

(1997) 10 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Petition No. 2057 of 1997

Siel Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Registration and Licensing of Industrial Undertakings Rules, 1952 — Rule 14

Citation : (1997) 6 AD 325 : (1997) 69 DLT 786 : (1997) 43 DRJ 485

Hon'ble Judges : Arun Kumar, J

Bench : Single Bench

Advocate : Sudhir Chandra, Jayant Bhushan, A.K. Vali, Mukul Rohatagi, Seema Sapra, Rajiv Nayar and Seema Sapra, for the Appellant;

Judgement

Arun Kumar, J.

(1) The petitioners have challenged the rejection of their application for grant of an industrial license for a sugar factory in district Muzaffarnagar in the State of U.P. The petitioners also challenge the grant of Letter of Intent (hereinafter referred as the LOI) to respondent No. 1 for the same district in preference to the petitioners. The action of the Government respondent No. 1 has been challenged mainly on the following grounds.

i) It is contrary to and violative of Rule 15 of the Registration and Licensing of Industrial Undertakings Rules, 1952 (hereinafter referred to as the Id Rules) which provide that before an application for grant of license is refused, an opportunity must be given to the applicant to state his case and further that the applicant has to be informed of the reasons for such refusal. ii) Issue of Letter of Intent in favor of respondent No. 3 purely on the ground that its application was prior in point of time is arbitrary and is in contravention of the Industries Development and Regulation Act, 1951 (hereinafter referred to as the Act), the Id Rules and the guidelines issued by respondents 1 and 2 in this behalf. iii) The grant of Loi in favor of respondent No. 3 is arbitrary and is otherwise vitiated on the ground that the Licensing Committee overlooked the fact which was very

much present before the Screening Committee as well as before the Licensing Committee that Smt.Shobhna Bhartia had already been granted a Loi in the year 1994 which she had failed to implement and respondent No. 3 in whose favor the Loi was being issued was none else than Smt. Shobhna Bhartia because she as the largest share holder and a director of respondent No. 3 company and she had in fact signed the application for grant of license on behalf of respondent No. 3.

(2) Briefly the facts which are necessary to appreciate the controversy in this writ petition are that sugar falls under the 1st Schedule to the Industries Development and Regulation Act and being a scheduled industry a license is required u/s 11 of the Act for establishment of a new industrial undertaking. The license is to be granted by the Ministry of Industry, Government of India. The petitioners as also respondents 3 and 4 besides some other parties had applied for industrial license for setting up of a sugar factory in district Muzaffarnagar, Uttar Pradesh. The application of respondent No. 3 was made on or about 22nd October, 1993 while the petitioners' application is dated 13th March, 1995. The petitioners claim that they are already running two most efficient sugar factories in the State of Uttar Pradesh and thus have the necessary expertise and experience and capability of setting up of a new sugar factory. It is also claimed that the petitioner No. 1 is a large and a well-known widely held public limited company with access to huge funds. It enjoys excellent relationship with the cane growers of the State of U.P. and has done tremendous work for their development and upliftment. On the other hand it is stated that respondent No. 3 has no experience of running a sugar factory.

(3) On 21st January, 1997 the Licencing Committee of the Ministry of Industry in its meeting decided to grant the Loi to respondent No. 3 purely on the basis that its application was earlier in point of time. In the same meeting the Licencing Committee noted that Smt.Shobhna Bhartia was the earliest applicant and she had been granted an Loi in the year 1994 but she had failed to implement the same and, Therefore, in spite of the fact that she was the earliest applicant, her application was rejected. On 6th February, 1997 the Loi was issued in favor of respondent No. 3. Vide letter dated 23rd February, 1997 the respondent No. 1 informed the petitioner that the Loi was being granted to an older applicant for the selected location. It is further stated in the said letter that the Government of India did not find themselves in a position to consider the request of the petitioners for a licence. However in case the petitioners wished to contest the ground of rejection they may send their representation to the Directorate of Sugar, Krishi Bhawan, New Delhi within a period of three weeks from the date of issue of the said letter. The petitioners made a representation to the Government in this behalf on 17th March, 1997 but the same remained pending. The present writ petition was filed in this Court on 14th May, 1997 challenging the action of respondent No. 1.

(4) For purposes of deciding the points raised in this petition, it is appropriate to notice some of the relevant rules contained in the Id Rules:-

7. Application for licence.- (1) An application for a license or permission for the establishment of a new industrial undertaking or any substantial expansion of [or 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]. x x x x x x x 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 acknowledgement stating the date of receipt. 9. Power to call for additional information.-- The Ministry of Industrial Development or the authority appointed by it [in this behalf] may require the applicant to furnish, within a period to be specified by it, such additional information as it may consider necessary. 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 maximisation of production, better utilisation 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 of 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. Proviso.-- A proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself. 11. Submission of a report by the Committee.-- After such investigation as may be necessary, the Committee to which application has been referred under Rule 10 shall submit a report to the Ministry of Industrial Development. 12. Contents of the report.-- In making 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, amount 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. 13. 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 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) Licences of permissions shall be in Form F appended to these rules.

(5) So far as the first ground of challenge is concerned, a perusal of Rule 15 sub-rule (2) shows that it is necessary to give an opportunity to the applicant to state his case before reaching a decision regarding refusal of permission for grant of license to him. In the present case the decision to grant Loi in favor of respondent No. 3 was communicated to respondent No. 3 vide letter dated 6th February, 1997. The refusal or rejection of the application of petitioners was communicated to them on 25th February, 1997 and by the same communication they were asked to make a representation, if they so desired, against the rejection of their application. Thus the opportunity envisaged in Rule 15 sub-rule (2) to be given before reaching a decision, was purportedly given to the petitioners after the decision. As a matter of fact even the rejection was communicated to the petitioners long time after the Loi had already been issued in favor of respondent No. 3. A post-decisional hearing in the facts of the present case besides being contrary to the Rules, is meaningless - it is an eye-wash. Only one license had to be granted for the area. The same stood granted when the issuance of Loi was communicated to the respondent No. 3 on 6th February, 1997. Nothing remained thereafter. I fail to see what purpose an opportunity given after the decision was already taken and communicated would serve. Thus it is a case of clear violation of Rule 15(2) of the Rules. The learned counsel appearing for the petitioners has in this connection relied on a decision of this Court in *Devinder Singh and Another v. Union of India etc.* (1995) 53 Del L T 705. In similar circumstances this Court held that an opportunity of hearing given after the communication of the decision of rejection was clearly in breach of Rule 15 of the Id Rules. Thus I am of the view that on this ground alone, the petitioners are entitled to succeed.

(6) The second point urged by the learned counsel for the petitioners is that

priority of time in making the application cannot be made the sole basis for grant of LOI. the letter by which rejection of their application was communicated to the petitioners itself states the ground for rejection, i.e. the older applicant was selected. My attention has been drawn to the various relevant rules which have been reproduced hereinbefore and on that basis it is urged that grant of license only on the basis of priority in point of time is contrary to the very object of the Statute and the rules framed there u/s 14 of the Act provides as under :-

14.Procedure for the grant of license or permission -- Before granting any license or permission u/s 11, Section 11(A), Section 13 or Section 293, the Central Government may require such officer or authority as it may appoint for the purpose, to make a complete investigation in respect of applications received in this behalf and 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.

(7) It will be seen from the above provision that the grant of license u/s 11 of the Act cannot be a mere mechanical process, which it is bound to be if priority of time is the only consideration before the Government. Section 14 refers to a complete consideration in respect of application received for grant of license which are to be reported to the prescribed authority. This brings us to the Id Rules. In the application for license itself as per Rule 7, some relevant information is required to be given. Under Rule 9, the Government can ask for additional information from the applicants. Rule 10 requires that the application for license is to be referred to a committee to be appointed under Rule 2. The committee is to consist of representatives of various other Ministries. Under Rule 11 the committee after such investigation as may be necessary has to submit a report to the Ministry of Industrial Development. Under Rule 12 the report itself is expected to cover various issues.

(8) A combined reading of all the aforesaid statutory provisions and the Rules shows that the process of grant of license cannot be reduced to a force like in the present case when the license is granted and refused purely on the basis of date of the application, i.e., priority in point of time in making the application. The appointment of the Screening Committee and thereafter the consideration of the report of the Screening Committee by the Licencing Committee of the Ministry of Industry shows that various aspects have to be considered at a top level. If the date of application was to be the sole criteria for grant of licence, where was the need to have the committees. The principle of first come first served reduces the process to a total mechanical exercise which does not admit of any application of mind. Even a clerk could tabulate the dates of applications of the various applicants and the Loi could be awarded. This could never be the intention in such serious matters. Grant of license to a party and refusal of the same to another party has very serious consequences for both the parties and such a function cannot be allowed to be performed in such an arbitrary fashion.

(9) The learned counsel appearing for respondent No. 3 submitted that in a case

of the present type each party had the requisite qualification and, Therefore, there was nothing for which application of mind could be necessary and in the circumstances the first come first served basis was proper and fair. According to the learned counsel, there are no minimum requirements nor there are any eligibility conditions for making the application. Thus each party is situated at par with the other. Every party has freedom to carry on its business under Article 19(1)(g) of the Constitution of India, Therefore, the Government's action in the present case was fully justified. I am unable to accept this argument advanced on behalf of respondent No. 3. The argument goes contrary to the statutory provision and the relevant rules referred to hereinbefore. Even the guidelines issued by the Ministry of Industry, Government of India in the year 1997, the year in which the impugned decisions were taken in this case, provide "in case more than one application is received for any unit of operation, other things being equal, priority will be given to the application received earlier". As per these guidelines also, some meaning has to be attached to the words "other things being equal". These words show that some comparative merit of all the applicants has to be considered before taking a final decision. In this case it appears that even the report of the Screening Committee has not been taken into consideration and the Loi has been issued in a mechanical manner on the basis of priority of the date of application. Priority of date of application may be one of the factors to be taken into consideration but it cannot be made the sole basis. A form is prescribed on which an application for grant of license or permission for establishment of a new industrial undertaking is to be given. While acceding to or rejecting the request on the basis of the application, authorities have to consider the fact on which information was asked for in the application. The two committees envisaged under the Act and the Rules, i.e., the Screening Committee and the Licencing Committee have to report and consider matters regarding the capital structure, suitability of the location, capacity of the applicant's plant to be installed, availability of technical and other skilled personnel required, collaboration, if any, with foreign manufacturers, availability of rail, transport, etc. No thoughts seem to have been given to these aspects.

(10) Another instance of total non-application of mind is that the fact that Mrs.Shobhna Bhartiya had been granted an Loi for same purpose in 1994 which remained to be implemented was taken into consideration for rejecting Mrs. Bhartiya's application for Loi for the location in question in this case, but this fact was overlooked that same Mrs.Bhartiya was behind respondent No. 3, the successful party.

(11) The impugned action of the respondent No. 1 accordingly appears to be wholly arbitrary, without application of mind and unjustified. This aspect of the matter was also dealt with by the Division Bench of this Court in the aforesaid decision in Devinder Singh's case and it was held that priority in making the application could not be the only consideration in such matters. The learned counsel appearing for the respondent No. 3 made a vain attempt to distinguish the said judgment. I am unable to accept the same. In my view the said

judgment is fully applicable in the facts of the present case and the impugned action of respondent No. 1 is liable to be quashed.

(12) It is surprising that in spite of the fact that a Division Bench of this Court held in the aforesaid case of Devinder Singh that priority of date of application as the basis for grant of license was not a valid criteria, the Government still followed the same principle in granting the Loi in the present case. The judgment in Devinder Singh's case was delivered on 3rd January, 1995. The SLP No. 14342-43/95 against the said judgment was dismissed on 28th July, 1995. Inspire of this, criteria of priority of date of application was followed by the Government.

(13) So far as the third point of challenge noted in the earlier part of this judgment is concerned, the learned counsel appearing for the petitioners did not urge the same at the time of the hearing. Therefore, I need not go into the same.

(14) In these circumstances this petition is allowed. The grant of Loi in favor of respondent No. 3 by respondent No. 1 vide letter dated 6th February, 1997 is quashed. The letter dated 25th February, 1997 communicating the rejection of petitioners application is also hereby quashed. Respondents 1 and 2 are directed to consider afresh the matter of grant of license with respect to the zone under consideration in accordance with law and the relevant rules. The petitioners are entitled to costs against respondents 1 and 2 quantified at Rs. 10,000.00 .