



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :30.04.2019
PRONOUNCED ON :08.05.2019

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CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A(MD)NO.503 OF 2019
and
C.M.P (MD)No.4292 of 2019

VR.Lakshmanan : Petitioner/Appellant

.vs.

1.The Additional Director,
Industrial Safety and Health
Department,
No.11A/1, Vinayaga Nagar,
Madurai - 625 020.

2.T.Kannan,
Partner of M/s.Thiagaraja Knitters,
Thigarajar Mills Premises,
Kappalur,
Madurai - 625 008.

: Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.3095 of 2019, dated 22.03.2019.

Prayer in WP(MD). 3095/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records relating to the impugned show cause notice issued by the 1st respondent in his proceedings No.A3/442/2019 dated 05.02.2019 and quash the same as illegal and without jurisdiction.

For Appellant :Mr.B.Saravanan

For Respondent-1 :Mr.VR.Shanmuganathan
Special Govt.Pleader

For Respondent-2 :Mr.B.Kumarasamy
for Mr.S.Manikandan



JUDGMENT

[Judgment of the Court was made by **K.KALYANASUNDARAM, J.**]

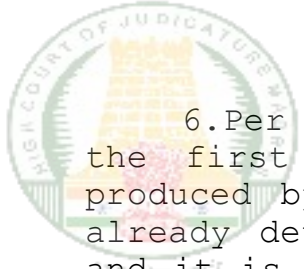
The Writ Petitioner is the appellant. The challenge made in the Writ Petition in W.P(MD)No.3095 of 2019 is to the show-cause notice issued by the first respondent, dated 5.2.2019 to show-cause as to why the factory licence of the appellant should not be revoked. The learned Single Judge dismissed the Writ Petition. Aggrieved over the said order, the present Writ Appeal is filed.

2.Heard Mr.B.Saravanan, learned counsel appearing for the appellant, Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the first respondent and Mr.B.Kumarasamy, learned counsel appearing for the second respondent and perused the materials placed before this Court.

3.According to the appellant, he entered into a lease agreement with the second respondent on 30.8.1999. Since then, he has been running the industry at Plot No.24 in SIDCO Industrial Estate in Madurai. The licence has been renewed periodically, but the renewal application of the Petitioner, dated 30.10.2018 was not considered by the first respondent, insisting for the production of consent letter from the second respondent. It is the case of the appellant that the first respondent has no authority to issue the show-cause notice, since the appellant has already furnished the relevant details for renewal of licence.

4.The learned counsel for the appellant would contend that normally a Writ Petition challenging the show-cause notice is not entertained by the High Court, however, if it was issued with pre-determination, the Writ Petition can be entertained. The learned counsel by referring to the counter filed by the first respondent, would argue that even though the appellant could have appeared before the first respondent to contest the show-cause notice, it would be only an empty formality, as he has already determined to reject the renewal application. In support of the above contentions, the decision of the Supreme Court reported in **(1998) 8 SCC(Whirlpool Corporation .vs. Registrar of Trade Marks, Mumbai and others)** and **(2006) 12 Supreme Court Cases 33(Siemens Limited) .vs. State of Maharashtra and others)** has been relied upon.

5.The learned counsel for the appellant by placing reliance on the decisions of the Division Bench of this Court in **W.A.No.216 of 2018, dated 29.2.2008(R.Rajangam .vs.The Commissioner of Prohibition and Excise, Chepauk,Chennai-5)** and the Hon'ble Supreme Court in **(2016) 14 Supreme Court Cases 263(Sudhakaran .vs. Corporation of Trivandrum and another)** would submit that at the time of renewal of the lease agreement or the consent letter from the landlord cannot be insisted upon.



6.Per contra, learned Special Government Pleader appearing for the first respondent would submit that no materials have been produced by the appellant to show that the first respondent had already determined to reject the renewal licence of the appellant and it is the submission of the learned Special Government Pleader that in the counter, the case of the second respondent was only extracted. The learned Special Government Pleader would also argue that the first respondent has every authority to call for additional particulars under sub-rule (5) of Rule 7 of the Tamil Nadu Factories Rules, 1950.

7.The learned counsel for the second respondent contended that the factory building is in a dilapidated condition and if any untoward incident takes place, the second respondent will be held responsible and the appellant has not satisfied the conditions stipulated in the original licence and prayed for dismissal of the Writ Appeal.

8.In the case on hand, it is not in dispute that the appellant is a lessee under the second respondent and he has been running an industry since 2000. It is the case of the appellant that the licence was being renewed every year without insisting for consent letter from the lessor, till 2018. It is the further case of the appellant that he has fulfilled all the conditions for renewal of licence and hence the first respondent has no jurisdiction to direct the appellant to produce the lease agreement or the consent letter from the landlord.

9.It is true that the first respondent had renewed the licence from 2000 to 2018, but, however due to the objection raised by the second respondent, renewal application was kept pending. It is to be noted that a notice, dated 25.01.2019 was issued by the Joint Commissioner to comply with some defects, for which, the appellant sent a reply dated 1.2.2019, in which, it is stated that the landlord asked him to vacate the factory premises abruptly and hence, he has instituted a suit before the Melur Court by filing a suit in O.S.No.10 of 2019 and since the matter is sub-judiced, he sought for renewal of the licence. However, by the impugned notice, the appellant was directed to appear for an enquiry on 10.2.2019 to show-cause as to why his factory licence should not be revoked on the ground that on inspection of the factory by the Deputy Chief Inspector of Factories, Madurai, on 31.01.2019, it was found that the condition Nos.4,5,6 and 9 in the Factory Plan Approval, dated 25.7.2000 were not rectified till 31.1.2019. It is also stated in the impugned notice that the appellant failed to rectify the mistakes pointed out by the Office, for renewal of licence.

10.We respectfully agree with the proposition laid down in the decision relied on by the learned counsel for the appellant, but the only question arises for consideration of this Court is whether they apply to the case on hand. Perusal of the impugned order shows



that the show-cause notice was issued for the failure of the appellant to comply with some of the original conditions imposed at the time of grant of licence. It is the case of the second respondent that the building is in a dilapidated condition and its existence causes imminent danger to the general public also.

11. For better appreciation, the relevant rule is extracted hereunder:

'7. Renewal of licence:---(1) No premises shall be used as a factory nor any manufacturing process carried on in any factory except under, and in accordance with, the licence renewed under these rules.

(2) The occupier of the every factory licensed under rule 4, shall submit to the (Deputy Chief Inspector of Factories) having jurisdiction over the area where the factory is situated, an application in Form No.2 in triplicate, for the renewal of the licence. The application for such renewal shall be made so as to be received in the office of the (Deputy Chief Inspector of Factories), not less than two months before the date on which the licence expires and it shall be accompanied by the original lessee if it is not already available with the (Deputy Chief Inspector of Factories)

((3) The same fee shall be charged for the renewal of a licence as for the grant thereof:

Provided that if the application for renewal is not received within the time specified in sub-rule(2), the licensed shall be renewed only on payment of an additional fee of --

(1) ten percentum of the fee payable, if the application for the renewal is received in the month of November of the year for which the licence is granted or renewed.

(2) twenty percentum of the fee payable, if the application for renewal is received in the month of December of the year for which the licence is granted or renewed.

(3) thirty percentum of the fee payable, if the application for renewal, is received after the expiry of the licence)

*(***)*

(Provided further that) if the occupier of the factory opts to remit the fee for the renewal of licence for a period upto five consecutive calendar years instead of getting it renewed for every calendar year he shall indicate in Form No.2, the number of years for which renewal of licence is required.)



(4) If the application has been made in accordance with this rule, the premises shall be held to be duly licensed until such date as the (Deputy Chief Inspector of Factories) may pass orders on the application for the renewal.

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(5) (The Deputy Chief Inspector of Factories shall renew the licence within thirty days from the date of receipt of application referred to in sub-rule (2))

Provided that the (Deputy Chief Inspector of Factories) may call for such other particulars as he may require before renewing the licence:

Provided further that the (Deputy Chief Inspector of Factories) may renew the licence subject to such conditions as he may consider necessary and which shall be specified in the licence.

(6) Suitable entry shall also be made in the Register of Factories regarding the renewal of the licence.''

12. A plain reading of the above Rule would establish that the proviso to sub-rule 5 of Rule 7 of the 'Act' empowers the authority to call for such other particulars. Hence the first limb of argument goes.

13. Next, it is to be seen that the show-cause notice was not issued for production of a consent letter from the landlord or the current lease agreement, but it was for non-compliance of the approval conditions, as referred supra. Further, in the show-cause notice, the letter issued by the Joint Commissioner, dated 25.1.2019 and non-compliance of four plan approval conditions have been extracted. In para 17 of the counter filed by the first respondent, the case of the second respondent is stated. So in our considered view, sufficient materials are not available to come to the conclusion that the impugned show-cause notice has been issued with pre-determination and hence the decisions cited supra also do not help the appellant.

14. It is the submission of Mr. B. Saravanan, learned counsel for the appellant that if a renewal applicant furnishes all the particulars as per Sub-Rule 2 of Rule 7, the competent authority is duty bound to renew the licence and the proviso to Sub-Rule 5 of Rule 7 applies only at the time of grant of original licence. We find it difficult to accept the proposition suggested by the learned counsel, for the reason that renewal of licence is not an empty formality and on the other hand, the authority has an obligation to see that an industry is being run by complying all the legal requirements. For that purpose, he is entitled to call for other particulars.



15. For the foregoing reasons, we find no valid ground warranting interference by this Court. In fine, the Writ Appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

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Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

vsn

To

The Additional Director,
Industrial Safety and Health
Department,
No.11A/1, Vinayaga Nagar,
Madurai - 625 020.

+1 CC to M/s.S.MANIKANDAN, Advocate (SR-65340[F] dated 08/05/2019)

**PRE-DELIVERY JUDGMENT
MADE IN**

**W.A (MD) NO.503 OF 2019
and**

**C.M.P (MD) No.4292 of 2019
08.05.2019**

CS: (03/06/2019) 6P 3C