
(1983) 09 KL CK 0001
In the High Court Of Kerala
Case No : O.P. No. 4470 of 1982

P. Sundardas

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-09-1983

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1983) KLJ 616

Hon'ble Judges : K. Bhaskaran, J

Bench : Single Bench

Advocate : M. Ramachandran, U.K. Ramakrishnan, T.K. Jayaram and E.K. Madhavan, for the Appellant;

Final Decision : Allowed

Judgement

K. Bhaskaran, J.—The petitioner had, with a view to set up a wheat roller flour mill at Chelambra Village of Malappuram District, applied to the 3rd respondent, District Collector, Malappuram, for a license under the provisions of Wheat Roller Flour Mills (Licensing and Control) Order, 1957 (the Order). On 18-3-1981 the petitioner was granted a license. Subsequently the petitioner received a communication from the 3rd respondent dated 11-11-1981, a true copy of which is Ext. PI, informing him as follows:-

Sri P. Sundardas, Krishna Oil Mills, West Hill, Calicut has been granted a license No.1/MJI in this office proceedings No. CS4|487|81 dated 18-3-1981 for conducting a Roller Flour Mill in R. S. No. 451/ of Chelambra village in Ernad Taluk.

The above license was issued during the period when powers for permitting the setting up of new Roller Flour Mills of 30 tonnes capacity per day were withdrawn from the State Government. Hence, the grant of license to Sri. P. Sundaradas is ab initio void.

In the circumstances, the license No. 1/MJI, issued to Sri. P. Sundardas, for

conducting a Roller Flour Mills, in R.S. No. 451/of Chelembra village in Ernad Taluk is hereby cancelled.

(Emphasis supplied)

Subsequent to this, the petitioner submitted an appeal dated 14-12-1981, a true copy of which is marked as Ext. P2, to the Special Secretary to Government of Kerala, Food Department, Trivandrum. Thereafter the petitioner received the order No. 13059/C2/81/Food, Food (C) Department, dated 27-3-1982 from the Special Secretary to Government, informing the petitioner as follows :-

?.I am directed to inform you that the recommendation of this Government for restoration of the milling license granted to you for starting a Wheat Roller Flour Mill in Chelambra Village, Ernad Taluk, has been rejected by the Government of India."

It is aggrieved by Exts. P1 and P4 that this writ petition has been filed by the petitioner.

We may now make a brief survey of the relevant provisions contained in the order/Clause 2(c) of the order (as it stood on 18-3-1981) defines the "licensing authority": It means an officer appointed by the State Government to exercise the powers and perform the duties of an Inspector under the Order. Clause 3 of the Order requires that no owner or person in charge of a roller mill, shall manufacture, or cause to be manufactured, any wheat product except under and in accordance with the terms and conditions of a license issued under the Order. The mode of application for the license is prescribed in Clause 4 and clause 5 which deals with power to issue and renew license lays down as follows :-

(1) on receipt of an application under Clause 4, the licensing authority/may, after making such investigation as it may deem fit, issue or refuse to issue or renew or refuse to renew a license having due regard to-

(a) the number of wheat roller flour mills functioning in the locality;

(b) the availability of wheat for supply with Central Government or, as the case may be, with the Food Corporation of India; and

(c) any other relevant factor.

2. It would appear from the averments made in Ground D of the writ petition that the Government of India had issued a Press Note in June 1979 to the effect that the the State Governments might permit entrepreneurs desiring to install roller flour mills with a capacity of 30 tonnes per day without the need to Obtain industrial license under the provisions of the Industries Development and Regulation Act, 1951, and that the said Press Note was withdrawn by Press Note No. 13 (69) LP/79 dated 24-5-1980. According to the petitioner the 3rd respondent by Ext. P1 proceedings dated 11-11-1981 cancelled the license granted to the petitioner on 18-3-1981 apparently on the ground that by virtue of the said Press Note the State Government's authority to order installation of

roller flour mills below 30 tonnes capacity stood withdrawn on 24-5-1980 and, therefore, he could not have granted license to the petitioner on 18-3-1981. It is evident that the 3rd respondent had mistaken the Press Note as affecting his statutory power under the Order to grant license for wheat roller flour mills.

3. The Central Government also appears to have been under a misconception that because of the withdrawal of the earlier Press Note by the Press Note dated 24-5-1980 the 3rd respondent was deprived of the power conferred on him under rule 2(c) of the Order. On the other hand, the correct position is that neither the earlier Press Note nor the later Press Note in any way affected the statutory power conferred on him under rule 2(c) of the Order.

4. If clause 2(c) of the Order remained in force on 18-3-1981, the license granted by the 3rd respondent to the petitioner on that date could not be characterized as one granted by him without power. Clause 2(c) has been amended with effect from 6-2-1982 by Wheat Roller Flour Mills (Licensing and Control) Amendment Order, 1982 (the amendment Order), substituting the words "Central Government" for the words "State Government." This amendment has no retrospective effect. The question is whether by administrative instructions this power vested on the 3rd respondent by the State Government in accordance with the provisions of the statutory rules, could be annulled or abridged. There is no legal force in the contention of the respondents that the license granted by the 3rd respondent to the petitioner on 18-3-1981 was against administrative instructions given by the Central Government to the State Government, and, therefore, the license was ab initio invalid. The power conferred on the 3rd respondent under the statutory provisions cannot be taken away by administrative instructions or executive orders. The Central Government evidently proceeded on a wrong assumption that by its administrative instructions the power vested in the State Government had ceased to exist, and that has led the 3rd respondent to hold that the license granted to the petitioner on 18-3-"81 was ab initio void, as stated in his communication dated 11-11-1981. This understanding of the position being absolutely wrong, Ext. P1 order of the 3rd respondent and Ext. P4 communication of the 4th respondent based on a mis-interpretation of the legal position cannot be sustained and are hereby quashed.

5. The petitioner having been granted a license on 18-3-1981 by the 3rd respondent who under rule 2(c) of the order had all the powers at the time, the cancellation of that license by the 3rd respondent stating that it was ab initio invalid, solely on the purported ground that his powers had already been withdrawn from the State Government, he is entitled to have it restored to the petitioner, as the cancellation is the result of a mistake of law committed by the respondents. In the writ petition the petitioner has taken other grounds also to attack Exts. P1 and P4, including the plea of promissory estoppel, violation of Article 14 of the Constitution and the denial of natural justice. I am not pronouncing anything on the validity of these contentions as I am satisfied that

the cancellation of the license granted by the 3rd respondent was under a misconception of the correct position in law. All the same, when the 3rd respondent takes up the petitioner's application for renewal of the license, the petitioner's case that he had expended large sums of money pursuant to the license granted is to be borne in mind.

In the result, the writ petition is allowed. The 3rd respondent would take up the application for renewal of the license that has already been made or might be made for by the petitioner, and pass orders on the basis that the license granted to him was validly granted in the exercise of the power vested in him. The order on the petitioner's application may be passed as early as possible, at any rate within 2 months from the date of receipt of a copy of this judgment or the date of the receipt of the application for renewal of the license whichever is later. There will be no order as to costs.