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Devinder Singh and anr. Vs. Union of India (Uoi) and ors.

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Court : Delhi

Decided On : Jan-03-1995

Reported in : 1995IAD(Delhi)597; 58(1995)DLT705

Judge : D.P. Wadhwa and; N.G. Nandi, JJ.

Acts : Industries (Development and Regulation) Act, 1951 - Sections 14; Industrial Undertaking Rules, 1952 - Rule 14; Constitution of India - Article 79; Industries (Development and Regulation) Rules, 1952 - Rule 15(2) and 15(3)

Appeal No. : Civil Writ Petition No. 1930 and 1977 of 1994

Appellant : Devinder Singh and anr.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : K.C. Mittal and ; Monica Aggarwal, Advs. for R 1-3, ; Shant

Advocate for Pet/Ap. : K.N. Bhat, Sr. Adv.,; S.K. Gupta, Adv.,; P.N. Lekhi, Sr

Disposition : Petition allowed

Judgement :

D.P. Wadhwa, J.

1. These two Writ Petitions raise common questions inasmuch as in both these petitions there is challenge to grant of Letter of Intent dated 31 March, 1994 issued

by the Central Government in the Ministry of Industry in favor of the respondent Vipin Goel for him to establish a sugar unit of the capacity of 2500 TCD (Tonnes cane crush per day) at Chandak in District Bijnor, U.P. Both the petitioners, however, claim their individual right to the Letter of Intent issued, to them, and seek a mandamus for that purpose.

2. Under the Industries (Development and Regulation) Act, 1951 (for short 'the I.D. Act') sugar falls under the first schedule and is, thus, a scheduled industry under Clause (i) of Section 3 of the Act. Under Clause (d), industrial undertaking means an undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including the Government. Under Section 11 of the Act, a license is required for establishment of a new industrial undertaking which license is to be granted by the Central Government in the Ministry of Industry. Section 14 prescribes the procedure for grant of license or permission and it says before granting any license or permission under Section 11 the Central Government may require such officer or authority, as it may appoint for the purpose, to make a full and complete investigation in respect of applications received in this behalf and to 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. A license may contain such conditions including, in particular, conditions as to the location of the undertaking and the minimum standards in respect of size to be provided therein as the Central Government may deem fit to impose in accordance with the Rules, if any, made under Section 30. The Registration and Licensing of Industrial Undertakings Rules, 1952, (for short 'the I.D. Rules') have been framed. These Rules provide as to how the application for license for establishment of a new industrial undertaking is to be made and how that application is to be processed. We may reproduce the extracts from the relevant rules:--

7. Application for license.--(1) Application for a license of permission for the establishment of a new industrial undertaking or any substantial expansion of for 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 of the production or manufacture of the new article;

(1-A) An application for a license or permission for changing the location of the whole or any part of an industrial undertaking which has been registered or in respect of which a license or permission has been issued shall be made before taking any of the following steps:

(a) the acquisition of land or the construction of premises for the purpose of housing the industrial undertaking at the proposed new site;

(b) the dismantling of any part of the plant and machinery at the existing site.

(3) Each application shall be accompanied by a crossed demand draft for Rs. 2,500 drawn on the State Bank of India, Nirman Bhawan, New Delhi, in favor of the pay and Accounts Officer, Ministry of Industry (Department of Industrial Development), Government of India, New Delhi.

8. Acknowledgement 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.

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 maximum of production, better utilization of existing plant and

machinery and other factors, the Ministriesconcerned 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 or 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.

11. Submission of report by the Committee--(1) After Such investigations as may be necessary the Committee to which an application has been referred under Rule 10 shall submit a report to the Ministry of Industrial Development.

12. Contents of the report.--In making the 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, among 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.

14. Invitation of applications--(1) The Ministry of Industrial Development or the authority appointed by it in this behalf may, where it considers necessary, invite, by means of a notice published in the Gazette of India, applications for the grant of licenses for the establishment of new industrial undertakings in any scheduled industry.

(2) An application received under Sub-rule (1) shall be dealt with in the manner laid down in Rules 10 to 13. 15. 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) licenses or permissions shall be in Form F appended to these rules.'

Under the Government of India (Allocation of Business) Rules, 1961, framed by the President of India under Clause (3) of Article 79 of the Constitution for the allocation of business, one of the subjects which falls to be dealt by the Ministry of Food is sugar industry and is indicated as under:--

'6. Industries, the control of which by the Union is declared by Parliament by law to be expedient in public interest, as far as these relate to:

(a) .....;

(b) Sugar Industry (including development of Gur and Khandsari); and

(c) .....'

Then the following subjects are shown under the Ministry of Industry:--'I. Industrial Policy

1. ...

2. Administration of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

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HI. Industries and Industrial and Technical Development.

6. Planning development and control of and assistance to, all industries other than those dealt with by any other Department, but including industries relating to bread, oilseeds meals (edible), breakfast foods, biscuits, confectionery (including Cocoa Processing and Chocolate making), malt extract, protein isolate, high protein food, weaning food and extruded food products (including other ready-to-eat foods).'

Under Rule 14 of the I.D. Rules, the Ministry of Industry did not invite any applications by means of public notice in the Gazette of India for the grant of license for establishment of the new sugar industry. However, by means of Press Notes (1990 and 1991 Series) certain guidelines were issued by the Central Government for licensing of new and expansion of existing sugar factories. Press Note (1991 Series) was issued in supersession of the Press Note (1990 Series) as certain revised guidelines were formulated. We may reproduce certain extracts from these guidelines from the Press Note (1991 Series) dated 8 November, 1991 for the sugar year 1991-92 and the Eighth Five Years Plan (1992-93 to 1996-97):--

'A'.

(1) .....

(2) licenses for new sugar factories will be issued subject to the condition that the distance between the proposed new sugar factory and an existing/already licensed sugar factory should be25 kilometres. This distance criterion of 25 kms. could, however, be relaxed to 15 kms.

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(5) Other things being equal, preference in licensing will be given to proposals from the Co-operative Sector and the Public Sector, in that order, as compared to the Private Sector.

In case more than one application is received from any zone of operation, priority will be given to the application received earlier. However, in such cases, also, preference will be given to the Co-operative Sector, followed by the Public Sector and the Private Sector, in that order, even though the applications of the first two sectors may be of a later date.

xxxxxB. Applications for licenses will initially screened by the Screening Committee of the Ministry of Food. While considering such applications, the comments of the State Governments/Union Territory Administration concerned would also be obtained. The State Government/Union Territory Administration would be required to furnish their comments within 3 months of the receipt of communication from the Ministry of Food.

. Applications for grant of industrial licenses for the establishment of new sugar factories as well as expansion of existing units should be submitted directly to the Secretariat for Industrial Approvals in the Department of Industrial Development in Form IL Along with the prescribed fee of Rs. 2500/-. A copy of the application may also be sent to Ministry of Food.

D. The procedure and guidelines, as given above, are brought to the notice of the entrepreneurs for their information and guidance.'

We may also note that the stand of the Central Government has been that the submission of application for grant of license for setting up new sugar factory is an on going continuous process and application submitted at any time can be taken

into consideration by the Ministry of Industry and the Screening Committee of the Ministry of Food to which application is referred.

3. In the present case there were various applicants for establishment of a new sugar factory at Chandak. These applications were referred to the Screening Committee of the Ministry of Food and comments of the State of U.P. were also invited in terms of the Press Note (1991 Series). The Screening Committee of the Ministry of Food, it appears, recommended the name of M/s. Pasupati Acrylon Ltd. (petitioner in CWP No. 1977/74). This led to filing of a Writ Petition in the Allahabad High Court by Mr. Vipin Goel who is the respondent now before us to whom ultimate the Letter of Intent for establishment of a new sugar factory at Chandak has been issued by the Ministry of Industry after approval by the Central Government. A copy of the judgment of theAllahabad High Court has been brought on record which disposed of the Writ Petition with certain directions. The High Court referred to the provisions of the I.D. Act and the I.D. Rules and observed that it was evident that before grant of license for setting up new industrial undertaking legal procedure had been prescribed by the I.D. Rules in detail and that in that must be followed before the license was granted. The Court was of the view that Screening Committee of the Ministry of Food was only a recommending body which had to submit its recommendations to the Licensing Committee of the Ministry of Industry who was then to apply its mind to the relevant facts and then submit its report to the Central Government. The Court also held that final authority for granting license was the Ministry of Industry and that the Licensing Committee and the Ministry of Industry were still to apply their minds to the question of grant of license. The Court, thereforee, did not go into the question as to whether the refusal to recommend the name of Vipin Goel by the Screening Committee of the Ministry of Food was valid or not, as that was to be finally decided by the Licensing Committee and the Ministry of Industry. The Court also observed that recommendation of the Screening Committee were not binding on the Licensing Committee or the Ministry of Industry. The Court, thus, held that the Writ Petition was premature, but then fixed a time schedule under which the Licensing Committee and the Ministry of Industry was to give their decision and the Court also gave liberty to the parties to make representations before them. The High Court then finally observed that despite any recommendations made by the

Screening Committee of the Ministry of Food it would be open to the Licensing Committee to accept or reject the said recommendations, but nevertheless directed that the Licensing Committee and the Ministry of Industry would take the report of the Screening Committee into account, but it shall not treat the same as conclusive of the matter or binding upon them. Both the Licensing Committee and the Ministry of Industry were required to consider the representations of the parties as well before taking a final decision in the matter.

Now after the Central Government decided to grant the Letter of Intent to Vipin Goel, these two petitions have been filed challenging the same. The grounds of attack in brief are: (1) that recommendations of the Screening Committee have been completely ignored; (2) decision is against the I.D. Act and the I.D. Rules; (3) the decision is arbitrary, unreasonable and irrational; (4) it was the Ministry of Food which was the final authority under the Government of India (Allocation of Business) Rules, which was the Administrative Ministry, and not the Ministry of Industry; and finally; (5) the hearing sought to be granted to the petitioners after rejecting their request was a farce inasmuch as decision had already been communicated to Vipin Goel for grant to him of Letter of Intent for establishment of a new sugar factory at Chandak.

4. Letter of Intent, granted to respondent Vipin Goel is dated 31 March, 1994 and is under challenge. This Letter of Intent to Vipin Goel says that with reference to his application dated 2 July 1990 the Central Government were prepared to issue to him an industrial license under the I.D. Act for establishment of a new undertaking for the manufacture of sugar at Chandak, District Bijnor in the State of Uttar Pradesh with daily cane crushing capacity of 2500(TCD). It was also mentioned that issue of industrial license would be subject to certain conditionsmentioned in the Letter of Intent. All those conditions are not relevant for our purpose except to note that the Letter of Intent was valid for a period of three years from the date of issue.

5. On 8 April, 1994, petitioner Pasupati was informed that an older applicant had been granted Letter of Intent and that in the circumstances the Government of India did not find themselves in a position to consider its request for a license. It

was, however, mentioned that the Government would be pleased to give the petitioner an opportunity to state its case before reaching a final decision. The petitioner Pasupati was, thereforee, asked to send its representation, if it wish to make one, to the Directorate of Sugar, Krishi Bhawan, New Delhi, within a period of three weeks from the date of issue of the letter. It was also mentioned that a copy of the letter was being endorsed to the State Government and the representation, if any, received from the petitioner Pasupati would be examined in consultation with the State Government, and further that the final orders would be passed after full consideration of the points urged by the petitioner and the State Government provided representation was received from the petitioner Pasupati not later than three weeks from the date of issue of the letter. Petitioner Pasupati was also informed that all future correspondence in the matter be addressed to the Directorate of Sugar, Krishi Bhawan, New Delhi. It was, however, not mentioned as to what was the date of the application of the petitioner Pasupati for grant of license. A similar letter was addressed to petitioner Devinder Singh. We may also note that petitioner Devinder Singh was not a party in the Writ Petition filed by Vipin Goel in the Allahabad High Court which we have referred to above.

6. In the letter dated 18 May, 1994 addressed to the petitioner Devinder Singh by the Ministry of Industry it was mentioned that with reference to his application for grant of license for the manufacture of sugar the Letter of Intent for the same location had been granted to 'another applicant who had experience in sugar related industry.' Devinder Singh was informed that Government of India did not find themselves in a position to consider his request for a license but he was told that opportunity was granted to him to state his case before reaching a final decision, and that his representation, if he so wish to make one, be sent to Directorate of Sugar, Krishi Bhawan, New Delhi, within a period of three weeks from the date of issue of the letter. As in the case of Pasupati, it was also mentioned that a copy of the letter was being endorsed to the State Government and representation of Devinder Singh, if received, will be examined in consultation with the State Government. Devinder Singh was asked to address all his correspondence in the matter to the Directorate of Sugar, Krishi Bhawan, New Delhi, and the letter ended with the following statement:--

'Final orders will be passed after full consideration of the points urged by you and the State Government, provided representation is received from you not later than three weeks from the date of issue of this letter.'

Both Pasupati and Devinder Singh responded by making representations well within the time given. Pasupati disputed that Vipin Goel was the older applicant. It said that the grant of Letter of Intent for setting up a sugar mill of 2500 TCD had been granted in favor of an old applicant just like cinema ticket orrailway ticket on the basis of first come first served. This, it was stated, was most Arbitrary and merits of individual case to consider the suitability of a person had been given a complete go by. Reference was made to the counter-affidavit filed by the Central Government in the Ministry of Food in the proceedings filed by Vipin Goel in the Allahabad High Court. The Screening Committee of Ministry of Food had recommended the name of Pasupati for grant of license in question. Pasupati also said in its representation that Vipin Goel was most incompetent to undertake the task of establishing a sugar factory of 2500 TCD capacity as he had no technical expertise or experience for setting up and running such a heavy industry. It was also submitted that he had misappropriated the money of farmers and cooperative society of farmers who had supplied their sugar cane to him to be crushed in his crusher and small scale Khandsari units. Pasupati ended its representation saying that it was the only suitable and competent applicant for grant of Letter of Intent for setting up a sugar mill of 2500 TCD. As to what was the stand of the Central Government before the Allahabad High Court we will refer to a little later.

7. Devinder Singh in his representation dated 1 June, 1994 said that the fact that there was a condition of sugar related experience was nowhere specified as either an essential or desirable condition for qualifying for grant of Letter of Intent. He said if that was so he was also running a Khandsari unit at Kharkhoda in District Sonepat, Haryana, which unit he said was subsequently converted into manufacture of crystal sugar by installation of modern suppuration plant. Devinder Singh also referred to a question in Parliament which was replied to by the Ministry of State in the Ministry of Industry. The question and answer are as under:--

'Question:

Is it a fact that the recommendation of LC was ruled out in the grant of LOI to Shri Devinder Singh for Bijnor?

Answer:

Although Shri Vipin Goel was the oldest applicant, the AM had pointed out that Shri Vipin was not regular in the payment of cane price to the farmers and there were cane price arrears pending against him. In view of this, the LC recommended grant of LOI to the second oldest applicant, namely, Shri Devinder Singh. However, the matter was reconsidered in view of the fact that Shri Vipin Goel was the oldest applicant. It was also ascertained from the State Government that there were no cane price arrears against Shri Vipin Goel. It was accordingly decided to grant LOI to the oldest applicant namely, Shri Vipin Goel for Bijnor.'

[LC refers to Licensing Committee and AM stands for Administrative Ministry which is Ministry of Food].

Devinder Singh, thus pointed out that it was nowhere the case of the Central Government that sugar related experience was a relevant consideration, and that the ground mentioned for awarding the Letter of Intent to Vipin Goel was that he was an older applicant. It is stated that even this ground is factually incorrect. Devinder Singh said that he had applied for establishing a sugar factory atChandak on 23 July 1990, while it was on 8 August, 1990 that Vipin Goel wrote to the Ministry of Food for Chandak as a second preference, his first preference was Kiratpur, though both in the Bijnor District, which application isdated2July 1990. He said that even the State of Uttar Pradesh had recommended his case for Chandak and he was assessed as 'financially sound and industrially experienced' person. Devinder Singh also pointed out that experience of running a Khandsari unit cannot, by any stretch of imagination, be said to be an experience for any one to run a large scale crystal sugar Mill. He said it was some thing like treating an owner of a powerloom in his backyard as being qualified for grant of a textile mill license. Devinder Singh also pointed out that the request of Vipin Goel did not find favor with the Ministry of Food inasmuch as he was a defaulter in making payments due to the sugarcane growers. He also pointed out that he was having a long and varied experience in industrial development and management since the

year 1962 which experience Vipin Goel did not at all possess.

These two representations of Pasupati and Devinder Singh are still pending consideration and on that account it was submitted on behalf of the Central Government that the writ petition would be premature. We do not think any importance can be attached to such an argument. Letter of Intent has already been granted to Vipin Goel and grant of opportunity to the petitioners for purpose of reconsideration of their case would appear to be rather an eye wash. Acceptance of representation of any of the two petitioners would mean the withdrawal of the Letter of Intent issued to Vipin Goel. Will he then again be heard? We have referred to the representations for the purpose of showing as to what are the merits of the case of the petitioners brought to the notice of the authorities. It is strange that both the petitioners have been asked to address their communications to the Directorate of Sugar, Ministry of Food, the Screening Committee of which had recommended the case of Pasupati and the Licensing Committee under the ID. Rules of that of Devinder Singh. As to how the Screening Committee in the Ministry of Food looked at the things, can be well found from the affidavit filed in the Allahabad High Court in the petition filed by Vipin Goel while recommending the case of Pasupati:

(1) Vipin Goel claimed to be the Director of Sharda Sugar Works, Kasaur, District Bijnor, was engaged in the manufacture of Khandsari and that the Khandsari units had not been able to pay the State Advised price to the sugarcane farmers, and that there was considerable unrest amongst the sugarcane farmers on that account;

(2) Vipin Goel initially applied on 2 July 1990 for industrial license for setting up a sugar factory at Kiratpur, District Bijnor. This application was registered by the Ministry of Industry and transmitted to the Ministry of Food for processing and recommendation. The letter of the petitioner dated 24 July, 1990 regarding setting up of a sugar unit at Chandak, as filed by him with the writ petition, was never sent to the Ministry of Food. There is nothing on record to show that there is any acknowledgement with the petitioner for having sent this letter dated 24 July, 1990 to the Ministry of Industry. Petitioner did write a letter dated 8 August, 1990 to the

Ministry of Industry stating therein that he may also be considered for Chandak as second priority. In this letter he did not mention about his letter dated 24 July, 1990. The letter dated 8 August, 1990 was received subsequently in the Ministry of Food. The application of the petitioner for grant of license forKiratpur was sent to the State Government for its comments who, by their letter dated August, 1990, recommended the name of Vipin Goel for grant of license to him with respect to Kiratpur;

(3) It was by letter dated 7 January, 1992 the State of Uttar Pradesh certified that the locations of both Kiratpur and Chandak in District Bijnor were suitable for setting up a sugar factory. Pasupati had not submitted any application in the year 1990-91 for setting up any sugar factory in Uttar Pradesh and its name was not included in the pending proposals dated 30 June, 1991. The application of Pasupati was received in the Ministry of Food through the Ministry of Industry on 18 June, 1993 and it was on 30 August, 1993 that Pasupati had applied for change of location to Chandak. The State of Uttar Pradesh recommended the case of Vipin Goel for Chandak for the first time by their letter dated 16 June, 1993. It was, thereforee, stated that so far as Chandak was concerned the applications for Vipin Goel and Pasupati had been made at about the same time. All applications made at any time before finalisation of recommendation can be taken into consideration by the Screening Committee for grant of license for setting up new industrial establishment. This is specially so when the matter is at the stage of processing and recommendations of the Ministry of Food and particularly when scientific advancement is taking place rapidly and the financial position of the applicant is liable to fluctuate. It would have been unjust and unreasonable to exclude applications made in 1993 and confine consideration to applications made in the year 1990. No applicant has any legal right to have the case of any other applicant shut out from consideration. Also in view of the fact that new guidelines had been announced it was necessary to take into consideration new applications made thereafter;

(4) The Screening Committee made its recommendation in favor of Pasupati in the light of the guidelines. It found the financial position of Pasupati extremely sound and in fact that it was running in net profit of over Rs. 5 crores and would,

thereforee, be able to draw up finances of its own in setting up its industry. On the other hand, Vipin Goel who was running a Khandsari unit was already owning arrears to the sugarcane farmers and had not been in a position to pay State Advised price. Pasupati had also in its application assured setting up of down stream industries in the shape of distilleries and paper factories and assured expansion of sugar manufacturing capacity, when Vipin Goel had mentioned in his application that after the license was granted he would raise loan from the sugar development fund of the Government of India which fund is not available for new mills. While Vipin Goel had applied in his individual capacity, Pasupati was a public limited company and would subsequently be in a position to raise fund by issuing shares to the public at large. Pasupati had a good industrial track record;

(5) The claim of Vipin Goel being the first applicant and, thereforee, being entitled to priority on the basis of guidelines was misconceived. The question of priority arose only if all other things were equal, and since the Screening Committee was not of the view that Vipin Goel and Pasupati stood on an equal footing, the question of giving priority to Vipin Goel did not arise;

(6) In any case the Screening Committee is only a recommendatory body and under the I.D. Act and I.D. Rules it is for the Licensing Committee and the Ministry of Industry to grant the Letter of Intent or the license.

After the judgment of the Allahabad High Court which had given certain directions, we may straightway refer to the proceedings of the Ministry of Industry, the final authority to issue the Letter of Intent. A note had been recorded on 4 March, 1994 by the Deputy Economic Adviser stating that applications for grant of license for sugar were discussed in the Licensing Committee in its ninth meeting held on 14 February, 1994 in the case of 15 applicants including that of Pasupati (date of application 9 June, 1993); Vipin Goel (date of application 2 July, 1990)--change of location (date of application 12 July 1993); and Devinder Singh (date of application 30 July, 1990). The Licensing Committee recommended the case of Devinder Singh for the grant of Letter of Intent, while Ministry of Food had recommended that of Pasupati. Then the note records as under:--

'In terms of the guidelines for grant of licenses for sugar, the other things being equal, preference is to be granted to the oldest application. But, AM had recommended M/s. Pasupati Acrylon Ltd. for grant of LOI at Chandak, although they were the second last for the location. LC had, thereforee, directed AM to reconsider their recommendation. On reconsideration also AM submitted the following to LC:--

(1) The application of Shri Vipin Goel was not acceptable for grant of LOI since he had defaulted in payment of cane price arrears.

(2) Shri Devinder Singh had interest in industrial cables and had no experience in sugar industry.

(3) Financial position at Chandak Sugar Mills, Dhaniram Baliram, SPR Coop. Enterprises, Anil Gujral, Udyan Vira, Subhash Chandra Aggarwal, Shakuntla Papers, Hawai Holding Pvt. Ltd. were considered to be doubtful and hence these were recommended for rejection.

(4) The application of Shri Nidish Prakash was recommended for rejection as his brother's name had been recommended for grant of LOI at Hussainpur, Distt, Muzaffarnagar.

(5) On reconsideration also, M/s. Pasupati Acrylon was found to be the most suitable candidate for issue of-LOI at Chandak.

(6) In terms of distances from the nearest sugar factory, Chandak was better than Roshanpur Pratap since its nearest factory was a 2500 TCD while the nearest factory from Roshanpur Pratap was a 9000 TCD.

In its 9th meeting of 1994 held on 14.2.94 LC accepted the recommendations of the AM regarding location and agreed that a letter of intent could be given to Chandak in Bijnor District.

However, LC found that the ground of rejection given by the AM for rejecting older applications was not acceptable. While the application of Shri Vipin Goel could be recommended for rejection since as per SIA records, he was not an original

applicant for Chandak and had changed his location on 12.7.93, it was difficult to overlook the claim of Shri Devinder Singh for grant of Letter of Intent as he had considerable industrial experience. Moreover, M/s. Pasupati Acrylon, who were being recommended for grant of LOI by AM also did not have any experience in sugar industry. The detailed minutes of the 9th LC meeting pertaining to case Nos. 9.1 to 9.15 is placed in the folder below at F/X.

Taking all factors into consideration, LC recommended grant of LOI to Shri Devinder Singh whose application was the oldest for the location.

The case is now submitted for approval 'on file' as desired by MOS(I), (In terms of the Court directives, 'Government has to give its views by 20.3.94).'

The note was marked to the Joint Secretary (SB) who approved the recommendation that Letter of Intent be granted to Devinder Singh as he had considerable industrial experience, and that it was difficult to overlook his claim. The Additional Secretary and Secretary agreed when the matter was put up before the Minister of State (Industrial Development), who recorded the following note on 16 March, 1994:--

'We may grant LOI to Shri Vipin Goel, who is the oldest applicant and has experience in sugar industry, with the condition that LOI will be subject to his clearing all the arrears for which he has defaulted in payment of cane price.'

The file was sent back to the Secretary (ID) who required that the position of cane arrears with the State Government and party before issue of Letter of Intent. Thereafter, nothing in the file show that though information was called for but position was not fully clear and that response from the State Government was awaited to whom a letter had been addressed.

8. Then there is a note dated 30 March, 1994 by the Deputy Economic Adviser who recorded that with reference to the observations of the Minister of State (ID) the department had called for the required clarifications from the party as well as the State Government, and that the information had been furnished by the party which included copy of the letter from the Assistant Cane Commissioner, Bijnor,

stating that 'they had not received any complaint about the four crushing units under reference on payment of cane prices.' It had been noticed earlier that according to information furnished Vipin Goel was associated with four crushing units, all in Bijnor District. It was noted that no reply either from the Secretary (Sugarcane Development) or from the Cane Commissioner had been received. The note further records as under:--

'The other representations and papers submitted by Shri Vipin Goel have also been perused in the Department. Although Ministry of Food have treated him as the first applicant for Chandak (2.7.90), that application was initially for location at Kiratpur (which was not chosen by the Government for grant of LOI).

Shri Vipin Goel formally applied for change of Chandak on 12.7.93, as per SIA records. Relevant file of Shri Vipin Goel is linked below with correspondence flagged. Shri Vipin Goel has separately submitted photo copy of letter dated 8.8.90 addressed to the then Minister (I.D.) in which he has expressed a desire to be considered for Chandak if Kiratpur cannot be given. SIA has no formal record of this letter. If the letter dated 8.8.90 (copy of which has been furnished by Shri Vipin Goel) is taken to be the date of application for change of location, Shri Vipin Goel becomes the second oldest party for the location.'

The file moves from Additional Secretary to Secretary, with out any of themhaving made any comment, to MOS (ID) who finally records the following order on 30 March, 1994.:--

'It is noted that there is some uncertainty about the oldest applicant, although Food Ministry has stated that Shri Vipin Goel is the oldest, However, even if he is the second oldest, he has experience in sugar industry which other parties do not have.

In view of the documents furnished by the applicant, a provisional LOI may be issued to him subject to confirmation from the State Government that cane arrears are not outstanding against him. In case there are any cane arrears outstanding against him in the State Government's records the same should be cleared by him immediately.'

There is, however, an intermediate note dated 23 March, 1994 by Ms. Jayalakshmi, Director, which notes that Vipin Goel was associated with four crushing units and statements were furnished only for two out of the four sugar units and that there was a letter from the Assistant Cane Commissioner, Bijnor, U.P., mentioning that he had not received any complaint about the four crushing units in the matter of payment of cane price. It was then noted that no reply had been received from the Secretary (Sugarcane Development), U.P. The file was then put up for reconsideration, The Joint Secretary records that the position was not fully clear and that State Government's response from Lucknow, to whom the letter had been addressed, may be awaited: This note is also dated 23 March, 1994. On the next date, the Additional Secretary approves this note and sends back the file to the Joint Secretary but then on 28 March, 1994 himself records that 'JS is on tour. For interim info' and marks that file to the Secretary. There is no recording of any note by the Secretary, but on the margin the Additional Secretary indicates 'Informed orally. P1. keep' and marks the file to the Director (Deputy Economic Adviser). Then without there being anything further on the record of the Central Government that note dated 30 March, 1994 is recorded by the Deputy Economic Adviser which in the circumstances we are unable to comprehend.

9. Stand of the Central Government before us, as to when the applications of Pasupati, Devinder Singh and Vipin Goel were received, is as under:--

Pasupati had originally applied for setting up of new sugar factory at location Shah Kumbini,, District Saharanpur (U.P.) which was registered Ministry of Industry vide No. 272(1993)--IL dated. 9.6.93 and subsequently changed location from Shah Kumbini, District Saharanpur, to Chandak, District Bijnor, vide letter dated 30.8.93. The State Government had recommended location Chandak vide letter dated 12th May, 1993.

Devinder Singh had originally applied for setting up of new sugar factory at location Chandak, District Bijnor, U.P., which was registered Ministry of Industry vide No. 1184(90)--IL dated 30.7.90.

Vipin Goel had originally applied for setting up of new sugar factory at location at near Kiratpur, Teh. Najibabad, District Bijnor, U.P., which was registered Ministry

of Industry vide No. 1050(90)--IL dated 2.7.90. He had written a letter dated 8.8.90 to Ministry of Industry stating therein that he may also be considered for Chandak as a second priority and furtherrequested to Ministry of Food, vide letter dated 15.5.93 for change of location from Kiratpur to Chandak, Kotwali (Nagina) or Haldaur, District Bijnor.

10. The Licensing Committee considered the recommendations of the Screening Committee for setting up a sugar Mill at Chandak, District Bijnor. It also called for certain more information from the Screening Committee and atone stage referred back the case to the Administrative Ministry (Ministry of Food). As noted earlier, the Licensing Committee, however, recommended the case of the petitioner Devinder Singh. As to how the matter was thereafter dealt in the Ministry of Industry we have already dwelt on in detail above.

11. We have seen the process culminating in the grant of Letter of Intent to Vipin Goel. It will be seen that the Central Government in the Ministry of Industry have completely ignored the recommendations of the Screening Committee as well as the Licensing Committee. Screening Committee in the Administrative Ministry, i.e. the Ministry of Food, is not an ordinary committee whose recommendations can be brushed aside without valid reasons. The importance of the Administrative Ministry, i.e., the Ministry of Food, can be gauged from the fact that under the Allocation of Business Rules sugar industry including its development is one of the subjects assigned to the Ministry of Food. The Central Government in the Ministry of Industry itself in its letters addressed to the Pasupati and Devinder Singh informed them that they could not be granted Letter of Intent and also informed them that Government would give them an opportunity to state their case again before reaching a final decision, and that for that purpose they were told that they should send their representations to the Directorate of Sugar which is under the Ministry of Food. Then recommendations of the Licensing Committee, which is a statutory body, have also been given a complete go by. The only consideration that prevailed with the Central Government in the Ministry of Industry was that Vipin Goel was the older applicant though it had taken different stands while writing letters to Pasupati and Devinder Singh declining their requests for grant of Letter of Intent. It was conceded even by Mr. Shanti Bhushan, learned Counsel for

Vipin Goel, that priority in making application could not in itself be a sole consideration for grant of Letter of Intent. 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 that application the authorities have to consider those facts on which information was asked for. If any other consideration was to prevail, all the applicants should have been informed and their replies seen. The Minister of State (ID) while recommending the case of Vipin Goel said that he had 'experience in sugar industry which other parties do not have'. But when communication is addressed to Devinder Singh he is told that Vipin Goel had experience in 'sugar related industry'. How far 'experience in sugar related industry' could be termed as 'experience in sugar industry' is not clear either from the stand taken by the Central Government before us or in its record. Sugar industry and sugar related industry are two separate concepts. We could not find a valid Explanationn from the respondents if in the form prescribed for application there was any such column for the applicants to indicate whether they were having any Khandsari unit as it was submitted before us that Vipin Goel had experience of running Khandsari units which was taken as experience in sugar related industry. Devinder Singh has said that he was having experience of running a Khandsari unit in the State of Haryana. Though this fact was not before the authorities when the order was made by the Minister of State (ID), in his representation Devinder Singh has clearly brought out this fact. This would show an irrelevant consideration outside the requirements of the application form has been taken into consideration by the Central Government. No where it is explicitly mentioned that applicant should have some experience in sugar industry asa pre-condition for grant of Letter of Intent. The Licensing Committee under the I.D. Rules had to report, among other matters, regarding the capital structure, suitability of the location, capacity of the plant to be installed, availability of technical and other skilled personnel required, collaboration, if any, with foreign manufacturers, availability of rail transport facility, availability of technical and other skilled personnel required, etc. No thought at all has been given by the Central Government to all these factors. Mr. Shanti Bhushan was at pains to explain that Vipin Goel was the right person inasmuch as he belonged to Bijnor District itself where the factory was to be established; had

experience of running Khandsari unit; had capacity to raise capital; was a man of substance; and that his application was pending for the last four years. Mr. Lekhi and Mr. Bhat, on other hand, were equally at pains to explain that Vipin Goel was not a suitable person to whom Letter of Intent could be granted to establish a new factory of the capacity of2500TCD. Because of the view which we have taken we do not wish to enter into this controversy lest it prejudices the case of either of the parties.

12. We do not think priority in making an application could be the only consideration, or even of much relevance, unless all other factors, which are necessary for the establishment of sugar factory as per the law, are the same among various aspirants,

13. It was submitted that the case of Vipin Goel had been recommended by the State Government, but as to what considerations prevailed in recommending that name by the State Government we do not know. We think it was a pure coincidence that recommendations of the Central Government and the State Government happended to be the same and no more. The recommendations of the State Government do not appear to be in the mind of the Central Government when it passed orders recommending the case of Vipin Goel for grant of Letter of Intent when recommendations of the Screening Committee, the Administrative Ministry (Ministry of Food) and the Licensing Committee had been brushed aside without even a wink.

14. Under Sub-rule (2) of Rule 15 of the I.D. Rules, where the Central Government considers that license or permission should be refused it had to give an opportunity to the applicant to state his case before reaching a decision. But here Pasupati and Devinder Singh have been asked to file their representations after action under Sub-rule (3) appeared to have already been taken. Letter of Intent has already been granted to Vipin Goel and both Pasupati and Devinder Singh have been told that their request could not be acceded to. We fail to see, thereforee, as to what purpose would have been served in giving opportunity tothe petitioners in the present case. There has been clear breach of Rule 15 of the I.D. Rules. It was also submitted by Mr. Shanti Bhushan that Kiratpur, for which Vipin

Goel had applied, and Chandak, which was his second option, were both at a distance of about ten kilometers. This argument was advanced, perhaps, to show that Kiratpur and Chandak would mean one and the same thing. We cannot accept this argument. This was also not that such a thing was taken note of by the Central Government.

15. We have not been able to find any rational basis for the Central Government in the Ministry of Industry to grant Letter of Intent to Vipin Goel. On the face of it the action is arbitrary, unreasonable and whimsical. It in fact runs counter to the stand taken by the Central Government in the Allahabad High Court. As noted above, the recommendations of the Screening Committee, the Administrative Committee, i.e., the Ministry of Food, and the Licensing Committee constituted under the I.D. Rules have been completely ignored. The impugned decision is in violation of the guidelines and the statutory rules on the subject. Grant of hearing to the petitioners would have certainly not served any purpose as decision had already been taken to grant the Letter of Intent to Vipin Goel. On the question as to whether which Ministry is competent to grant license for establishment of a new industrial undertaking, being the sugar industry, there is already a Bench decision of this Court in the Bimbhaoli Sugar Mills Ltd. and Anr. v. Union of India and Ors., : AIR1993 Delhi219 , holding that the appropriate Ministry would be the Ministry of Industry. We do not wish to go into this question again because of the view which we have taken though there may appear to be overlapping of jurisdiction of the two Ministries of the Government of India. It has been consistent stand of the respondents that though the recommendations are to be made by the Ministry of Food, the license has to be granted by the Ministry of Industry after seeing the contents of the report submitted by the Licensing Committee. Recommendations of the Screening Committee are important and could not be just overlooked without valid reasons. The Central Government in the Ministry of Industry has made the Screening Committee, the Administrative Ministry and the Licensing Committee as worthless, and have just proceeded on the basis as to who is the prior applicant in the petition filed by Pasupati and who had experience in the sugar industry in the case of petitioner Devinder Singh. Moreover, Vipin Goel is certainly not the older applicant. We have not been able to decipher any ground as to why both the petitioners should have been communicated different grounds for

grant of Letter of Intent to Vipin Goel. What is great about the experience of Vipin Goel running a Khandsari unit for him for establishing a huge sugar factory of 2500 TCD capacity is difficult for us to comprehend, and particularly when other applicants were not put to notice of this consideration. In modem days with such technological advancement for any industrialist to establish a new sugar factory cannot be said to be an impossibility when he has a sound capital base. The fact that an applicant for grant of license to establish a sugar factory had no experience of sugar industry cannot and should not come in his way if he has a standing and credibility in the industry and wants to diversify in the field of sugar industry as well. We find examination of all the relevant factors by the Central Government in the Ministry of Industry inappropriate and nothings on the file show that there has not been any proper application of mind by the functionaries of the Government. There has been no evaluation of comparative merits of all the applicants by the Central Government in the Ministry of Industry. No reasons are forthcoming as to why the Central Government ignored the recommendations both of the Screening Committee and the Licensing Committee and even that of the Administrative Ministry, i.e., the Ministry of Industry. To us it appears that the Central Government was guided by extraneous and irrelevant grounds in granting the Letter of Intent to Vipin Goel. The Central Government could not have such a free and untrammelled, discretion in the matter and mere first come first served principle could not be applicable in the circumstances of the present case including the principles for grant of industrial license.

16. We, thereforee, allow the petitions, issue a writ of certiorari quashing the order granting the impugned Letter of Intent to Vipin Goel, respondent for him to establish a sugar factory at Chandak in District Bijnor, and further issue a direction to respondents 1 to 3 to consider the matter afresh in accordance with law. Petitioners would be entitled to costs Counsel fee Rs. 5,000/- in each Writ Petition. Rule is made absolute.

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