
(2002) 01 PAT CK 0095
In the Patna High Court
Case No : C.W.J.C. No. 9437 of 1999

Tirupati Balajee Sugar and Co.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Citation : (2002) 1 BLJR 598

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Judgement

R.S. Garg, J.—The parties are finally heard.

2. The petitioner being aggrieved by the order dated 6-2-1999 passed by the Cane Commissioner and order dated 10-7-1997 passed by the Secretary, Cane Department, Bihar, has come to this Court.

3. The undisputed facts, in a nutshell are that the respondent intervenor Riga Sugar Company is a licenced Sugar Factory at Riga in the District of Sitamarhi. The petitioner made an application to the Cane Commissioner for grant of a licence for establishment of a Khandsari Factory. The present intervenor objector submitted his objections to the grant of the licence but the Cane Commissioner after hearing the parties recorded finding in favour of the present petitioner and directed grant of the licence. The said grant order was challenged before the appellate authority and after being unsuccessful, came to this Court in C.W.J.C. No. 6009 of 1997. After arguing the petition for sometime the petitioner sought permission to withdraw the writ petition enabling the said petitioner (present objector) to approach the respondent authority for redressal of his grievance. The writ petition was accordingly dismissed.

4. It appears that thereafter no further steps were taken by the objector intervenor. It did not challenge the grant but a new chapter opened. The present petitioner was given licence to raise and establish the Khandsari Unit at village Parwaha but it established a Unit within the precinct of village Inderwa. The

intervenor objector made an application to the authorities for cancellation of licence on the ground of breach of licence conditions. A notice was issued to the present petitioner and after hearing the parties the Cane Commissioner ultimately held that in view of the breach of the licence conditions specially breach of Section 17(2)(e) of the Act the licence deserved cancellation. It accordingly cancelled the licence by order dated 6-2-1999, Annexure-12. The said order was challenged by the petitioner before the Secretary, Cane Department who by order dated 10-7-1999, dismissed the appeal, therefore, the petitioner has come to this Court.

5. Learned Counsel for the petitioner submitted that a particular area is reserved for the existing Sugar Factory every year in accordance with the Notification to be issued u/s 31 of the Act. He submitted that under the law permission to establish a Khandsari Unit can be allowed at a distance of 15 Kms., however, learned Counsel for the respondents submits that in accordance with Section 31 of the Act a particular area is to be declared as reserved area for existing sugar mill. He, however, submits that a licence can be granted to establish a new Sugar Mill or Khandsari Mill in accordance with Section 16 of the Act, if Cane Commissioner records a finding that the establishment of the New Unit is not likely to impair the production of sugar by the earlier establishment.

6. From the records it appears that when the petitioner had applied for grant of licence, the intervenor raised the objections. The said objections were rejected.

7. The learned Counsel for the petitioner on the last date of hearing submitted to this Court that after completion of the formalities the licence for establishment of Khandsari Factory was issued in his favour, therefore, the Cane Commissioner be asked to grant post facto sanction for location where the petitioner has established or raised his construction. This Court required the Cane Commissioner to look into the matter and submit his comments. On 3-12-2001 the said Cane Commissioner has submitted to this Court in form of a counter-affidavit that post facto sanction is not possible because the licence was cancelled by the Cane Commissioner on 6-2-1999 and as the same was only for one year. He also Stated in his counter-affidavit that the petitioner may apply for fresh licence for the season 2001-2002 giving the full details of the site and other informations. After examination of the fresh proposal on merit grant of licence would be considered by the authority.

8. Learned Counsel for the petitioner, though submitted that a post-facto sanction can be granted in favour of the petitioner because the total exercise has already taken place on earlier occasion and reconsideration of the fresh application would be nothing but waste of time, however, I am not impressed by this submission. Section 16 relates to the grant of a licence while Section 17 refers to conditions of licences granted to occupiers of factories or owners of units. An enquiry u/s 16 is precondition before grant of licence. The conditions which can be imposed upon a licensee are enumerated in Section 17. Section 17(2)(e) provides that the licensee shall not extend or alter the unit or charge its

location without previous permission. In a case where the licence conditions have been violated the licence itself can be cancelled but that would not invalidate the original grant, grant of licence is altogether different power of the Cane Commissioner in comparison to the cancellation of the licence.

9. Section 16 on its fair perusal does not say that post facto sanction can be granted in favour of a person who has already established a unit or has raised construction or who either bona fide or under some inadvertence changed the location for raising the construction. Section 16 makes it clear that a licence has to be applied for a particular site and the Cane Commissioner has to record his satisfaction after hearing all concern that grant of the permission and issuance of the licence is not likely to impair production of sugar by the earlier occupier.

10. After going through the legal provisions I am unable to concede to this argument.

11. At this stage learned Counsel for the petitioner submits that the petitioner in accordance with the suggestions made by the Cane Commissioner so also in accordance with law would apply for fresh licence but this Court must require the Cane Commissioner to hold, that in view of earlier enquiry and grant of licence in favour of the petitioner is not likely to unduly impair the production of sugar by the intervenor/objector. To this submission the Counsel for the intervenor/objector raised a serious objection. According to him the earlier licence was granted taking into consideration the conditions which prevailed at the time of the said application or grant of the licence and if today the conditions have changed then the intervenor objector would be entitled to raise his fresh objection against grant of fresh licence.

12. In the opinion of this Court, earlier grant, though would be a relevant factor but would not be conclusive conclusion for granting a fresh licence in favour of the petitioner. The petitioner while making application for grant of fresh licence may certainly rely upon the observations made and findings recorded in the earlier order but the intervenor/objector would also be entitled to raise their fresh objections or protected to raise their fresh objections or produce fresh evidence in support of their claim that the licence should not be granted even for the new site.

13. After taking into consideration the totality of the circumstances and hearing the parties the Cane Commissioner shall pass speaking order.

14. The petition is disposed of.