

(2002) 08 AHC CK 0072
In the Allahabad High Court
Case No : Writ Petition No. 51791 of 1999

Vijai Sugar Industries and Others

APPELLANT

Vs

Special Secretary/Appellate Authority and Others

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Constitution of India, 1950 — Article 136, 266

Citation : (2002) 4 AWC 2899

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

Bench : Single Bench

Advocate : Anil Sharma, for the Appellant; Arvind Kumar Sharma and Ravi Kant, S.C., for the Respondent

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—Heard learned counsel for the petitioners, learned counsel appearing for the contesting respondent Nos. 2 to 7.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioners pray for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 10.9.1999 (signed on 9.9.1999) passed by the appellate authority and the order dated 13.1.1999 passed by the licensing authority under the U. P. Khandsari Sugar Manufacturers' Licensing Order, 1967 (for short "the Order") and to treat the petitioners to be the licence holders for the years 1997 to 1999. Prayer for quashing the order dated 3.12.1998 passed by the licensing authority has also been made. Besides the general prayer, prayer to pass any other order or orders as this Court may deem fit under the circumstances of the case and the submissions made before it, has also been made.

3. The relevant facts of the case giving rise to the present petition, in brief, are that the petitioners used to carry on Khandsari manufacturing business in the name and style of M/s. Vijai Sugar Industries in their unit situated in plot No. 76,

village Akbarpur Seemli, district Bijnor on the strength of a licence granted in their favour by the licensing authority under the aforesaid Order. The licence granted in favour of the petitioners was valid upto 30.9.1996. It was on 18.12.1996 that the petitioners have sold the scrap/junk of the machinery, dilapidated building and plot No. 76 in favour of respondent No. 5 through respondent Nos. 6 and 7 ; but not the crusher. In the year 1996-97, the petitioners did not run the unit nor applied for renewal of their licence. In 1997-98, the petitioners decided to restart the aforesaid business, they, therefore, after completing the formalities for the same, applied for renewal of their licence to establish the unit in plot No. 33 situated in the same village comparatively far away from the reserved area of the Mill as compared to plot No. 76. The licensing authority without applying its mind to the licensing policy for the year 1997-98 and the provisions of the Order, dismissed the application of the petitioners for renewal of their licence merely on the ground that on the spot, the crusher/unit was not installed and that the unit was sold in favour of contesting respondents, by his order dated 10/9.9.1997. In the licensing policy for the year 1997-98, there was no restriction either on the sale of the unit or shifting of the same to the other place within the same reserved area and the licence of the petitioners could be renewed. In the meanwhile, contesting respondents also applied for grant of a new licence at plot No. 76 in place of the petitioners. According to them the order passed by the licensing authority was illegal and the same was contrary to the provisions of the licensing policy and the Order, therefore, the petitioners filed an appeal before the appellate authority, the State Government, challenging the validity of the order of licensing authority. The appellate authority also dismissed the appeal by its judgment and order dated 14.1.1998. It would not be out of place to state that before appellate authority, respondent Nos. 7 and 8 applied for their impleadment as parties in the appeal which was objected to by the petitioners but the same was allowed. Thereafter, the petitioners challenged the validity of the orders passed by the licensing authority and the Appellate Authority before the High Court (Lucknow Bench) in Writ Petition No. 212 (MS) of 1998. The High Court was pleased to admit the writ petition and grant interim stay order whereby the operation of the orders passed by the authorities below was stayed on 20.1.1998. On behalf of the respondents, counter-affidavits were filed in reply of which the petitioners also filed rejoinder-affidavits. High Court also dismissed the aforesaid writ petition by its judgment and order dated 8.10.1998. Consequently, the interim order granted by the High Court stood vacated. The petitioners immediately thereafter filed a leave petition, on which leave was granted and it was registered as Special Appeal (Civil) No. 17302 of 1998. Hon'ble Supreme Court on the application for interim relief passed the following order on 17.11.1998 :

"Exemption allowed. I.A. No. 2 is allowed.

Issue notice returnable within three weeks indicating that the matter would be finally disposed of at the notice stage itself. Dasti service in addition is permitted."

4. Taking undue advantage of the fact that the interim relief was not granted to the petitioners in the aforesaid appeal, the licensing authority vide its order dated 3.12.1998, apparently on the strength of the order passed by the High Court, granted licence for the licensing year 1997-98 in favour of the contesting respondents in place of licence of the petitioners after getting the taxes and fee, etc. which were outstanding against the petitioners. The operative portion of the order dated 3.12.1998, is quoted below :

^^of.kZr ifjLFkfr;ksa esa vkosndksa ds i{k esa mi;qZDr vkdkj dh bdkbZ dk ykblsUI ;FkkLFkku Loh?r fd;s tkus dh vuqefr iznku dh tkrh gS A iwoZ ls laLFkkfir [kk.Mlkjh bdkbZ ds ykblsUI dh lqIr vof/k o"kZ 1996&97 dk ykbZlsUI "kqYd foyEc "kqYd lfgr vkosndx.k dks"kkxkj esa pkyku }kjk tek dj rn~fo"k;d izek.k i= izLrqr djuk lqfuf"r djsa A ftlls muds i{k esa ykblsUI fuxZr djus dh dk;Zokgh dh tk lds A**

5. The aforesaid special appeal after service of notices upon the parties concerned, was heard and was ultimately allowed by the Apex Court and case was remanded to the licensing authority to consider the application for renewal made by the petitioners and dispose of the same on its own merits. The operative portion of the said order is quoted below ;

"We, therefore, set aside the order passed by the licensing authority, as confirmed by the Sugar Commissioner, and direct the licensing authority to reconsider the application for renewal made by the appellants and dispose of the same on its own merits. The licensing authority is directed to dispose of that application within one month from today."

6. After the case was remanded by the Apex Court, the licensing authority issued a notice to the petitioners. The petitioners also gave the reply of the same to the licensing authority. The licensing authority, thereafter again rejected the application for renewal of the licence of the petitioners by its order dated 13.1.1999 in violation of the directions given by the Apex Court precisely on the same grounds on which the earlier order dated 13.1.1999 was passed. The validity of the said order was again challenged by the petitioners before the appellate authority by filing an appeal, which ultimately came to the file of Mr. Pramod Kumar, Special Secretary, who earlier by his order dated 14.1.1999 dismissed the appeal filed by the petitioners. The appeal filed by the petitioners was entertained and admitted but no date was fixed for hearing, therefore, the petitioners had to make several applications for early hearing. Ultimately, the appeal was heard on 5.5.1999 but judgment was not delivered, it was reserved. It has been stated that the petitioners again had to make several applications and representations for delivery of judgment. Ultimately, the appellate authority delivered the judgment and again affirmed the order passed by the licensing authority and its own order dated 14.1.1998 by its judgment and order dated 10.9.1999 and dismissed the appeal. Hence, the present petition.

7. After admission of the writ petition, interim order was granted in favour of the

petitioners whereby the operation of impugned orders was stayed and contesting respondents were restrained from running crusher. By the same order, notices were also issued to the contesting respondents by this Court. On receipt of notices, the contesting respondents have filed their counter-affidavit controverting the facts stated in the writ petition and asserting that the application for renewal of the licence of the petitioners and their appeal were rightly dismissed, by the authorities below. In reply to the counter-affidavit, petitioners have also filed rejoinder-affidavit controverting and denying the facts stated in the counter-affidavit and reiterating and reasserting the facts stated in the writ petition.

8. Learned counsel for the petitioners vehemently urged that the orders passed by the authorities below are wholly illegal and without jurisdiction. They are also in violation of the directions issued by the Apex Court of the country. It was urged that the authorities below erred in law in relying upon the policy for grant of licence for the year 1998-99 which was irrelevant as the application for renewal was filed in 1997-98. It was also urged that the authorities below have no right to grant licence to the contesting respondents in plea of the petitioners, after getting the amount of taxes, etc. deposited, which were outstanding against them. The order granting licence was also contrary to the provisions of the order and was illegal. It was also submitted that the appeal filed by the petitioners in view of the fact that earlier appeal was dismissed by him, should not have been decided by Sri Pramod Kumar. The order passed by him, dismissing the appeal was, thus, illegal as from it, element of bias cannot be ruled out. It was also urged that the order dated 3.12.1998 granting the licence in favour of the contesting respondents by the licensing authority was wholly without jurisdiction, non-est and was liable to be ignored.

9. On the other hand, learned counsel appearing for the contesting respondents supported the validity of the orders passed by the authorities below. It was urged that licensing policy cannot override the provisions of the order and that the Impugned orders were passed in accordance with the provisions of the order as well as the policy promulgated by the State Government for the year 1998-99. It was also urged that the petitioner did not file any appeal against the order dated 3.12.1998, therefore, the writ petition was liable to be dismissed on the ground of alternative remedy.

10. I have considered the submissions made by the learned counsel for the parties and also carefully perused the record.

11. Admittedly, in plot No. 76 of village Akbarpur Seemli, district Bijnor, the khandsari unit was established by the petitioners after obtaining licence from the licensing authority. The said unit continued to function and produce khandsari sugar upto 1996. In the year 1996, plot No. 76 and scrap/junk of the machinery, bels and dilapidated building were sold in favour of respondent No. 5 but not the crusher. The petitioners, for the reasons best known to them, did not run the unit nor applied for renewal of their licence in the year 1996-97. In the year 1997-98,

the petitioners decided to restart the said business. They have shifted/ established their unit in plot No. 33 situated in the same village, after completing all the formalities and after giving undertaking as provided under Sub-clause (Kha) of Clause 4 of the licensing policy. In the said policy, vide order dated 7.11.1997, in paragraph 1 (Cha), it was provided as under :

(Only relevant quoted)

^^izLrj&A ?p?

iwoZ ls LFkkfir ,oa lapkfy fdUrq dqN le; ds fy, lqIr bdkbZ Lokeh ;fn ,d eq"r ykblsUI dh lqfo/kk dk ykHk mBkus gsrq vkosnu izLrqr djrk gS rks leLr jkt dh; ns;ksa dk Hkqxrku djus ds ckn mUgSa ykblsUI Loh?r fd;k tk ldrk gS A**

12. Under the facts and circumstances of the present case, at the time when the application for renewal was filed, there existed no other unit in the area having a licence nor anybody had the licence, granted by the licensing authority to run the unit. Therefore, in view of the aforesaid policy when the petitioners, who have fulfilled all the conditions, their licence was liable to be renewed. Sub-clause (4) of Clause 3 of the order provides 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 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 Khandsari Sugar Manufacturing Industry in the best interest of the industry ; or

(b) avoiding uneconomic concentration of Khandsari unit in any area ; or

(c) ensuring in a reserved or assigned area adequate supplies of sugarcane in 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 the application including the previous contravention, if any, or any provision of this Order, or conditions of the license ; and

(b) the total continuous period for which the applicant held licence under this Order prior to 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 no application for renewal of a license 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 grant or renewal of a license 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 of licensing year 1982-83 by December 31. 1982."

13. A reading of the aforesaid clause of the order shows that there was no conflict between the licensing policy and the said clause of the order and the petitioners, as stated above, have fulfilled all the conditions which were necessary for renewal of their licence. Under the aforesaid facts and circumstances, the licence of the petitioners was liable to be renewed. The licensing authority, however, for the reasons best known to it, on totally irrelevant considerations and noticing incorrect facts, rejected the application of the petitioners for renewal of their licence. The contesting respondents never contended that any provision of the order was being contravened by the petitioners, therefore, there was no question of the order having overriding effect over the licensing policy, referred to above. The Apex Court, while dealing with this question, was pleased to hold as under :

"It is not the case of the respondents that any of the provisions of Sub-clause (iv) of Clause 3 of the U. P. Khandsari Sugar Manufacturers" Licensing Order, 1967. comes in the way of renewal of licence,"

14. In the said judgment, it was observed by the Supreme Court that the application for renewal of licence was rejected by the licensing authority on extraneous considerations, namely, the unit of the appellant was not existing as the land and building of the unit were already sold which was not relevant for the purposes of renewal of licence inasmuch as In the application for renewal of the licence, the petitioner clearly stated that they had sold the land and building on which the unit existed earlier and that the unit was going to be installed in Khasra plot No. 33 of the same village. It was also observed by the Supreme Court that shifting the unit from one place to another place within the same village was permissible under the Rules.

15. After the case was remanded to the licensing authority by the Supreme Court, the licensing authority again harped upon the same reasoning, which was adopted by it while passing the order dated 9.9.1997, rejecting the application of the petitioners. It has committed an error which is apparent on the face of the record in relying upon the provisions of the licensing policy of 1998-99 and held that since the unit was sold, the petitioners cannot take advantage of Clause 2 of the said policy and were not entitled to renewal of the licence. Having recorded the said finding, the licensing authority illegally dismissed the application filed by

the petitioners. The licensing authority completely ignored the Judgment and order passed by the Apex Court, therefore, the submissions made by the learned counsel for the contesting respondents cannot be accepted. The appellate authority was none else but Mr. Pramod Kumar himself who earlier dismissed the appeal of the petitioners. He has arbitrarily held that the licensing authority has decided the application in accordance with law and that the petitioners have violated the provisions of the order without specifically mentioning as to which provision was violated by them. Thus, the order passed by the appellate authority is also illegal and unenforceable in law.

16. So far as the question of availability of alternative remedy against the order granting licence dated 3.12.1998 is concerned, it is evident from the said order passed by the licensing authority that the licence was granted to the contesting respondents in place of the petitioners' licence after getting deposited the taxes, etc., which were due against the petitioners which was legally not permissible under the law. New licence could be granted according to the provisions/Order read with the licensing policy. Thus, the order dated 3.12.1998, is wholly without jurisdiction and non-est. The same is, therefore, liable to be ignored. In view of the aforesaid facts, it was not necessary for the petitioners to file appeal against the said order. In *Kiran Singh and Others Vs. Chaman Paswan and Others*, the Apex Court was pleased to rule as under :

"(6)It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties....."

17. In view of the aforesaid decision, the order granting licence to the contesting respondents is liable to be ignored as it was wholly without jurisdiction. However, in the present petition, the validity of the said order dated 3.12.1998, has been challenged even though legally it was not necessary to challenge the same in view of the law laid down by the Apex Court. Further, learned counsel for the petitioners rightly submitted that the order dated 3.12.1998, was passed on the strength of the order passed by the High Court in Writ Petition No. 212 (MS) of 1998 and for the reason, no interim relief was granted by the Supreme Court in Civil Appeal No. 17302 of 1998 in favour of the petitioners. Ultimately, the order of High Court was set aside by the Supreme Court. Thus, not only the order of High Court merged in the order of the Supreme Court but the order dated 3.12.1998 also became non-existent. A reference in this regard may be made to the decision in the case of *Kunhayammed and Ors. v. State of Kerala and Anr.* 2000 (4) AWC 2.37 (SC) (NOC) : 2000 (5) SCC 181, wherein it was ruled by the Apex Court as under :

(Only relevant quoted)

" 40. To sum up, our conclusions are :

(i) Where an appeal or revision is provided against an order passed by a Court, Tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

x x x x

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked, the order passed in appeal would attract the doctrine of merger, the order may be of reversal, modification or merely affirmation."

18. Thus, not only the order passed by the High Court in Writ Petition No. 212 (MS) of 1998 merged in the judgment of the Supreme Court but also the order granting licence in favour of the petitioners, which was passed on the strength of the said order also became non-existent. The submission made by the learned counsel for the respondents that present petition was liable to be dismissed on the ground of availability of alternative remedy, therefore, cannot be accepted.

19. Here, it may also be noted from the reports of Tehsildar, contained in Annexure-24 of the writ petition, which were filed before the licensing authority, it is evident that in plot No. 33, referred to above, the unit was fully installed after investing substantial amount by the petitioners and the same will be started the moment their licence is renewed. Therefore, the petitioners cannot be denied their right to get licence renewed on the alleged ground that the unit situated in plot No. 76 was sold by them, which is factually incorrect for the facts and reasons stated above.

20. In view of the aforesaid discussion, the present petition deserves to be allowed.

21. The writ petition succeeds and is hereby allowed. The orders dated 13.1.1999, 10.9.1999 and 3.12.1998, are hereby quashed. The respondent No. 3 is directed to renew the licence of the petitioners for the year 2002-2003, in accordance with law, within two weeks from the date a certified copy of this order is communicated to him along with an application. The contesting respondents are also restrained from running the crusher in question situated in plot No. 76 of village Akbarpur Seemli, district Bijnor. No order as to costs.