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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Delivered on: 11.09.2012

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WP(C) No. 4540/2012

SH. YASH PAL SAWHNEY

..... Petitioner

Vs

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Salim Inamdar & Mr Vedanta Varma, Advocates.

For the Respondents: Mr Sachin Datta, CGSC for Respondent no. 1.

Ms Renuka Arora, Advocate for Respondent nos. 2 to 4.

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This writ petition is directed against the order dated 11.08.2011, which was communicated to the petitioner vide letter dated 24.08.2011, emanating from the office of respondent no. 3, and the communication dated 17.04.2012, whereby the petitioner's application dated 02.11.2011 for granting personal hearing was rejected. In sum and substance, the impugned order and communication is passed by respondent no. 2, i.e., the Lieutenant Governor of Delhi.

2. At the very outset it may be noticed that the petitioner had applied for an industrial plot, under a re-location policy of the respondents; a request, which was, rejected solely, on the ground that the petitioner had failed to

establish that the industrial unit, which was, closed down and against which re-location was sought, was operational prior to the cut-off date, i.e., 19.04.1996.

3. The aforesaid challenge of the writ petitioner to the impugned order is thus made in the background of the following broad facts as set out in the writ petition, to demonstrate that these were several indices to which reference was made to prove that the petitioner had established his industrial unit prior to 19.04.1996. Essentially the grievance is that none of these factors were considered by respondent no.2.

3.1 The petitioner avers that in January, 1992, he had set up a copper wire/copper aluminum wire drawing industrial unit in the name and style of M/s Alankar Tar Manufacturing. The said unit was set up in premises bearing khasra no. 29/10, Gali 17, Libaspur, Delhi – 110042 (in short the said premises). The said premises were taken on lease by the petitioner from one Sh. Narender Kumar, who had obtained a sanction power load of 37.4 kw.

3.2 Vide application no. 22749 dated 13.03.1992, the petitioner made an application to respondent no. 3 for registering his concern as a SSI unit. The respondent no. 3 raised objections vis-a-vis petitioner's application for registration as an SSI unit vide communication dated 8.4.1992. The petitioner, also opened a current account bearing 1780, on 21.04.1992 under the name and style of Alankar Tar Manufacturing with Punjab National Bank (PNB) with its branch at Vijay Nagar. A loan in the sum of Rs 85000/- was taken from the said bank for running a small scale industry vide loan account no. T/LA/C. No. 165/92. The purpose of the loan was to purchase machinery for installation in its aforementioned industrial unit.

3.3 It appears on 30.10.1993, PNB requested the petitioner to furnish a fresh insurance policy in respect of the machinery purchased as the earlier insurance policy had expired.

3.4 On 27.05.1994, the petitioner also applied to the Municipal Corporation of Delhi (MCD) vide application no. 13000 for grant of license. Requisite license fee was also deposited.

3.5 Since the petitioner had committed a default in payment of his loan instalment, in January, 1995, the PNB issued a communication in that regard at the aforementioned premises of the petitioner. On 07.04.1995, the petitioner changed the name of his proprietorship concern from Alankar Tar Manufacturing to M/s Ambika Metal India. Electricity dues were also paid by the petitioner between 6.4.1995 to 4.5.1995, on 27.5.1995, to the extent of Rs 6,442/-. On 13.6.1995, United India Insurance issued an insurance policy in respect of the machinery installed at the aforementioned premises of the petitioner for the period 13.12.1995 to 12.6.1996. On 04.12.1995, a registration certificate was issued in favour of the petitioner's industrial unit, by Director of Industries.

3.6 The petitioner claims that the electricity bills amounting to Rs 21,673/- was paid for the period 6.12.1995 to 5.1.1996; on 29.1.1996.

3.7 The petitioner avers that, in April, 1996 an application was made for grant of registration by the Sales Tax Department. It is the case of the petitioner that registration was obtained w.e.f 27.05.1996, both for local and central sales tax. Income tax returns for assessment years 1995-96 and 1996-97 were filed and the petitioner were assessed to income tax qua income earned from his industrial unit vide assessment order dated 24.12.1996. It is the case of the petitioner that income tax return for assessment year 1995-96, was filed on 31.5.1996.

3.8 It is also the case of the petitioner that pursuant to the policy floated by respondent no. 1 for allotment of industrial plots vis-a-vis those applicants, whose industrial units had to be closed, as they were located in residential/non conforming areas; the petitioners being similarly placed filed an

application in that behalf. The application for allotment of an industrial plot admeasuring 300 sq. mtrs. was filed on 26.12.1996.

3.9 The petitioner obtained a central excise registration in respect of its industrial unit on 28.01.1997. The respondents at a meeting held on 16.04.1998, for the first time, fixed a cut-off date to consider applications for allotment of industrial plots against those units which had been closed down on account of their location in residential/non-conforming areas.

4. On 23.01.2001 the petitioner filed a fresh application for re-consideration of his case for allotment of an industrial plot. Vide communication dated 16.5.2001, issued by the respondents, the petitioner was directed to produce the relevant documents for consideration of his case at a hearing fixed on 14.06.2001.

4.1 Admittedly, the petitioner failed to present himself on the said date. On a request being made that the failure to appear was on account of his illness, a fresh date was fixed on 25.07.2001.

4.2 Thereafter, the petitioner appears to have made several representations between August, 2001 and October, 2004 to the respondents including the Minister of Industries, Government of NCT of Delhi. In the interregnum legal notices dated 07.04.2003 and 27.09.2004 were also served upon the respondents.

4.3 Since no action was taken, on 20.07.2005, the petitioner filed a writ petition in this court being **WP(C) 17725/2005**. Vide order dated 6.1.2007, the said writ petition was disposed of with a direction to the respondents to consider the case of the petitioner on the basis of documents filed with the writ petition. Pursuant to the aforesaid directions, the petitioner filed an application alongwith documents that had been appended to the aforementioned writ petition.

4.4 Respondents vide order dated 21.2.2007, rejected the petitioner's claim

for allotment of an industrial plot. Resultantly, the petitioner filed a second writ petition being: **WP(C) 5103/2007**. By this writ petition, challenge was laid to the respondents' order dated 21.2.2007. It appears that respondents did not file their counter affidavit in the said writ petition despite repeated opportunities. However, the said writ petition was disposed of on 7.1.2009, based on the submission of the respondents that an alternative remedy by way of an appeal to respondent no. 2, i.e., the Lt. Governor, was available to the petitioner against the order dated 21.2.2007.

5. Consequently, on 6.2.2009, the petitioner preferred an appeal before respondent no. 2, i.e., the Lt. Governor. It is this appeal, which has been rejected by the impugned order dated 11.8.2011, which was, communicated to the petitioner on 24.8.2011.

6. Upon the order dated 11.8.2011 being communicated to the petitioner, the petitioner filed applications with respondent no. 2, dated 2.11.2011 and 10.02.2012, making a grievance that the said order had been passed without affording him an opportunity of being heard. Vide order dated 23/24.11.2011, this request of the petitioner, was rejected. The rejection was communicated to the petitioner vide communication dated 17.4.2012, which the petitioner says, was received by him, on 26.4.2012.

7. Being aggrieved by order dated 11.8.2011 and 17.4.2012 which was communicated on 26.4.2012, the petitioner has approached this court by way of the present writ petition. Principally there are two grievances of the petitioner. First, that the impugned orders were passed without affording him an opportunity to present his case. Second, that in passing the impugned orders, the various events and documents, which have been referred to by the petitioner to establish his case that the industrial unit set up by him before the cut-off date, i.e., 19.4.1996, had not been considered.

7.1 With regard to the first aspect, i.e., the breach of principle of natural justice, it is clear that the petitioner was afforded a personal hearing, even according to his own case, on 23.02.2010 when he failed to appear. The petitioner was granted another opportunity of public hearing on 7.7.2010. Thereafter the petitioner was afforded personal hearings on two occasions, i.e., on 3.8.2010 and 27.8.2010. It is the petitioner's case that on 6.9.2010, he received a communication from the office of respondent no. 2 directing him to file an affidavit detailing out therein chronologically the events and the documents, which would establish that he had set up the industrial unit before the cut-off date, i.e, 19.4.1996. The petitioner submits that such an affidavit was filed. In fact, copies of the comments of the department were also forwarded to him, to which he had filed a rejoinder. The petitioner's case thus is that after the pleadings were completed, on 15.7.2011, no personal hearing was given in the matter. It is the petitioner's case that the impugned order dated 11.8.2011 was thus passed without giving him effective personal hearing in the matter.

7.2 The second aspect is with regard to, as indicated above, the consideration of the relevant material filed to establish the petitioner's case that the industrial unit was set up prior to the cut-off date. In this regard, as indicated above, various dates and events which were material, according to the petitioner, have not been adverted to in the impugned orders. It would be noticed that, in the earlier round when the petitioner had come up against order dated 21.02.2007 passed by the Secretary-cum-Commissioner of Industries, i.e., respondent no. 3, the rationale given was as follows:

“Today again, the undersigned has examined the application No.14130 for allotment of industrial plot under relocation scheme in the name of Ambica Metal India through its proprietor Sh. Yashpal Sawhney and has

seen all the photocopies alongwith the application. From the record, the undersigned has come to the conclusion that M/s. Ambica Metal India is a new firm and establish after the cut off date i.e, 19.4.96.

The photocopies of Sales tax registration and Central Sales Tax are of dated 18.9.96. Copies of income tax assessment orders for assessment year 1995-96, 96-97, clearly show that both the returns were filed on 31.5.96 and both these returns were assessed together on 24.12.96. But the unit had failed to prove that M/s. Ambica Metal (India) was established before the cut off date i.e. 19.4.96.

As M/s. Ambica Metal (India) has failed to give any proof of the existence of the unit before the cut off date i.e., 19.4.96, its case for allotment of an industrial plot under relocation scheme is hereby treated as rejected.”

7.3 This rationale has been accepted according to the petitioner without due application to the material on record in the impugned order passed by respondent no. 2, i.e., the Lt. Governor.

8. In the order dated 31.7.2012, I had recorded that there was apparent error in the order of the Commissioner dated 21.2.2007, in as much as the income tax returns which pertain to assessment years 1995-96 and 1996-97, would relate to income for the previous years 1994-95 and 1995-96 respectively. Therefore, the respondent no. 3 could not have come to the conclusion that the petitioner had failed to establish that he was carrying on the business prior to the cut-off dated, i.e., 19.04.1996.

8.1 It is on this basis that the learned counsel for the respondents 1 to 3 and respondent no. 4 were asked to take instructions. Time was accorded to the learned counsels for the said respondents to file their reply within two weeks and, correspondingly opportunity was granted to the petitioner to file a

rejoinder before the returnable date.

8.2 When the matter came up for hearing today, there was no compliance in as much as neither replies were filed nor were any instructions obtained. The learned counsels sought further time to file a reply. In my view, no purpose would be served, in affording further opportunity, as apart from the delay the affidavits could not have improved what was clearly apparent from the impugned order.

8.3 The impugned order of 11.08.2011, appears to simply replicate the conclusion of the department which is represented by respondent no. 3 – by its observation that the petitioner's application is rejected: since as per the note of the department the applicant had failed to prove the existence of the unit prior to the cut-off date, i.e., 19.04.1996. No reasons whatsoever are provided in the impugned order dated 11.8.2011, which was communicated to the petitioner on 24.8.2011. Therefore, the order deserves to be set aside on this short ground. One can only hazard a guess that, if the reasons were those which are found in the order of respondent no. 3 dated 21.2.2007, the same are flawed as the return for assessment year 1995-96 would clearly relate to the business of the company being carried out in 1994-95, which is a period well before the cut-off date, i.e., 1995-96.

8.4 There are several other evidences and events, to which I have made a reference above, in respect of which there is no discussion whatsoever by respondent no. 2 in the order, which was communicated to the petitioner. I had noticed in my order dated 31.07.2012 that in the profit and loss account ending on 31.03.1995 there was income by way of job work of Rs 2,75,730/-. Similarly, for the profit and loss account for the year ending 31.03.1996 the income from the “*job work*” is shown as Rs 3,10,255/-. The aforesaid two profit and loss accounts have amongst others, expenses shown qua wages, electricity, tools and dies, repairs etc. In so far as balance sheets as on

31.03.1995 and as on 31.03.1996 is concerned, the book value of the machinery is shown as 1,75,000/-. Prima facie, this itself would show that the petitioner's business was established prior to the cut-off date. However, respondent no. 2 has not taken into account any of this material. Nor has there been any attempt to make reference of those averments and documents, to which I have made a reference above. Therefore on this short ground, as indicated above, the impugned order deserves to be set aside.

8.5 The reference in the impugned order that sales tax registration was obtained after April, 1996 is flawed for several reasons: First, if the petitioner's income is from job work in the relevant year then surely it was not required to have prima facie sales tax registration at relevant point in time. Therefore, cursory rejection on this score was unwarranted. Second, the impugned order refers to failure to prove establishment of industrial unit prior to cut off date not commencement of sale and manufacture. These several indices of establishment of unit adverted to by petitioner, none of which has been examined. For example : the purchase machinery, taking up insurance, setting up of unit by acquiring spare, generation of income, deployment of labour etc.

8.6 On the issue of principle of breach of natural justice, there is some merit in the submission of the petitioner, that once further information was sought from the petitioner and in response to which comments sought of the Department of Industries were called, it would have been appropriate that the petitioner was heard in support of his case, especially when he had been called upon to file a rejoinder. But then, I am not basing the conclusion arrived at in my order on this alone. As indicated above, what is a more compelling reason, in arriving at the conclusion which I have, is the non-consideration of the material on record. The impugned order / communication is bereft of any reasons. As is often said, reasons are a link

between the material on record and the conclusion which a judicial or a quasi judicial authority arrive at. In the absence of reasons, the conclusion cannot stand.

9. Accordingly, I have no hesitation in coming to the conclusion that the impugned orders / communications have to be set aside. It is ordered accordingly. The respondent no. 2 shall hear the appeal of the petitioner once again based on the material on record. The appeal shall be disposed of as expeditiously as possible, preferably within a period of eight weeks from today, having regard to the fact that the petitioner has now been at it, for more than a decade and a half. The petitioner will be given a notice of hearing of the appeal. The respondent no. 2 shall pass a speaking order, which will be communicated to the petitioner no later than one week from the date of the passing of the order.

10. Needless to say, if the order passed by respondent no. 2 is adverse to the interest of the petitioner, he would have liberty to take recourse to an appropriate remedy as may be available to him in law.

11. With the aforementioned observations, the writ petition is disposed of.

RAJIV SHAKDHER, J

SEPTEMBER 11, 2012

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