna, for the Appellant; Dr. A.M. Singhvi, Senior Advocate and Mr. Sanjay Bhartari, Mr. K.C. Mittal, for UDI, for the Respondent

Judgement

D. P. Wadhwa, J.—The petitioners in this petition under Article 226 of the Constitution seek a writ of mandamus quashing the Letter of Intent dated 31 March 1994 issued to the first respondent by the Central Government in the Ministry of industry, Department of Industrial Development, for establishing a sugar factory at Dhaulana, District Ghaziabad in the State of Uttar Pradesh for the manufacture of sugar with daily cane crushing capacity of 2500 TCD. They also seek a writ of mandamus or any other appropriate writ, order or direction directing the Central Government to consider the application of the petitioners for grant to the first petitioner a license for setting up of the sugar mill at Dhauiana on the basis of the recommendation of the screening committee and the Administrative Ministry being the Ministry of Food in view of the provisions of Article 77 of the Constitution read with Government of India (Allocation of Business) Rules, 1961. Second petitioner is the Director of the first petitioner and reference to the petitioner would mean and include the first petitioner. There are as many as 18 respondents but the contesting respondents have been only two, namely, (1) the first respondent a public limited company, which was amalgamated with the second respondent another public limited company, by order dated 22 July 1992 of the Allahabad High Court; and (2) Union of India in the Ministry of Industry. Affidavit in opposition has also been filed by respondent

No. 2(a) who was the Managing Director of the second respondent and a Director of the first respondent.

2. When the letter of intent for establishment of sugar factory was granted to the first respondent the petitioner was informed by letter dated 8 April 1994 that "an older applicant has been granted letter of intent for the same location" and further that in the circumstances the Central Government did not find itself in a position to consider the request of the petitioner, but that Government would give an opportunity to the petitioner to state its case before reaching a final decision in the matter. The petitioner was, Therefore, asked to send its representation, if it so wish to make one, to the Directorate of Sugar, Krishi Bhawan, New Delhi, within a period of three weeks from the date of issue of the letter. It was also mentioned that a copy of the letter was being endorsed to the State Government and representation of the petitioner when received will be examined in consultation with the State Government, that final orders would be passed after full consideration of the points urged by the petitioner and the State Government provided "a representation is received from you not later than three weeks from the date of issue of this letter". Petitioner was finally told that in future he was to address all its future correspondence in the matter to the Directorate of Sugar, Krishi Bhawan, New Delhi. In the case of O. P. Parasrampuria, who was admittedly yet another older applicant than the first respondent the ground of rejection communicated to him was that a sister concern had already been granted a letter of intent, and for other applicants the ground of rejection was "since an older applicant has been granted LOI at the same location." In the Letter of Intent dated 31 March 1994 issues to the first respondent certain conditions were stipulated with which we are not concerned except to note that it was stated that the Letter of Intent would be valid for a period of three years from the date of issue. By letter dated 6 May 1994 the second respondent was informed that the Letter of Intent dated 31 March 1994 in favor of the first respondent would be implemented by the second respondent subject to same terms and conditions stipulated therein.

3. The relevant provisions for grant of license/LOI are the Industries (Development and Regulation) Act, 1951 (for short the I.D. Act); the Registration and Licensing of Industrial Undertaking Rules, 1952 under the I.D. Act; and the Guidelines for Licensing of New and Expansion of Existing Sugar Factories issued by the Ministry of Industry in the Department of Industrial Development.

4. Under the Industries (Development and Regulation) Act, 1951 (for short the I.D. Act'') sugar falls under the first schedule and is, thus, a scheduled industry under clause (i) of Section 3 of the Act. Under clause (d), industrial undertaking means an undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including the Government. u/s 11 of the Act, a license is required for establishment of a new industrial undertaking which license is to be granted by the Central Government in the Ministry of Industry. Section 14 prescribes the procedure for grant of license or permission

and it says before granting any license or permission u/s 11 the Central Government may require such officer or authority, as it may appoint for the purpose, to make a full and complete investigation in respect of applications received in this behalf and to report to it the result of such investigation and in making any such investigation the officer or authority shall follow such procedure as may be prescribed. A license may contain such conditions including, in particular, conditions as to the location of the undertaking and the minimum standards in respect of size to be provided therein as the Central Government may deem fit to impose in accordance with the Rules, if any, made u/s 30. The Registration and Licensing of Industrial Undertakings Rules, 1952 (for short ''the I.D. Rules'') have been framed. These Rules provide as to how the application for license for establishment of a new industrial undertaking is to be made and how that application is to be processed. We may reproduce the extracts from the relevant rules: --

7. Application for license.-- (1) Application for a license of permission for the establishment of a new industrial undertaking or any substantial expansion of for the production or manufacture of any new article in an industrial undertaking shall be made before taking any of the following steps :

(a) raising from the public any part of the capital required for the undertaking or expansion or the production or manufacture of the new article;

(b) commencing the construction of any part of the factory building for the undertaking or expansion or the production or manufacture of the new article;

(c) placing order for any part of the plant and machinery required for the undertaking or expansion or the production or manufacture of the new article;

(1-A) An application for a license or permission for changing the location of the whole or any part of an industrial undertaking which has been registered or in respect of which a license or permission has been issued shall be made before taking any of the following steps;

(a) the acquisition of land or the construction of premises for the purpose of housing the industrial undertaking at the proposed new site;

(b) the dismantling of any part of the plant and machinery at the existing site.

(3) Each application shall be accompanies by a crossed demand draft for Rs. 2, 500 drawn on the State Hank of India, Nirman Bhawan, New Delhi, in favor of the Pay and Accounts Officer, Ministry of Industry (Department of Industrial Development), Government of India, New Delhi.

8. Acknowledgment of application. On receipt of the application, the receiving officer shall note thereon the date of its receipt, and shall send to the applicant an acknowledgment stating the date of receipt.

10. Application to be referred to Committee.-- (1) The Ministry of Industrial Development shall refer the application to a committee appointed under sub-rule

(2) :

Provided that where an application relates to the extension of the period of validity of an industrial license or to the issue of a carry on business license or to diversification within the existing licensed capacity in respect of such scheduled industries as may, from time to time, be decided by the Central Government, having regard to the maximum of production, better utilization of existing plant and machinery and other factors, the Ministries concerned may dispose of such application without reference to the Committee.

(2) The Ministry of industrial Development may, by notification in the Official Gazette, appoint one or more committees, consisting of such number or members as it may think fit to represent--

(a) The Ministries of the Central Government dealing with--

(i) the industries specified in the First Schedule to the Act;

(ii) Finance;

(iii) Company Affairs; and

(iv) Science and Technology; and

(b) the planning commission."

(3) A committee appointed under sub-rule (2) may co-opt one or more representatives of other Ministries of the Central Government or of any State Government concerned, wherever it is necessary.

11. Submission of report by the Committee. (1) After such investigation as may be necessary, the Committee to which an application has been referred under Rule 10 shall submit a report to the Ministry of Industrial Development.

12. Contents of the report.-- In making the report under Rule 11, the Committee shall have regard to the approved plans, IF any, of the Central Government for the Development of the scheduled industry concerned and, where no such plans exist, to the existing capacity of the scheduled industry, the demand and supply position, availability of raw materials and plant and machinery. The report should, among other matters, contain recommendations regarding capital and its structure, suitability of the location proposed from the point of view of the approved plans for the industry, capacity of the plant to be installed, availability of rail-transport capacity, availability of technical and other skilled personnel required, and collaboration, if any, with foreign manufacturers .

14. Invitation of applications.-- (1) The Ministry of Industrial Development or the authority appointed by it in this behalf may, where it considers necessary, invite, by means of a notice published in the Gazette of India, applications for the grant of licenses for the establishment of new industrial undertakings in any scheduled industry.

(2) An application received under sub-rule (1) shall be dealt with in the manner laid down in rules 10 to 13.

15. Grant of license or permission.-- (1) The Ministry of Industrial Development shall consider the report submitted to it under Rule 11, and where it decides that a license or permission, as the case may be, should be granted it shall inform the applicant accordingly, not later than three months from the 1 date of receipt of the application, or the date on which additional information under Rule 9 is furnished, whichever is later.

(2) Where the Ministry of Industrial Development considers that certain conditions shall be attached to the license or permission, or that the license or permission should be refused, it shall not later than three months from the date of receipt of the application or the date on which additional information under Rule 9 is furnished, whichever is later, give an opportunity to the applicant to state his case, before reaching a decision.

(3) Where a license or permission has been refused the applicant shall be informed of the reasons for such refusal.

(4) licenses or permissions shall be in Form F appended to these rules."

5. Under the Government of India (Allocation of Business) Rules, 1961, framed by the President of India under Clause (3) of Article 79 of the Constitution for the allocation of business, one of the subjects which falls to be dealt by the Ministry of Food is sugar industry and is indicated as under :--

"6. Industries, the control of which by the Union is declared by Parliament by law to be expedient in public interest, as far as these relate to :

(a).....;

(b) Sugar Industry (including development of gur and khandsari); and

(c) ....."

6. Then the following subjects are shown under the Ministry of Industry :--

"I. Industrial Policy

1.........

2. Administration of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

xx xx xx III. Industries and Industrial and Technical Development.

6. Planning, development and control of and assistance to, all industries other than those dealt with by any other Department, but including industries relating to bread, oilseeds means (edible), breakfast foods, biscuits, confectionery (including cocoa processing and Chocolate making), malt extract, protein isolate, high protein food, weaning food and extruded food products (including other

ready-to-eat foods)."

7. Under Rule 14 of the I.D. Rules, the Ministry of Industry did not invite any applications by means of public notice in the Gazette of India for the grant of license for establishment of the new sugar industry. However, by means of Press Notes (1990 and 1991 Series) certain guidelines were issued by the Central Government for licensing of new and expansion of existing sugar factories. Press Note (1991 Series) was issued in supersession of the Press Note (1990 Series) as certain revised guidelines were formulated. We may reproduce certain extracts from these guidelines from the Press Note (1991 Series) dated 8 November 1991 for the sugar year 1991-92 and the Eighth Five Year Plan (1992-93 to 1996-97) :--

"A.

(1)........

(2) licenses for new sugar factories will be issued subject to the condition that the distance between the proposed new sugar factory and an existing/already licensed sugar factory should be 25 kilometres. This distance criterion of 25 kms. could however, be relaxed to 15 kms.

xx xx xx (5) Other things being equal, preference in licensing will be given to proposals from the Co-operative Sector and the Public Sector, in that order, as compared to the Private Sector.

In ease more than one application is received from any zone of operation, priority will be given to the application received earlier. However, in such cases, also, preference will be given to the Co-operative Sector, followed by the Public Sector and the Private Sector, in that order, even though the applications of the first two sectors may be of a later date.

xx xx xx B. Applications for licenses will be initially screened by the Screening Committee of the Ministry of Food. While considering such applications, the comments of the State Governments/Union Territory Administration concerned would also be obtained. The State Government/ Union Territory Administration would be required to furnish their comments within 3 months of the receipt of communication from the Ministry of Food.

C. Applications for grant of industrial licenses for the establishment of new sugar factories as well as expansion of existing units should be submitted directly to the Secretariat for Industrial Approvals in the Department of Industrial Development in Form II. along with the prescribed fee of Rs. 25000/-. A copy of the application may also be sent to Ministry of Food.

D. The procedure and guidelines, as given above, are brought to the notice of the entrepreneurs for their information and guidance."

8. We may also note that the stand of the Central Government has been that the submission of application for grant of license for setting up new sugar factory is

an on going continuous process and application submitted at any time can be taken into consideration by the Ministry of Industry and the screening Committee of the Ministry of Food to which application is referred.

9. In the present case there were various applicants for establishment of a new sugar factory at Dhaulana. These applications were referred to the Screening Committee of the Ministry of Food and comments of the State of U.P. were also invited in terms aft he Press Note (1991 Series). The Screening Committee of the Ministry of Food, it appears, recommended the name of M/s. Nupur Professionals Pvt. Ltd. the petitioner. This led to filing of a writ petition in the Allahabad High Court by M/''s. Presteege Fibres Ltd. (now respondent No. 1) and Or. C. K. Jain (now respondent No. 2(a)) and it is Presteege to whom ultimately the Letter of Intent for establishment of a new sugar factory at Dhaulana has been issued by the Ministry of Industry after approval by the Central Government. A copy of the judgment of the Allahabad High Court has been brought on record which disposed of the writ petition with certain directions. The High Court referred to the provisions of the I.D. Act and the I. D. Rules and observed that it was evident that before grant of license for setting up new industrial undertaking legal procedure had been prescribed by the I.D. Rules in detail and that that must be followed before the license was granted. The court was of the view that Screening Committee of the Ministry of Food was only a recommending body which had to submit its recommendations to the Licensing Committee of the Ministry of Industry who was then to apply its mind to the relevant facts and then submit its report to the Central Government. The court also held that final authority for granting license was the Ministry of Industry and the Licensing Committee and the Ministry of Industry were still to apply their minds to the question of grant of license. The court, Therefore, did not go into the question as to whether the refusal to recommend the name of Presteege by the Screening Committee of the Ministry of Food was valid or not, as that was to be finally decided by the Licensing Committee and the Ministry of Industry. The court also observed that recommendation of the Screening Committee were not binding on the Licensing Committee or the Ministry of Industry. The Court, thus, held that the writ petition was premature, but then fixed a time schedule under which the Licensing Committee and the Ministry of Industry was to give their decision and the court also gave liberty to the parties to make representations before them. The High Court then finally observed that despite any recommendations made by the Screening Committee of the Ministry of Food it would be open to the Licensing Committee to accept or reject the said recommendations, but nevertheless directed that the Licensing Committee and the Ministry of Industry would take the report of the Screening Committee into account, but it shall not treat the same as conclusive of the matter or binding upon them. Both the Licensing Committee and the Ministry of Industry were required to consider the representations of the parties as well before taking a final decision in the matter.

11. Now after the Central Government decided to grant the Letter of Intent to Presteege and later changed this in the name of M/s. Gulshan Sugars and

Chemicals Ltd. (respondent No. 2), this petition has been filed challenged the same. The grounds of attack in brief are: (1) In the face of Rule 12 of the I.D. Rules, and Art. 14 of the Constitution, the criterion of giving the Letter of Intent to an older applicant is contrary to law as the principle of first come first served cannot be a relevant criterion; (2) there has been non-consideration of the reports of the Screening Committee and the Administrative Ministry (Ministry of Food) as well as the recommendation of the State of Uttar Pradesh recommending the case of the petitioner and no reasons have been given by the Central Government while disagreeing with those recommendations and this makes action of the Central Government arbitrary and irrational; (3) no specific reasons have been given with respect to the preference being given by the Licensing Committee to the Presteege, the first respondent and not the petitioner and the only reason mentioned is not relevant; (4) on 8 April, 1994 petitioner is informed that the older applicant had been granted the Letter of Intent and petitioner has been asked to give representations against non-grant of Letter of Intent and this, it is stated, has no meaning and representation made will be an illusory particularly when rights in favor of Presteege have been created. Rule 15(2) of the I.D. Rules has, thus, been made a a redundant; (5) the Letter of Intent has been granted to Presteege which was a non-existing company on the date of issue of Letter of Intent, it having been merged with Gulshan (respondent No. 2) and having lost its legal existence, and that license could not have been granted or transferred to Gulshan (respondent No. 2); (6) Gulshan could not have taken priority and could not have stepped into shoes of Presteege to claim seniority in the list of the applicants; (7) financial status of Presteege could not be said to have improved on its amalgamation with Gulshan and the experience of Gulshan in sugar industry could not have been considered as the experience of Presteege.

12. The respondents have denied the allegations made by the petitioners. Reference has been drawn to the relevant provisions of the I.D. Act and the Rules and the guidelines issued by the Ministry of Industry which we have set out above in detail. The Central Government has stated that as per the guidelines in case there are more than one applications from any zone of operation, priority will be given to the one received earlier. But having regard to the scheme of the Act and the Rules and the objects of the guidelines we have to understand the said provision in the guidelines to mean that priority can be given to an older applicant only when all other things are equal among the applicants. It is further stated by the Central Government that it is only the Ministry of Industry (Department of Industrial Development) which is designated as the authority empowered to consider and decide the applications for grant of license for establishment of new factory, and that the Screening Committee in the Ministry of Food and the Administrative Ministry (Ministry of Food) are merely the recommendatory bodies. Reference has been drawn to the judgment of the Allahabad High Court which held that recommendations of the Screening Committee were not binding on the Licensing Committee or the Ministry of

Industry, and that the Ministry of industry or the Licensing Committee may reject the recommendations of the Screening Committee. As to how the matter was considered in the present case, the case of the Central Government as given in the affidavit is as under:

"In the instant case, the Licensing Committee, as was done for all other locations, took up the consideration of the applications in chronological order after having agreed to the selection of the location of Dhaulana made by the Screening Committee. For Duaulana there were 7 applicants, out of whom Sri O.P. Parasrampuria was the senior most followed by M/s. Presteege Fibres while M/s. Nupur Professionals were the junior most in chronological order having charged their location in Dhaulana on 31-8-1993. The Licensing Committee first of all considered the case of Shri O.P. Parasrampuria and it found him sufficiently experienced in industry and financially sound and, Therefore, capable of putting of a sugar unit. However, in view of the decision to grant only one Letter of Intent to one business house in a State during the 8th Plan period, the Licensing Committee did not recommend the case of Shri O.P. Parasrampuria since his group member Shri R.I. Parasrampuria had already been recommended for Budhana, Distt. Muzaffarnagar. Licencing Committee noted that M/s. Presteege Fibres who were the second oldest applicant for the location, had merged with M/s. Gulshan Sugars and were capable of putting up a sugar project in view of their financial soundness and experience in Sugar Industry. Licencing Committee was not in disagreement with the Ministry of Food about the technical and financial competence of M/s. Nupur Professionals for putting up a Sugar Project, but it found it unjust to overlook the claims of earlier applicants for the location who were financially capable of putting up a sugar project. Keeping these facts in view, licensing committee recommended M/s. Presteege Fibres for grant of Letter of Intent for Dhaulana, Distt. Ghaz.iabad. Taking into consideration the recommendations of Licencing Committee, Ministry of Industry granted Letter of Intent to M/s. Presteege Fibres.

It is clear from the entire sequence of events narrated above that decision of the Ministry of Industry to grant Letter of Intent to M/s. Presteege Fibres is not arbitrary. It is reasonable and based on the principles of natural justice and within the policy parameters framed by the Govt. for grant of sugar licenses."

13. We may also note that the Allahabad High Court in its judgment dated Dec. 1993 in the writ petition filed by Presteege had given opportunity to the parties to make any representations to the Licensing Committee as well as the Ministry of Industry. The judgment said that the Licensing Committee and the Ministry of Industry would take into account the report of Screening Committee, but it shall not treat this report as conclusive of the matter or binding on if, and that the Licensing Committee and the Ministry of Industry would consider the representations of the parties before taking any final decision in the matter. It was directed that the Licensing Committee would make its recommendations to the Ministry of Industry within a certain period and thereafter Ministry of

Industry must pass a speaking order "clearly dealing with the representations of the petitioners as well as Respondent No. 15 (M/s. Nupur Professional pvt. Ltd.) and it must clearly indicate why the license has been granted to a particular party and why it has been refused to the other party." It was mentioned that this was in fact a requirement of Rule 15(3) of the I.D. Rules. Yet the court felt that it was necessary in the interest of justice to give a clear direction so that no party might have any grievance. A time schedule was set in the judgment for all concerned to pass the orders latest by 15 March 1994. The Central Government in its affidavit has stated that the representations made by all the parties in pursuance to the aforesaid judgment of the Allahabad High Court were duly considered by the Central Government before arriving at a decision. In view of the judgment of the Allahabad High Court we think we have to only consider the proceedings before the Licensing Committee and in the Ministry of Industry (Department of Industrial Development) as to how the whole matter was, processed. A criticism was, however, leveled by Dr. Singhvi, learned counsel for respondents 1 and 2, that Nupur, the petitioner, had earlier applied for gram of license for establishing a new sugar factory at some other location. It is only on 31st August 1993 a purported application was filed by Nupur with the Ministry Food for change of location to Dhaulana. This application of Nupur is as under: --

"To,

The Joint Secretary (Sugar)

Dear Sir,

Sub: Our application for selling up a plant for production of sugar.

We have applied for setting up a 2500 TPA plant at Lakhanuti (Gangoh) Saharanpur (U.P) and at Chausana, Muzaffarnagar (UP). We will also be interested in putting up the plant at Dhaulana, Ghaziabad as an alternate site.

You may kindly consider any of (he above locations and accord your approval for setting up the manufacturing facilities and oblige.

Thanking you,

Yours sincerely,

For Nupur Professional Aid Pvt. Ltd.

Sd/-Illegible."

On the following day the Screening Committee in the Ministry of Industry grants its approval in favor of Nupur without even waiting for any comments from the State Government. This is how the minutes of the Screening Committee dated 1 Sept. 1993 are recorded :--

"GHAZIABAD DISTRICT

Considering the surplus availability of cane in this district, the Committee decided that one more LOI for setting up a new sugar factory in this district can be given. The State Government has recommended the location of Dhaulana for the new factory.

This site satisfies the distance criteria of 25 kms. and, accordingly, the committee felt that this would be an appropriate location for the new sugar factory.

The State Government has recommended the name of Shri O.P. Parasrampuria for this location. There are 7 applications for this location and the committee decided that Nupur Professional Aid Private Ltd., a company representing a group of professional consisting of technocrats, financial experts and business management experts, would be most appropriate. This company is promoted by the Dhanuka Group, which is already in the sugar industry. Accordingly, the Committee decided to recommend grant of LOI to M/s. Nupur Professional Aid Pvt. Ltd. for setting up of a new sugar factory at Dhaulana District, Ghaziabad."

It will at once be seen that no application was made by Nupur to Secretariat for Industrial Approval (SIA) in the Ministry of Industry for change of location. It is there that an application for grant of license is filed and priority of an application fixed. No application could have been filed straightaway in the Ministry of Food. There has been no proper application specifically praying for grant of license for setting up a factory at Dhaulana, Dr. Singhivi is right in his submission that there was hardly any application from Nupur for establishing a sugar i''actory at Dhaulana, and the Screening Committe did not apply its mind properly without there, being any report from the State of U.P. and further that it could not consider any application for change of location filed directly before it without the same being registered with the SIA. The Licensing Committee in its meeting on 5 January, 1994 noted the judgment of the Allahabad High Court and considered the representations made by the parties. With reference to the setting up of a new sugar factory at Dhaulana, the Licensing Committee recorded the following minutes :--

"LC noted that Presteege Fibres had made the following points in their representation:

i. They claimed to be the eldest applicant for location Dhaulana, Ghaziabad.

ii. State Government of Uttar Pradesh recommended their case for the location in their letters dated 12-5-93, 25-6-93 and 6-7-1993.

iii. The Company merged with Gulshan Sugars in terms of Allahabad Court Order dated 29-7-1992. As a result the Company has adequate financial capability to implement a sugar project.

iv The respondent No. 15 M/s. Nupur Professionals were the last applicant for the location. They had first applied for location Lakhnauti, district Sharanpur, then for Chausana, district Ghaziabad, and finally on 31-8-1993 for Dhauiamt, district Ghaziabad. However their application for Dhaulana was not on the Company letter head nor was it diarised in the Ministry of Food. The application for change of location was not endorsed to Ministry of Industry.

LC noted that M/s. Presteege Fibres was not the oldest applicant for the location as claimed by them, as there was an older application, that of O.P. Parasrampuria, for the location which was recommended for LOI by the State Government. However, LC desired that/Ministry of Food may comment on the various other points raised in the. representation."

(Sec Table on next page)

14. Thus, after considering the representations and the comments of the Ministry of Food (the Administrative Ministry), the Licensing Committee recommended the case of Presteege for grant of license. This is how the Licensing Committee dealt with the matter :--

"Ministry of Food (AM) had recommended Dhaulana as a site for a new sugar unit of 2500 TCD. This site was also recommended by the State Government. LC had agreed with choice of Dhaulana as a site in its 38th Meeting of 1993.

AM (Ministry of Food) had recommended issue of letter of intent to Nupur Professional Aid who had changed their proposed location to Dhulana on 31-8-1993, and hence were the last in order of seniority for the location. The other applicants for the location were recommended for rejection without citing adequate reasons. Based on the facts made available to it at that stage, LC had noted that the oldest applicant for the site was O.P. Parasrampuria who belonged to an industrial House who had applied for several locations in U.P., but had not been recommended for grant of LOI anywhere by the AM. LC had, Therefore, referred the matter back to AM for reconsideration.

M/s. Prestegee Fibres who were the second oldest applicant for Dhaulana moved the Court on the plea that their claim for grant of letter of intent for Dhaulana was overlooked by the Screening Committee, in spite of being recommended by the State Government. In their representation, M/s. Presteege Fibres also pointed out that in terms of a Court Order, they had merged with M/s. Gulshan Sugars and M/s. Gulshan Sugars had considerable financial background to put up a new sugar unit. LC directed AM also to send then comments on representations made in the Court case, in terms of the Court Judgment dated 16-12-1993.

The Ministry of Food by its letter dated 11 /12 January 1994 sent in the following comments:--

"(1) M/s. Prcsteege Fibres Ltd. is the first applicant for DhauJana, Distt. Ghaziabad. Shri Om Prakash Parasrampuria is the oldest applicant for Dhaulana. His application is dated 25-4-1990 whereas that of Prestcege Fibres Lid. is dated 8-5-1990.

(2) M/s. Nupur Professionals Aid Pvt. Ltd. changed their location from Distt. Sharanpur to Dhaulana, Distt. Ghaziabad on 31-8-93 and the meeting of the Screening Committee was held in the Ministry of Food on 1-9-1993. The

statement is correct and accordingly his application was considered for Dhaulana, Distt. Ghaziabad.

(3) The request for change of location from Nupur Professionals Aid Pvt. Ltd. is not found on the Company''s letter-head and has not been diarised in the Ministry of Food. It is true that the request for change of location is not on the company''s letter-head but the letter has been diarised in the Ministry of Food."

When the Licensing Committee again asked for comments on some additional points, the Ministry of Food by its letter dated 21/27 January 1994 again sent in the following comments:--

"Whether State Government had recommended the case of M/s. Prestige Fibres for Dhaulana Distt., Ghaziabad in their letters dated 12-5-93, 26-6-93 and 6-7-1993 as claimed by M/s. Prestige Fibres. It is correct that the Government of U.P, recommended the case of M/s. Prestcege Fibres for Dhaulana, Distt. Ghaziabad vide their letter dated 12-5-93. In the letters dated 25-6-93 and 6-7-93, the Government of U. P. had sent the details of the various applications including the application of M/s. Presteegc Fibre along with suitability of the location Dhaulana, Distt. Ghaziabad. No recommendations were made in respect of any of the entrepreneurs which applied for this location."

AMCOMMFNTSONLC OBSERVATIONS:

AM submitted the following to LC:

(1) Shri Om Prakash Parasrampuria had no experience in sugar industry as they were basically in laxtiles.

(2) M/s. Nupur Professional Aid Pvt. Ltd. whose application had been recommended by the Screening Committee had a base in sugar, representing a group of professionals consisting of Technocrats, financial experts and Business Management Experts. The Company was promoted by the Dhanuka Group which was already in the sugar industry.

(3) M/s. Prestcege Fibres who were the second oldest for Dhaulana were recommended for grant of LOI by the State Government in their letter dated 12-5-1993. However, in the subsequent letters received from the State Government dated 26-6-1993 and 6-7-1993, no recommendations were made in respect of any of the entrepreneurs who had applied for the location. The application of M/s. Presteege Fibres was recommended for reject ion by AM as their financial position was stated to be doubtful.

(4) On reconsideration also, AM reiterated that M/s. Nupur Professional Aid Pvt. Ltd. were the best entrepreneur among the appli- cants for Dhaulana, and they should be given LOI.

LC RECOMMENDATIONS:

LC noted that the argument given by AM for rejecting older applications for the location were not tenable. Although it was correct that Shri O.P. Parasrampuria, the oldest applicant, had no experience in sugar industry, he belonged to a well known industrial house who were financially capable of putting up a sugar unit. Further, in a representation given to LC, Shri O. P. Parasrampuria had stated that he belonged to the Parasrampuria Group which had wide ranging experience in business, industry and real estate, and they were financially very sound and there would be no problem in arranging funds for the sugar unit.

M/s. Prestegee Fibres Ltd., who were the second oldest for the location, in their representation two LC had stated what they had merged with Gulshan Sugars and hence were financially quite capable of putting up a sugar project.

As for M/s. Nupur Professionals, LC felt that although they did not disagree with AM about the technical and financial competence of the Company for putting up a sugar project, it would be unjust to overlook the claims of earlier applicants for the location, who were financially capable of putting up a sugar project.

LC recollected that a LOI was being recommended to Shri R.L. Parasrampuria at Hussainpur in Muzaffarnagar district, It was also checked from records that Shri R.L. Parasrampuria and Shri O.P. Purasrampuria belonged to the same industrial house. Considering the guidelines followed by LC in recommending only one LOI to one business house in a State for sugar during the Eighth Plan Period, Shri O.P. Parasrampuria could not be granted a letter of intent for Dhaulana, Ghaziabad.

LC also noted that while considering the LOI to be granted for Husssainpur Muzaffarnagar, the application of M/s. Gulshan Sugars were rejected since the location Miranpur was rejected by the Government, although there was nothing against the party to disqualify them for grant of LOI for sugar. Considering the fact that M/s. Prestegee Fibres Ltd. are the second oldest applicant for Dhaulana, Ghaziabad, who have merged with Gitlshan Sugars, LC felt that they were the most appropriate entrepreneur for the location in terms of (he seniority as well as other parameters followed by LC in granting of LOIs for sugar.

In view of the above, LC recommended grant of LOI to M/s. Presteege Fibres Ltd. who have merged with Gulshan Sugars for location Dhaulana, Ghaziabad, and recommended rejection of application of Shri O.P. Parasrampuria on the ground that a letter of intent has been recommended for the same group of Company at another location, and recommended rejection of other applications for the location on the ground that a letter of intent has been recommended to an older applicant for the location."

15. The matter was thereafter considered in the Ministry of Industry, Department of Industrial Development. In her note dated 4 March, 1994 the Deputy Economic Adviser referred to the minutes of the Licensing Committee and noted that in terms of seniority Presteege who had earlier merged with Gulshan had been recommended grant of LOI at Dhaulana by the licensing Committee. The file was then referred to the Joint Secretary who recommended grant of LOI to

Prcsteege (merged with Gulshan) at Dhaulana, Ghaziabad. This was agreed to by the Additional Secretary as well as the Secretary and the file was then referred to the Minister of State (ID) who raised certain queries. These were answered to and thereafter the Ministry of State (Industrial Development) agreed to grant of LOI to Presteege. Thus, we find there has been proper consideration of the case both by the Licensing Committee as well as by the Ministry of Industry. Though the reasons for grant of LOI to Presteege and non-grant to Nupur were not clearly stated in the respective communications to them, they are clearly found in the minutes of the Licensing Committee as well as on the records of the Ministry of Industry. Those reasons we find are also based on records available both of the Screening Committee as well as the State of Uttar Pradesh. There has been a proper application of mind by the Central Government in the grant of LOI to Presteege which was subsequently transferred in the name of Gulshan, the second respondent. Both the Licensing Committee and the Ministry of Industry have taken into account the financial conditions of Presteege before its merger with Gulshan and after its merger, and had given the advantage of Presteege being the older applicant to the company in which it was merged, and we see no reason to interfere with the discretion exercised by the Licensing Committee and the Central Government which is based on sound principles. The Central Government has noted that the scheme of amalgamation between Presteege and Gulshan takes into account the fact that LOI can be issued in any one of the two names of the companies. When the petitioner was communicated rejection of its application and yet it was asked to give representation, something could have been said by the petitioner that its representation could be of no avail when LOI had already been granted to Presteege, but then the fact remains that, the petitioner did not file any representation and we think he can make no grievance that Rule 15 of the I.D. Rules has been violated. As a matter of fact, the Allahabad High Court had given opportunity to the parties to file representations before the Licensing Committee which, as noted above, were duly considered by the Committee and by the Ministry of Industry. The LOI has been granted to Presteege/Gulshan not only be-cause it was an older applicant, but because it satisfied other criteria of sound financial condition, etc., and requirement of law has been satisfied in the instant case. All the particulars required for the Licensing Committee to make its recommendations and the Ministry of Industry to grant LOI were there on the record and duly considered. On that basis Dr. Singhvi also said that reasons could be gleaned from the records and it was not necessary that reasons should have been specifically stated in a consolidated form. No argument was raised if it was the Ministry of Industry under the I.D. Act who was competent to grant the LOI for establishing a new sugar factory or that it was the Ministry of Food who was competent under the Government of India (Allocation of Business) Rules framed by the President of India under clause (3) of Art. 379 of the Constitution. We, Therefore, need not consider the same. Various judgments were cited at the bar on the scope of judicial review and the extent of the jurisdiction of the court under An. 226 of the Constitution, but in the circumstances of the case we do not consider it necessary to refer to any one of them. That may not, however, be taken two mean our disregard for the principles laid by the courts in these judgments. Law is now quite well settled on the subject and particularly after the decision of the Supreme Court in the case of Tata Cellular Vs. Union of India, . We, Therefore, do not wish to burden this judgment with all those cases.

16. Thus, in view of the facts of the case and the law applicable thereto, we do not find it a fit case for us to interfere. This petition, Therefore, fails and is dismissed with costs. Counsel fee Rs. 2,200/-.

17. Petition dismissed.

