NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 2605 of 2020

M/s SMV Beverages Private Limited, Through Its Authorized Representative Diwakar Awasthi, Aged About 55 Years, S/o Late Srinivas Awasthi, Plot No. 26 & 30 And 25 & 27, Urla Industrial Area, Raipur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Commerce And Industries, Mantralaya, Atal Nagar, Naya Raipur, Chhattisgarh
2. Chhattisgarh State Industrial Development Corporation Ltd. Through Its Managing Director, 1st Floor, Uday Bhawan, Ring Road No. 1, Raipur, Chhattisgarh
3. Executive Director, Chhattisgarh State Industrial Development Corporation Ltd. L.I.C. Building, Pandri Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Prafull N. Bharat, Advocate along with Mr. Shashi Bhushan Tiwari, Advocate
For Respondent no.1	:	Mr. Mateen Siddiqui, Dy. A.G.
For Resp. No.2 & 3	:	Mr. Anumeh Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

04.11.2020

1. The petitioner in the present writ petition has challenged the order dated 11.08.2020 (Annexure P-18) passed by the respondent no. 1 whereby the second appeal preferred by the petitioner has been rejected. As a consequence, the order passed on 22.02.2013 cancelling the lease deed executed in favour of the petitioner and

also the order of the first appellate court dated 25.09.2013 stood affirmed.

2. The brief facts relevant for the disposal of the present writ petition is that the petitioner a company incorporated under the Companies Act, 1956 established a manufacturing unit of aerated water of different brand names during the year 1985-86. For the purpose of establishing the said establishment, the petitioners obtained two lease deeds executed in their favour for a period of 99 years. The first lease was executed on 01.05.1985 for Plot No. 26 and 30 which was valid as such for a period till 03.04.2084. The second lease was executed on 03.03.1989 for Plot No. 25 and 27 and the lease was to be valid uptill 02.03.2088. When the said lease was executed, it was the erstwhile State of Madhya Pradesh and its department of Madhya Pradesh Audhyogik Kendra Vikas Nigam which was responsible for the allotment of land and also for the purpose of execution of lease deed. The petitioner had a franchise for the Pepsi Food Private Limited and the petitioner started manufacturing a range of products for the Pepsi Company from their plant situated at Urla Industrial Area, Raipur.

3. Subsequent to the creation of the State of Chhattisgarh, the respondent no. 2-corporation was established and the industrial areas in the State of Chhattisgarh came under the Respondent No. 2 and 3. The petitioner continued with the production from the time of its inception up till 2010-2011. Subsequently on account of some alleged change of technology or some differences that arose between the petitioner and M/s. Pepsi Food Private Ltd., the production from the said plant stopped during the same period ie., in the year 2010-2011. It is said that negotiations were going on

between the petitioner and Pepsi Food Private Limited but since it did not materialise the plant of the petitioner remains closed.

4. As per the lease agreement, industrial establishments which have been granted property on lease by the respondent no. 2 and 3 if the manufacturing plant gets closed or the production is stopped for a period of more than six months continuously, the lease would get cancelled.

5. Admittedly, the production in the petitioner's establishment got stopped during the period 2010-2011. Accordingly, as the plant went out of production and closed for a period of more than six months, the respondent no. 2 and 3 issued a show-cause notice to the petitioner on 19.04.2012 calling upon an explanation as to why the lease should not be cancelled and sixty days' period was granted to the petitioner ensuring that the short-comings be rectified to avoid contravention of the lease deed.

6. Since the conditions did not improve, the respondent no. 3 vide order dated 22.02.2013 cancelled the lease. Since there was the provision of preferring an appeal against the cancellation of lease, the petitioner preferred an appeal before the Respondent No. 2, who vide his order Annexure P-7 dated 25.09.2013 on the basis of the contentions that were raised before the respondent no. 2, granted the petitioner 15 days' time for clearing all the unpaid dues and further granted six months' time for reopening of the plant failing which the order passed by the respondent no. 3 dated 22.02.2013 would automatically come into force. Yet the petitioners could not abide-by the relaxation given by the appellate authority for reopening of the establishment within six months' time. The petitioner was again issued with another notice by the respondent

no. 3 vide Annexure P-9 dated 09.02.2016 again granting sixty days' time to the petitioner for reopening of the establishment. In spite of all the relaxations given, the petitioner could not reopen the establishment and subsequently, the order Annexure P-12 was issued by the respondents seeking possession of the said property. The said letter was issued somewhere in the month of April, 2019. Meanwhile, the petitioners preferred an appeal before the respondent no. 1 by way of a second appeal which stands rejected vide the impugned order dated 11.08.2020 leading to the filing of the present writ petition.

7. Primarily the challenge is on the ground that the rejection of the second appeal so also the cancellation of the license by the respondent no. 2 and 3 is in violation of basic principles of natural justice inasmuch as the respondents have not given a fair opportunity of hearing to the petitioner before the decision for cancelling the lease was issued. The counsel for the petitioner referred to various intermittent correspondences that were made in between the petitioner and the respondent no. 2 and 3 canvassing the point that the respondents never had an intention of cancelling the lease and at the same time, the petitioner also was trying hard for reestablishment of his business. According to the counsel for the petitioners, there is no default so far as any monetary claim payable to the respondent-corporation is concerned. There is no allegation that the petitioner having misused the property for any other purpose other than for what it has been allotted. It was also the contention of the petitioner that the reason for closing down of the manufacturing unit was something which was beyond the control of the petitioner and the petitioner has already entered into an

agreement with another family business of theirs and was soon planning to start a new manufacturing unit wherein they intended to manufacture soaps, detergent and other toiletry products. The petitioner referred to a Conducting Agreement entered into between the petitioner and one M/s. Jaipuria Health Care Products Pvt. Ltd. According to the counsel for the petitioner, the said agreement entered with M/s Jaipuria Heath Care Products Pvt. Ltd. is a business in their own family and the petitioner would continue to be the owner of the plant and the new establishment. According to the counsel for the petitioner, there was all likelihood of production to start soon and the condition of the lease deed shall stand restored thereafter and thus there was no necessity for cancellation of the lease deed. It was also the contention of the petitioner that though the production stood discontinued or stopped from 2010-2011. However, the petitioners were operating their own allied business from the said premises and therefore, it cannot be said that the property was lying unutilised. According to the counsel for the petitioner, there are various correspondences made between the parties subsequent to 22.02.2013 when the lease deed was cancelled and also after 25.09.2013 when the appellate authority disposed off the first appeal. According to the petitioners, this would show that they never intended to enforce the order dated 22.02.2013 and the order dated 22.02.2013 in the light of the subsequent correspondences and after granting sixty days' time on a couple of occasions. The two orders earlier passed automatically stands nullified. It was also contended that the ground on which the appeal has been rejected by the respondent no. 1 also is not sustainable as there was no subletting created by the petitioner rather even by the Conducting Agreement he continues to remain the owner of the business establishment.

8. Counsel appearing for the respondents, both for the State as well as the CSIDC contended that the dates which have been mentioned by the petitioner in the writ petition are sufficient to establish the fact that the petitioner has been provided with sufficient period of time for opening the plant which stood closed from 2010-11. According to the respondents, admittedly the petitioner-establishment stood closed from 2010-11 and now it is almost 10 years, yet the petitioner has not been able to resume manufacturing or production from the said plant which is sufficient to reach to a safe conclusion that the petitioner was not in a position to reopen the factory/manufacturing unit and as such the impugned orders do not warrant any interference.

9. Counsel for the respondents referred to the show cause notice/notices issued to the petitioner time and again intimating the petitioner to resume the manufacturing unit which by itself shows that the petitioner has been granted repeated opportunities to ensure that the conditions to the lease deed are not flouted. Counsel for the respondents also referred to Annexure P-4 which is a show cause notice issued as early as on 19.04.2012 and contended that from the first show cause notice issued on 19.04.2012 till date, though more than 8 ½ years elapsed, the status of the petitioner has not improved and the manufacturing plant remained closed for all these periods.

10. The respondents further contended that even after cancellation of the lease on 22.02.2013 the status of the petitioner has not improved and to add with it the respondents referred to the

order of the appellate authority dated 25.09.2013 wherein the appellate authority also though negated all the contentions that the petitioner had raised in his appeal yet the petitioner was granted six months time to reopen the plant failing which the order of the cancellation of lease passed by the respondent no.3 on 22.02.2013 would stand restored.

11. According to the respondents, this order was not challenged by the petitioner before any forum and as such the order has attained finality. The order attaining finality, it also becomes binding upon the petitioner to abide by the order passed by the appellate authority which again the petitioner failed and therefore, the petitioner does not have any right to challenge the same now. The respondents further referred to Annexure P-9 dated 09.02.2016 and also Annexure P-12 which seems to have been issued in the year 2019. The respondents also referred to the agreement entered between the parties where there was a specific clause of the lease holder requiring to use the property exclusively for the purpose of manufacturing aerated dings and that it was also specifically agreed that the lessee would continuously run the plant during the period of lease and closure of the factory for a period of continuous six months would be considered as the breach of the conditions. It was also the specific condition to the agreement that the lessee would not be permitted to sublet the said property to any third party. According to the respondents, in spite of all these admitted facts well known to the petitioner it is undisputed that the manufacturing establishment put by the petitioner stands closed from 2010-11 i.e. for a decade now, therefore, the action on the part of the respondents neither can be said to be arbitrary nor can it be said to

be in any manner malafide. Thus, prayed for rejection of the writ petition.

12. Having heard the contentions put forth by the counsel appearing on either side what stands admitted from the pleadings made by the petitioner is that the petitioner was granted a lease for the property that situated in plot Nos. 26 & 30 and 25 & 27 by way of 2 separate lease deeds executed on 01.05.1985 and 03.03.1989 respectively. The petitioner put up a manufacturing unit of aerated water/drinks on the said property. The petitioner got franchise of Pepsi Foods Private Limited and started manufacturing of the range of products belonging to Pepsi group. The petitioner continued with their business up till 2010-11 when because of some dispute that the petitioner had with M/s Pepsi Foods Private Limited, the production unit of the petitioner was closed down by the petitioner in 2010-11 and since then the petitioner has not been able to resume the plant again in spite of numerous opportunities being granted and the petitioner itself making best of efforts by negotiating with Pepsi Foods Private Limited.

13. 10 years is a pretty long time for any establishment for taking steps for ensuring that the lease conditions are not violated. The contention of the petitioner that he is operating the business as a C & F agent of some companies from the property leased to the petitioner, is not tenable for the reason that that was not the purpose for which the lease was granted nor was a property in an industrial area leased out for such purpose. Moreover, what also is reflected from the pleadings is that there have been numerous correspondences in the form of notices or show cause notices issued to the petitioner by the respondents and each time the

petitioner was asked to ensure that the manufacturing unit becomes operational or else it would be treated as the plant remaining shut down for more than 6 months, the lease of which would be liable to be cancelled.

14. The contention of the petitioner that they have already entered into a Conducting Agreement for resuming the manufacturing process at the leased out property again does not seem to have been materialized till now in spite of Conducting Agreement being entered into on 2nd of September, 2018.

15. Moreover, the Conducting Agreement also does not reflect the petitioner to be the operator of the said business as would be evident from the plain reading of the Conducting Agreement itself wherein the petitioner has been referred to as the owner of the property and the second party has been referred to as the Conductor of the business. In the Conducting Agreement entered in the year 2018, the petitioner had agreed that there was no commercial activity being undertaken from the said property which by itself falsifies the stand of the petitioner that they are operating their business of C & F agent of other companies from the said premises.

16. Clause-e of the said Conducting Agreement speaks of the same. Clause-g of the said agreement is worthwhile to be mentioned at this juncture which is reproduced herein under:

> "(g) The Owners with an offer to allow the Conductors to conduct the Owners' said premises at their own risk and cost, to which request the Owners have agreed subject to the terms, covenants and conditions hereinafter appearing."

17. The petitioner herein though are projecting themselves as the owner of the said property but on the other hand have put a condition of charging fifty thousand rupees as security deposit from the Conductor i.e. the second party to the agreement. In addition, the petitioner would also be charging fixed monthly royalty fee @ Rs.5,000 which shall stand enhanced @ 10% every year. There was also a clause of charging interest in the event of default in payment of royalty fee. One of the conditions to the said agreement also was that the petitioner shall deliver one set of key of the premises to the Conductor to enter into the property and run the business.

18. The plain reading of the aforesaid Conducting Agreement also clearly reflects that the petitioner herein by virtue of Conducting Agreement was subletting the property to M/s. Jaipuria Health Care Products Pvt. Ltd. on monthly royalty fee with interest fee and security deposit. There does not seem to be any terms and conditions showing the sharing of business and also sharing of profit and loss. Similarly, there is no reference of the petitioner having any role in the said business.

19. All the aforesaid factual matrix of the case particularly the various notices enclosed along with the writ petition issued by the respondents upon the petitioner would clearly demonstrate that the petitioner had been granted sufficient opportunity of time before lease was ordered to be cancelled. Likewise, from the recent development of the petitioner entering into a Conducting Agreement with M/s. Jaipuria Health Care Products Pvt. Ltd. and the conditions to the Conducting Agreement clearly reflect the intention of the petitioner in subletting the property which otherwise was not

permissible under the agreement entered into between the parties and in the circumstances, all the 3 orders dated 22.02.2013 Annexure P-5, 25.09.2013 Annexure-P-7 and 11.08.2020 Annexure P-18 do not warrant any interference.

20. The writ petition thus being totally devoid of merits deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Rahul/Khatai