(1998) 02 AHC CK 0055

In the Allahabad High Court

Case No : Writ Petition No. 3152 (M/S) of 1997

Shri Bhola Sugar Mills (P.) Ltd. APPELLANT

Vs

State of U. P. and others RESPONDENT

Date of Decision : 20-02-1998

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1999) 1 AWC 811

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : B.K. Nigam, Krishna Mohan and S.C. Misra, for the Appellant; C.S.C. and D.K. Srivastava, for the Respondent

Judgement

R.H. Zaidi, J.—Heard learned counsel for the parties and also perused the record.

2. By means of this petition under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 11.12.1997 passed by respondent No. 1, allowing the appeal filed by respondent No. 3, against the order dated 27.11.1997 passed by Sugar Commissioner, U. P., Lucknow.

3. It appears that in exercise of powers under U. P. Khandsari Sugar Manufacturer Licensing Order, 1967 (for short ''Licensing Order''), licensing authority granted a licence in favour of respondent No. 3. Petitioner, who was adversely affected by the grant of said licence, filed objection before respondent No. 2 Sugar Commissioner/Licensing Authority, and prayed for cancellation of the licence granted in favour of respondent No. 3. In brief, it was pleaded that the licence was obtained by respondent No. 3 by concealing material facts, committing forgery and by playing fraud. Same was, therefore, liable to be cancelled. On receipt of the objections filed by the petitioner, notices were issued by respondent No. 2, to respondent No. 3, to show-cause as to why licence granted in favour of the said respondent be not cancelled. On receipt of the notices respondent No. 3 filed its explanation. Parties thereafter produced

evidence, for and against.

4. Respondent No. 2 recorded findings on all the relevant questions involved in the case against respondent No. 3, it was held that licence was obtained by the said respondent, by playing fraud and forgery and by concealment of material facts. Having recorded the said findings, in exercise of powers under Clause 6 (a) and 6 (b), respondent No. 2 cancelled the licence dated 29.10.1997 issued in favour of respondent No. 3, with liberty to respondent No. 3, to apply for a fresh licence for the year 1997-98, by order dated 27.11.1997. Aggrieved by the order dated 27.11.1997 passed by respondent No. 2, respondent No. 3 preferred an appeal before respondent No. 1. In the memo of appeal, the provisions under which said appeal was filed, was not noted. However, as it is evident from the statement of fact made in the order dated 11.12.1997. Annexure-11, to the writ petition, appeal was entertained under sub-clause (5) of Clause 3 of the Licensing, Order and was ultimately allowed by order dated 11.12.1997. Petitioner being aggrieved by the said order, filed the present petition.

5. Learned counsel for the petitioner vehemently urged that the impugned order dated 11.12.1997 passed by respondent No. 1, was wholly illegal and without jurisdiction. It was urged that the right of appeal is the creation of statute and unless same is conferred by Statute, said right cannot be availed of, inferred or exercised. Learned counsel for the petitioner elaborating his argument submitted, that under the Licensing Order, 1967, against the order passed under Clause 6, there was no provision for filing an appeal before respondent No. 1. Therefore, respondent No. 3 had no right to file appeal, nor respondent No. 1 had the jurisdiction to entertain and allow the appeal.

6. On the other hand, learned Standing counsel attempted to support the validity of the order impugned in the present petition. He placed reliance upon unamended Licensing Order, but could not substantiate his argument for the reason, the Licensing Order was amended from time to time and at the relevant time and date, there existed no provision of appeal against the order passed under Clause 6.

7. Sub-clause 15) of Clause 3 of the Licensing Order, reads as under :

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

8. It is apparent from the aforesaid sub-clause (5) of Clause 3, that appeal under the said sub-clause could be filed before respondent No. 1 against the order of licensing authority passed under sub-clause (4) of Clause 3.

9. Sub-clause (4) of Clause 3 of the said Order, reads as under :

"(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 Khandsarl Sugar Manufacturing Industry in the best interest of the industry ; or

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

(c) ensuring in a reserved or assigned area adequate supplies of sugar cane 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 of 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), and

(d) the default, If any, made by the applicant in payment of the dues under the Uttar Pradesh 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."

10. A reading of the aforesaid sub-clause (4) of Clause 3 reveals that under it, licensing authority has got the power to dispose of the application for grant or renewal of the licence. Said sub-clause does not deal with the power of cancellation of licence. Said power has specifically been conferred upon licensing authority under Clause 6 and against orders passed by licensing authority under Clause 6, there is no provision of appeal in the Licensing Order. In view of the said provisions appeal filed by respondent No. 3 against the order of respondent No. 2 was legally not maintainable. Learned counsel appearing for respondent No. 3 has fairly conceded that in the Licensing Order, there is no provision of appeal and that appeal filed by respondent No. 3 was legally not maintainable. Learned counsel appearing for respondent No. 3 has also filed an application on

18.2.1998 stating that the order passed by respondent No. 1 dated 11.12.1997 was wholly without jurisdiction, as against the order passed in exercise of power under Clause 6 of the Licensing Order, no appeal was provided under the Licensing Order. It was, therefore, prayed on behalf of respondent No. 3 that the order dated 11.12.1997 passed by respondent No. 1 be quashed.

11. Under the aforesaid facts and circumstances, this petition deserves to be allowed.

12. Writ petition succeeds and is allowed. Order dated 11.12.1997 passed by respondent No. 1 is, hereby, quashed. Interim order dated 4.2.1998 is discharged.