

Ramesh Kumar Vs. the Commissioner of Industries and ors.

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Court : Delhi

Decided On : Dec-04-2014

Judge : Vibhu Bakhru

Appellant : Ramesh Kumar

Respondent : The Commissioner of Industries and ors.

Judgement :

THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

04. 12.2014 W.P.(C) 3479/2012 RAMESH KUMAR Petitioner versus THE COMMISSIONER OF INDUSTRIES AND ORS. Respondents Advocates who appeared in this case: For the Petitioner : Mr S.S. Parashar. For the Respondents : Ms Renuka Arora for DSIIDC. CORAM:HONBLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J1 The petitioner impugns an order dated 13.05.2010 (hereafter impugned order) rejecting petitioners application/appeal for allotment of industrial plot under the relocation scheme on the ground that the petitioner had failed to establish that he was carrying manufacturing business prior to 19.04.1996.

2. Briefly stated, the relevant facts are that the industrial units which were functioning in non-conforming areas were to be relocated to conforming areas in view of the decision of the Supreme Court in M.C. Mehta v. Union of India and Ors.: W.P.(C) No.4677/1985. In order to facilitate shifting of industrial units from

non-conforming areas, the Government of NCT of Delhi floated a relocation scheme and entrusted DSIIDC for implementing the said scheme. As per the scheme, the industrial units that were established prior to 19.04.1996, were eligible for allotment of industrial premises in conforming area. The applications in this regard were scrutinized by the Commissioner of Industries and a list of eligible applicants was forwarded to DSIIDC.

3. The petitioner is engaged in the business of manufacturing, trading and repairing of "Die making" and was running a factory at Shastri Nagar, Delhi under the name of R.K. Mechanical Works. On 31.12.1996, the petitioner made an application (No.53498) to the Commissioner of Industries for an industrial plot under the relocation scheme.

4. By a letter dated 11.06.1998, the Commissioner of Industries informed the petitioner that he had not filed any documentary evidence to show existence of his industry prior to the cut of date i.e. 19.04.1996 and granted him a hearing on 29.06.1998 to provide the necessary documents. By a letter dated 27.06.2000, the Commissioner of Industries informed the petitioner that his application was rejected as the petitioner had failed to provide any documents or any clarification as required.

5. The petitioner, thereafter, filed an appeal against the order dated 27.06.2000. Although the said appeal was rejected, the order was not communicated to the petitioner; the petitioner became aware of the order pursuant to information provided in response an application under the Right to Information Act, 2005. The petitioner, thereafter, filed a writ petition (W.P.(C) No.8996/2009) before this Court challenging the decision of the Appellate Authority. By an order dated 25.01.2010, the order of the Appellate Authority was set aside and the matter was remanded for reconsideration in view of the petitioners assertion that the date of commencement of business was erroneously noted as 10.09.1996 instead of 10.09.1995.

7. In compliance of the order dated 25.01.2010, the petitioners case was considered by the Industrial Land Management Advisory Committee (ILMAC), which concluded that the petitioner had failed to establish that he was carrying out

manufacturing business prior to 19.04.1996. The recommendations/findings of ILMAC were accepted by the Secretary cum Commissioner (Industries) and the impugned order was passed.

8. The controversy to be addressed is whether the petitioner had established industrial unit prior to the cut off date (i.e. 19.04.1996) and whether the impugned order is erroneous.

9. It is not disputed that only those units that were established in a non-conforming area prior to 19.04.1996, were eligible for allotment of premises in conforming area. As per the policy adopted by the respondent, any of the following documents were acceptable for evidencing existence of an industrial unit prior to the cut off date:

a) Municipal Corporation b) Permanent S.S.I. Registration Licence (renewed 31.3.1995) upto c) Sales Tax Regn. For d) Excise Manufacturing manufacturing Regn. For e) Regn. Under Factories f) Drug Licence, if unit is mfg. Act Item covered under Drug Act g) Test Report from B.I.S. , R.T.C., Q.M.S. Certificate issued by the Office of C.I. etc. h) Manufacturers Certificate in case of House-hold Electrical Appliances i) B.I.S. Licence j) Regn. With E.P.C. Manufacturer Exporter as k) Copy of the Challan l) Power Bill showing misuse issued by the DDA or MCD charges for running an industry in or DVB within last five non-conforming areas. years for running the industry. m) Income Tax Return of n) Receipt showing that unit has applied for permission to High the industry. Power Committee

10. The petitioners appeal for reconsidering his case under the relocation scheme was rejected. The information obtained under the Right to Information Act, 2005 indicated the reason given for rejection of the petitioners appeal as:

date of establishment has been shown as 10 th September 1996 i.e. after cut-off date.

Since the petitioner asserted that this was palpably erroneous, the matter was remanded to Appellate Authority.

11. Concededly, the petitioner had submitted the Sales Tax Registration Certificate under the Delhi Sales Tax and Central Sales Tax to ILMAC. The said Sales Tax Registration Certificate was valid w.e.f. 19.05.2000. However, ILMAC did not accept the same as confirming that petitioners unit existed prior to the cut off date. The reasons provided by ILMAC for rejecting the Sales Tax Registration Certificate are as under:- a) Although the applicant has furnished Sales Tax Regn. Certificate under DST as well as CST the same has been issued on 19.06.2000 i.e. much after the cut off date i.e. 19.04.1996. b) Even though it has been mentioned on the CST Certificate that the applicant has a manufacturing unit and that the liability of the unit starts from 20.09.1995, same cannot be treated as a proof that the applicant had been manufacturing on the said date because the validity of this certificate commences from 19.05.2000 and the same has been issued on 19.06.2000. Further, the liability of paying Tax w.e.f. 20.09.1995 is due to one sale outside Delhi was made by the applicant for an amount of Rs. 488/- to M/s Sharda Seals Works, Mitti Khadan, Kaithal Road, Nagpur (Maharashtra) and it does not confirm about his manufacturing activities of the unit. c) The copy of the receipt to the erstwhile DESU towards payment of new connection is not one of the admissible document out of the documents stated above. Further the receipt does not mention any address or name of the unit whereupon.

12. The learned counsel for the petitioner has drawn the attention of this Court to the Statement of Dealer cum Report of Inspector on Application for Registration which indicates that the report was prepared by Sales Tax Inspector on 19.12.1995 and also bears his signature. The said report reflects the date of commencement of business as 10.09.1995. The report further indicates that the following machinery were installed at the date of inspection:

- 1) Three Lath machines
- 2) One Grinder
- 3) One Drill Machine
- 4) One Tool Grinder

13. Apparently, the said report has not been considered by either ILMAC or the Secretary cum Commissioner (Industries). A copy of the order dated 11.01.1996 of the Sales Tax Officer also indicates that an inspection of the petitioners unit was carried on 19.12.1995 14. The Sales Tax Registration Certificate submitted by the petitioner was rejected as the same was issued after the cut off date. Although it is accepted that the petitioners concern was liable to pay tax w.e.f. 20.09.1995, the respondent has not accepted the same as proof of an established manufacturing concern. The petitioner had shown only one interstate sale and this was not accepted by the respondent as confirmation of manufacturing activities.

15. The petitioner also referred to the assessment notice under the Sales Tax Act in respect of the existence of the manufacturing business since September 1995; bank account in the name of the proprietary concern since 13.12.1995; documents showing purchase of machineries between 15.09.1995 and 08.11.1995. However, the respondent has not considered any of the above material.

16. In the above circumstances, there is sufficient evidence to indicate that the petitioner had an established unit prior to the cut off date which has been overlooked.

17. Accordingly, the impugned order is set aside and the respondent is directed to consider the petitioners application for allotment of an industrial plot in accordance with its policy. VIBHU BAKHRU, J DECEMBER04 2014 RK

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