(1978) 08 OHC CK 0006

In the Orissa High Court

Case No : Original Jurisdiction Case No. 76 of 1978

Pattnaik Industries (P) Ltd. APPELLANT

Vs

Controller of Weights and Measures and Another RESPONDENT

Date of Decision : 22-08-1978

Acts Referred:

Orissa Standards of Weights and Measures (Enforcement) Rules, 1993 — Rule 24, 24(3)
Orissa Weights and Measures (Enforcement) Act, 1958 — Section 13, 2, 44, 44(1), 44(4)

Citation : (1978) 46 CLT 537

Hon'ble Judges : S.K. Ray, C.J;J.K. Mohanty, J

Bench : Division Bench

Advocate : R. Mohanty and S. Gajendra, for the Appellant; D.P. Mohapatra, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.K. Ray, C.J.—The Petitioner is a private limited company engaged in the business of manufacture and sale of cast iron metric weights. It commenced this business in the year 1966 under valid licences, one for manufacture and another for sale, obtained under the provisions of the Orissa Weights and Measures (Enforcement) Act, 1958 (Act 20 of 1958) (hereinafter referred to as the Act) and Rules framed there under (hereinafter referred to as the Rules). These licenses were being renewed every year since the commencement of its business till 31-10-1977, when the Petitioner applied for renewal of its manufacturing and dealership licences for the year 1978, beginning from 1st January, 1978 to 31st December, 1978. By Annexure-2 dated 18th November. 1977 the Deputy Controller, weights & Measures, Government of Orissa, asked the Petitioner to furnish up to date sales tax clearance for renewal of its licences. By Annexure-3, which was a reply to Annexure-2. the Petitioner objected to this imposition of a pre-condition for renewal of its licences on the ground, inter alia, that neither the Act nor the Rules envisaged such a pre-condition for renewal and that it had a right of renewal under Rule 24 of the Rules unless it was shown to have violated any provision of the Act or of the Rules. By Annexure-A the opposite party No. 1 reiterated his demand for production of sales tax clearance certificate before renewal could be granted stating that Since the Petitioner had been complying with similar requirement during previous years, it was bound to furnish such clearance certificate for renewal of its licenses. The Petitioner by its reply (Annexure-5) also stuck to its stand that law, viz, the Act or the Rules did not, while conferring a right of renewal, envisage any such pre-condition as was being insisted upon. Despite Its protest, the opposite party No. 1 persisted in refusing renewal until sales tax clearance certificate was produced. The Petitioner has therefore, filed this writ application for Issuance of rule nisi in the nature of Mandamus directing opposite party No. 1 to renew its licences for manufacture and sale of C. I. metric weights.

2. The sale question, therefore, is whether the stand of opposite party No. 1 in insisting upon production of sales tax clearance certificate as a pre-condition for renewal of the Petitioner?s licences is legal and valid under the provisions of the Act and the Rules.

3. The relevant provisions of the Act and the Rules in this connection are extracted herein below. Section 13 of the Act provides as follows:

13. Prohibition of manufacture etc., of weights and measures without licence,: No person in course of trade or business shall manufacture, repair or sell any commercial weight or measure or any weighing or measuring instrument unless he has obtained in the prescribed manner a licence in this behalf from the State Government or any officer authorised by such Government.

?Prescribed? has been defined in Section 2(f) of the Act as meaning "Prescribed by rules made under this Act". Section 44 deals with the power to make Rules. Necessary provisions of this section are extracted herein below.

44. Power to make rules: (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purpose of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) x x x

(b) x x x

(c) x x x

(d) x x x

(e) x x x

(f) x x x

(g) the form and manner in which and the conditions subject to which licences may be granted to persons for manufacture, repair or sale of commercial weights and measures and weighing and measuring instruments;

x x x

(r) any other matter which has to be or may be prescribed;

(3) x x x

(4) The power to make rules under this section shall be subject to the conditions of previous publication in the Gazette.

(5) All rules made under this section shall, as soon as may be after they are made, be laid before the State Legislature." Rule 24 of the Rules deals with licensing of manufacturers, repairers and dealers of weights, measures, etc. and runs as follows:

(2). Licensing of manufacturers, repairers and dealers of weights, measure, etc.- (1) Every manufacturer or repairer of or dealer in, weights, measures or weighing and measuring instruments shall obtain a licence from the Controller in the form and subject to the conditions set out in Schedule XI and such licence shall be renewed from year to year.

(2) The fees payable for such licence and its renewal shall be as specified in Schedule XII.

(3) The Controller may, by order, refuse to grant or renew the licence or suspend or cancel the licence of a manufacturer or repairer of, or dealer in weights, measures, weighing and measuring instruments on the ground of want of proper and adequate workshop facilities or staff or incompetency or failure to observe any provisions of the Act or these rules:

Provided that no such order shall be made without giving such manufacturer, repairer or dealer a reasonable opportunity of stating his case.

(4) The Controller shall maintain a register of licensed manufacturers, repairers and dealers in the form set out in Schedule XII.

Schedule XI contains licensing Form A. Clause (4) of this form provides:

The manufacturer/repairer shall comply with the conditions noted below. If he fails to comply with anyone of these his licence is liable to be cancelled

At the foot of this form are set out the conditions of licence as follows:

1. The person in whose favour this licence is issued shall comply with all the relevant provisions of the Act and the Rules for the time being in force;

(b) x x x .

(c) x x x

(d) comply with any general or special directions that may be given by the

Controller of Weights and Measures of Orissa....

(e) x x x

2. Every condition prescribed after the issue of this licence shall, if notified in the Official Gazette be binding on the person/persons to whom the licence has been granted.

4. From the aforesaid provisions of the Act and the Rules. It is clear that a person desirous of carrying on trade or business in manufacture or sale of any commercial weights and measures or any weighing or measuring instruments must obtain licences from the State Government or from any officer authorised by the State Government. Such licences are to be obtained from the Controller in Forms A and B set out in Schedule XI and must be renewed from year to year to enable the licensees to maintain the continuity of their business of manufacture or sale. The licences so granted shall be subject to the conditions 1 and 2 set out therein which are identical in both Forms A and B. As provided in Sub-rule (3) of Rule 24 of the Rules the Controller may refuse to renew a licence on the ground, inter alia, of failure to observe any provisions of the Act or the Rules. According to Clause (4) of the licensing Forms A and B, failure to comply with the conditions of licence annexed to them will entail cancellation of the licences.

5. In the content of the aforesaid provisions the question for determination is whether non-observance of the direction of the Controller to produce sales tax clearance certificate as a condition precedent to renewal amounts to failure to observe any of the provisions of the Act and of the Rules. It is contended by the learned Additional Government Advocate that the condition of licence set out in the licensing forms ate part of the Rules and condition 1(d) of the Conditions of Licence entitles the Controller to issue any general or special direction to the licensees and the present direction of the Controller to produce sales tax clearance certificate has apparently been issued in exercise of this power and non-compliance of the same amounts to a breach of Rules thereby empowering him to refuse renewal in pursuance of Rule 24(3) of the Rules. This contention is not well-founded. The general or special directions envisaged in condition 1(d) of the licences must be of such character as would relate to a matter connected with the carrying on of the trade or business of manufacture or sale for which licences have been issued, like to maintain a new, proper and adequate workshop facilities or staff, and not in regard to a matter wholly unconnected therewith, like calling upon the licensee to produce sales tax clearance certificate as a condition precedent for renewal. Since it has no nexus with the trade or business of manufacture or sale of weights, measures, etc. for which the Petitioner holds the licences, it would not come within the purview of condition 1(d) of the Conditions of Licence. Even if such a direction be treated as one corning within the ambit of that condition, non-compliance thereof would only entail a liability of having the licences cancelled but would be irrelevant for the purpose of considering the question of renewal of the licences. Further, this direction is one which has been issued after the grant of the licences and as

required by condition 2 of the Conditions of Licence any condition prescribed after the issue of the licence shall be binding on the licensee if it is notified in the Official Gazette. Therefore, if the requirement of production of sales tax clearance certificate be deemed to be a condition prescribed which? is obviously after the issue of the licences, it cannot be binding on the licensee unless the same is notified in the Official Gazette. There is no controversy in this case that this direction of the Controller to produce sales tax clearance certificate has not been notified in the Official Gazette.

This direction of the Controller cannot also have the status of a Rule even though it is conceded that such a direction could be issued under condition 1(d) of the conditions of licence. The rule making power vests in the State Government u/s 44(1) of the Act and such power shall be subject to the condition of previous publication in the Official Gazette and, shall be laid before the State Legislature as provided in Sub-sections (4) and (5) thereof. Thus, as the direction to produce sales tax clearance certificate is of the Controller and not of the State Government and has not been published in the Official Gazette and laid before the Legislature, it has not attained the status of Rule. Consequently, failure to observe this direction will not empower the Controller to refuse renewal of licences.

The Controller is to renew the licence as a matter of course, as the right of renewal inheres in the licensee under the provisions of the Act and the Rules, unless any or all of grounds of refusal as indicated in Sub-rule (3) of Rule 24 of the Rules have been established. Since there has been no failure on the part of the Petitioner to observe any of the provisions of the Act or of the Rules, as indicated above, the Controller is in the wrong in refusing renewal on the ground that toe Petitioner has failed to carry out his direction to produce sales tax clearance certificate. Mere fact that the Petitioner has been producing such clearance certificates during previous years will not raise a plea of estoppel against it or whittle down its right of renewal.

6. As a result of aforesaid discussions, we come to the conclusion that the Petitioner is, entitled to renewal of its licences as of right and that such renewal cannot be denied merely on the ground of the Petitioner?s failure to produce sales tax clearance certificate as directed by the Controller, because breach of such a direction does not amount to breach of any provisions of the Act or of the Rules. We therefore, order that a Writ of Mandamus be issued to opposite party No. 1 directing him to renew the licences in favour of the Petitioner for manufacture and sale of C. I. metric weights.

7. The writ petition is, accordingly, allowed and the Petitioner is entitled to costs which is assessed at Rs. 100/- (rupees one hundred).

J.K. Mohanty, J.

I agree.

Petition allowed.