

(2011) 09 P&H CK 0141

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 3076 of 1992 (O and M)

B.L. Electricals (P) Limited

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Sept. 27, 2011

Acts Referred:

- Punjab New Capital (Periphery) Control Act, 1952 - Section 10, 11, 3(2), 5

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Judgement

K. Kannan, J.

The Petitioner seeks for mandamus directing the Director, Housing and Urban Development Department, Punjab, arrayed as the 5th Respondent, to issue No Objection Certificate (NOC) in respect of "free enterprise zone" pertaining to the periphery area in respect of the site where the Petitioner had located a factory, for a direction to give appropriate the Water Pollution Board, arrayed as the 4th Respondent, and grant all industrial incentives which were available to Small Scale Industries set up in the backward areas in the State of Punjab by Respondents 1 to 3.

2. The Petitioner had registered as a Small Scale Industry under the District Industries Centre (DIC) located at village Devi Nagar, Tehsil Rajpura, District Patiala. The unit was said to have been located under "B" grade growth area that was eligible for 15% State Capital Subsidy under the Industrial Policy, 1989 for manufacture of brass screws for electrical goods and steel self tapping screws and informed as such by the District Manager, DIC, Patiala. The Petitioner would rely on the proceedings of the DIC for establishing a factory without any difficulty in the peripheral areas which were classified as "free enterprise zone" and it enjoyed relaxation in the Regulation relating to siting of industries and change of use of agricultural lands for industrial purpose as required under Sections 10 and 11 of the Punjab New Capital (Periphery) Control Act of 1952 (for short, "the 1952 Act").

According to the Petitioner, in view of the said notification, there was no prohibition against the Petitioner for establishing the factory and there was again no requirement for obtaining a change of use or certification from the authority under the 1952 Act. The Petitioner's application to the Punjab Housing and Town Planning Commission, Chandigarh, for issuance of a NOC has been responded by the Director with a letter rejecting his plea and warning him of action for removal of the construction. It appears that yet another person running an industry called as M/s Swastik Roller Flour Mills (P) Limited, had not been given the NOC and he had filed a writ petition in CWP No. 14455 of 1991. During the pendency of the writ petition itself, the Housing and Urban Development Department, Punjab, accorded to the said industry a NOC. The proceedings issued in favour of M/s Swastik Roller Flour Mills (P) Limited on 07.10.1991, has been cited by the Petitioner as instance as to how for any industry established in free enterprise zone, a NOC was a sine qua non. His grievance is that discrimination had been practiced to deny the NOC only to him. The Petitioner would also point out to the proceedings of the Pollution Control Board which had declined to issue NOC till the Housing and Urban Development Department had not issued the NOC.

3. The Pollution Control Board has filed the reply stating that the issue of NOC was dependent on the clearance from various authorities and particularly the Director, Housing and Urban Development Department and the Pollution Control Board cannot issue such a clearance certificate without the other authorities giving the respective certificates after fulfilling all the prescribed formalities and giving necessary information relating to the clearance from the Housing Board. The DIC has filed a statement contending that it has no cause of action against the Respondents 1 to 3, since they had given the exemption notification. The Housing Board has filed written statement referring to Section 5 of the 1952 Act imposing restrictions for construction in the controlled area and requiring permission from the Deputy Commissioner in writing before any work was carried out. Referring to Section 11 that imposes a prohibition for use of the land for any purpose other than those for which it was permitted to be used in notification u/s 3(2) and appropriate permission to be taken from the Deputy Commissioner on payment of necessary charges, it is contended that the Petitioner has not fulfilled the necessary formalities. As far as establishing the factory at the site in view of the notification relating to the free enterprise zone is concerned, the permission as to the nature of activity itself cannot be said to be in doubt. The only objection seems to be, therefore, that the permission of the Deputy Commissioner had not been obtained u/s 5 of the said Act.

4. It is not very clear from the contentions of the parties as to why the Housing Board is refusing the issue of NOC without a clearance from the Deputy Commissioner. The Petitioner has referred to the fact that several other factories which had been set up in the same area had been issued NOC and hence, there was no reason as to why the same has been refused to the Petitioner alone. I have no

information as to whether any other industry had secured clearance u/s 5 of the 1952 Act. I have no doubt that the Petitioner is entitled to the same treatment as any other factory and particularly in view of the fact that this Court had even directed the 5th Respondent to issue a NOC for M/s Swastik Roller Flour Mills (P) Limited. The Petitioner would be entitled to the same treatment and the 5th Respondent is directed to issue a NOC if the same has been done without reference to any application u/s 5 to the Deputy Commissioner. On the other hand, if M/s Swastik Roller Flour Mills (P) Limited has secured the previous permission from the Deputy Commissioner, even apart from the direction before the Court, the application submitted by the Petitioner shall be forwarded to the Deputy Commissioner for his approval. The Deputy Commissioner himself is not a party before the Court and the liberty is given to the Petitioner to apply to the Deputy Commissioner citing instances where such permission had been given and to obtain an equal treatment as other industries have obtained. If any such representation is given by the Petitioner to the Deputy Commissioner, the same will be considered in two weeks" time to enable the 5th Respondent to take appropriate decision and issue NOC.

5. The writ petition is disposed of on the above terms.