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Court : Patna

Decided On : May-05-1999

Judge : M.Y. Eqbal, J.

Appeal No. : C.W.J.C. No. 3409 of 1997 (R)

Appellant : Kwality Refractories Ltd.

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Judgement :

M.Y. Eqbal, J.

1. In this writ application, the petitioner prays for issuance of appropriate writ for quashing the order and decision dated 14.10.96 of respondent No. 3, the State Level Capital Subsidy Committee, whereby the petitioner's representation dated 21.9.96 for his disbursement of capital subsidy has been rejected. The petitioner further prays for issuance of appropriate direction to the respondent to disburse the amount of capital subsidy to the extent of Rs. 1,58,176/- for which the petitioner has applied in respect of the first expansion and also for disbursement of the amount of capital subsidy to the extent of Rs. 3,26,556/- which the petitioner has applied in respect of second expansion, as both the applications for the grant of benefits were made on the basis of Resolution No. 13730 dated 1.9.86 passed

in Bihar Gazette Extraordinary 513 dated 9.9.1986.

2. The petitioner's case in brief is that Government of Bihar adopted aforesaid resolution in 1986 whereby Government made unqualified promises regarding number of incentives to large, medium, small and tiny industries to set up in the State of Bihar for accelerating the industrial growth in Bihar. The resolution, inter alia, provides for grant of capital subsidy to the industrial unit and paragraph 5 of the policy provides that in the district of Singhbhum the capital investment subsidy @ 15% of the fixed capital investment will be admissible to new industrial units coming into production or after 17.11.80 subject to maximum of Rs. 15 lakhs grant for capital investment subsidy. Petitioner's further case is that clause 15 of the said policy speaks of the benefit being extended to those units going for expansion and diversification. Petitioner claims that it has made first expansion of its unit and had increased its production capacity and the total amount spent for the first expansion was from its own resources. Petitioner, on the basis of aforesaid policy 1986, made an application for grant of capital subsidy on 19.1.88 which was received by the office of the General Manager, District Industry Centre on 20.1.88. Petitioner again made an application claiming the aforesaid benefits on the ground that it has made second expansion of its unit and started manufacturing refractoriness products. It is stated that second expansion was made after taking loan from the Bihar State Financial Corporation. Application claiming subsidy for the second expansion was made on 5.1.90. Petitioner's further case is that despite several letters and reminders respondents failed and neglected to disburse the capital subsidy to the petitioner on the basis of aforesaid policy of 1986. Petitioner having no way filed a writ application in this Court being C.W.J.C. No. 2814/85 (R) for direction to the respondents for disbursement of the amount of capital investment subsidy on the first and second expansion. The said writ application was disposed of on 18.7.96 directing the petitioner to make fresh representation before the authority concerned for payment of capital subsidy and the respondents were directed to dispose of the representation within specified time. Pursuant to that order petitioner said to have filed representation on 21.9.96 substantiating its claim for grant of capital subsidy and said representation was considered by the State-Level Subsidy Committee on its meeting on 14.10.96 and the claim of the petitioner was rejected by the impugned order decision dated 14.10.96. Copy of

the said order decision dated 14.10.96 is annexed as Annexure-10 to the writ application.

3. A counter-affidavit has been filed on behalf of the respondent No. 3, State Capital Subsidy Committee through Director of Industries, Government of Bihar, Patna. The case of respondent is that the petitioner's unit originally started functioning since 1972. The General Manager, District Industries Centre, Chaibasa issued new permanent registration certificate, vide letter dated 11.12.87 to the old unit in which manufacturing of the goods of the unit has been mentioned as cancellation of minerals and refractoriness products and the date of the production has been mentioned as 10.4.72 and 1.9.87. It is stated that the expansion scheme of the petitioner's unit was approved by the General Manager, District Industries Centre, Chaibasa, vide letter dated 12.1.88. In the sanctioned order, it has been mentioned that the date of beginning and closer as 1.4.81 and 30.4.84 respectively. Date of production after expansion has been mentioned as 4.5.84 and the total capital investment of Rs. 10,54,312.42. Respondents' further case is that the General Manager, District Industries Centre, Chaibasa, vide letter dated 24.3.88, has recommended for grant of capital subsidy after the expansion of the petitioner's unit. On receipt of the recommendation, the State-Level Subsidy Committee in its meeting dated 18.5.88 considered the case of the petitioner's unit for the grant of capital subsidy and sought some clarification from the District Industries Centre, Chaibasa, which was communicated by the District Industries Centre, vide letter dated 22.11.88. It is stated that the claim of the petitioner for grant of capital subsidy was considered by the State-Level Subsidy Committee on 6.8.89 and 3.1.91 when it was found that the petitioner's unit is an old unit and the expansion scheme was prior to 1986 and accordingly, claim of the petitioner was rejected and the same was communicated to the petitioner, vide letter dated 4.4.91. Lastly, it is stated in the counter-affidavit that the State-Level Subsidy Committee again reconsidered the fresh representation which was filed by the petitioner pursuant to direction of this Court and it was again found that date of production of the petitioner's unit after expansion is 4.5.84 and petitioner's unit made an application for grant of capital subsidy before the District Industries Centre, Chaibasa on 21.5.88. According to respondents, petitioner's unit ought to have made an application for grant of capital subsidy in 1984 under industrial

policy 1981 but it had failed to do so. The industrial policy 1986 came into effect from September 1986 and hence petitioner's claim is not entertainable.

4. Mr. Mittal, learned Counsel appearing on behalf of the petitioner, assailed the impugned order rejecting the representation of the petitioner as being illegal and wholly without jurisdiction. Learned Counsel contended that the respondent No. 3, the State Capital Subsidy Committee misconstrued and misinterpreted the industrial policy resolution 1986 and wrongly held that the benefit is not available to the petitioner. It is further contended that the petitioner is entitled to benefits of capital subsidy both for first expansion and second expansion. Learned Counsel submitted that the impugned order has been passed by the authority without considering the relevant fact that during the second expansion the period i.e. 1.4.87 to 1.3.89, the industrial unit of the petitioner was not closed rather working and the production was there.

5. On the other hand, Mrs. I. Sen Choudhary, learned SC I contended that the benefit of State Capital Subsidy is not available to the old industries established before 1980. According to the learned Counsel, industrial policy 1986 is applicable to only new industries which came into production after 1980, while petitioner-industry was established in 1972.

6. Before appreciating the submissions advance by the learned Counsel, it would be useful to look into the relevant provisions of Industrial Policy Resolution 1986. The Bihar Industries Policy 1986 came into force from 1st September, 1986. Its main objective is to accelerate the growth of industries in the State and all sectors and to give due incentives to industrialists and entrepreneurs to set up industries in the State.

7. Clause 2 of the Resolution reads as under:

2. The incentives and concessions which the Government will consider giving to the industries in the next five years with effect from 1st September, 1986 are as follows:

2.1 Concessions and subsidies-

(a) Subsidy on the cost of preparing feasibility/ project Report.

(b) Subsidy on technical know-how fee.

(c) Seed money assistance.

(d) Capital investment subsidy.

(e) Subsidy on electricity consumption.

(f) Subsidy on the purchase and installation of generating sets.

(g) Sales tax relief.

8. Clause 5 of the Resolution deals with the grant of Capital Investment Subsidy, which reads as under:

5. Capital Investment Subsidy:

Some districts of the State have been categorized as 'A', 'B' and 'C backward districts by the Government of India vide their Notification issued on 27th April 1983. In these districts, Central Capital Investment Subsidy is admissible to the industrial units. In the remaining districts, as also in category 'C districts, State Capital Investment Subsidy is admissible. The scale of Central/State Capital Investment subsidy is as follows:

(a) ...

(b) ...

(c) ...

(d) Districts other than those falling in 'A', 'B' and 'C categories (State Capital Subsidy)-In the following districts of the State viz., Patna, Katihar, Rohtas, Hazaribagh, Dhanbad, Giridih, Ranchi, Gumla, Lohardaga and Singhbhum and Barauni Block of Begusarai district, State Capital Investment Subsidy at the rate of 15 per cent of the fixed capital investment will be admissible to all new industrial units coming into production on/or after the 17th November, 1980 subject to a maximum of Rs. 15 lakhs.

9. From reading of Clause 5 of the Resolution, it is clear that in the districts mentioned in Sub-clause (d) State Capital Subsidy at the rate of 15 per cent of the Fixed Capital Investment is admissible to all new industrial units coming into production on or after 17th November, 1980.

10. The next important and relevant clause of the Resolution in Clause 15, which reads as under:

15. Incentive for expansion or diversification.--Incentives will be allowed to old units for expansion or diversification. Expansion implies an increase of at least 25 per cent of the (rated) capacity of the unit for the items for which it is registered. Diversification implies production of a new item or items not envisaged in the project report on which such loan was sanctioned or not capable of being manufactured by existing machinery. The incentives will be available on the following conditions:

(a) The expansion/diversifications programme has been duly registered and approved by the competent authority prescribed by the Government.

(b) The facilities relating to sales tax as mentioned in paragraphs 9.1 and 9.2 will be available for a period of 5 (five) years from the date of commencement of production after expansion/diversification and shall be limited to the extent of expansion/diversification.

(c) In respect of incentives relating to power consumption, incentive will be admissible on the additional consumption of power relating to production purposes consequent upon expansion/diversification of the unit. The facility will be available for a period of 5 (five) years from the date of commencement of production after expansion/diversification and shall be limited to the extent of expansion/diversification.

11. On plain reading of the aforesaid clause, it is clear that the resolution of the Government providing different incentive is also available in case of expansion or diversification of the industries. Although, no such plea has been taken in the

counter-affidavit but the learned Standing Counsel made her submission referring this clause and contended that State Capital Subsidy is not available in case of expansion or diversification. I do not find any force in the submission of learned Counsel as this clause simply lays down the condition for the grant of incentives including State Capital Subsidy.

12. The only question, therefore, falls for consideration is whether respondent No. 3, State Capital Subsidy Committee is justified in rejecting the claim of the petitioner on the ground that the benefits under the Resolution of 1986 is not available to the petitioner-industry.

13. It is not disputed that although the industry was established in 1972 but a new permanent registration certificate was issued to the petitioner's unit for manufacturing and production of goods. It is also not disputed that the expansion scheme was approved by the General Manager, District Industries Centre, Chaibasa vide letter dated 12.1.88. However, it is stated by the respondent that in the sanction order the date of production after expansion has been mentioned as 4.5.1984. Nevertheless the General Manager, District Industries Centre, vide letter dated 24.3.88, recommended for grant of capital subsidy after expansion of the petitioner unit. However, the respondent No. 3 rejected the claim as against the first expansion on the ground that since the date of production was 4.5.1984 the petitioner ought to have applied for grant of subsidy under the Industrial Policy Resolution of 1981. The claim of further benefit of capital subsidy as against second expansion was rejected on the ground that the expansion scheme of the petitioner unit was ended in March 1989 and the date of production after expansion cannot be 1.9.1987. It do not find any justification in rejecting both the claims of the petitioner by the respondent No. 3 on the aforementioned ground.

14. I will first deal with the claim of the petitioner for State Capital Subsidy on account of first expansion. Admittedly, the petitioner unit was established in 1972. In para 7 of the writ petition, the petitioner has stated about first expansion but has not mentioned the date when it came into production. Simply, it is stated that an application for the grant of State Capital Subsidy was made on 19.1.1988 for the first expansion. A copy of application has been annexed as Annexure-2 to the writ

petition. In the said application, it was admitted by the petitioner that capital investment for first expansion was made in between 1.4.81 to 30.4.84. Admittedly, the first expansion scheme was approved and sanctioned and in the sanction order, it was mentioned that the petitioner unit came into production after expansion on 4.5.84. There is no dispute that in 1984 the Industrial Policy Resolution, 1981 was in force and the petition could have applied under that Resolution. As a matter of fact, the Industrial Policy Resolution, 1986 came into force from September, 1986 and, therefore, the claim of the capital subsidy against first expansion was rightly rejected by the State-Level Committee. In my opinion, Clause 5(d) of the Resolution applies to all those new industrial units which came into production after 17th November, 1980. Since the petitioner unit was old one as established in 1972 and it claims capital subsidy under Clause 15 of the Resolution on the ground of expansion then the benefit would have been available if expansion was made after September, 1986 when the Resolution 1986 came into effect. The rejection of petitioner's claim for capital subsidy as against first expansion on the ground that the petitioner unit came into production before 1986 is justified. At this stage, I must refer a decision of the Supreme Court in the case of Orissa Sponge Iron Ltd. v. State of Orissa (1998) 2 SCC 268, where their Lordship has considered a similar question about the application of Orissa Industrial Policy Resolution to old units. It was observed:

Therefore, it was for the policy-maker to consider whether he should not allow the older units to get benefits of sales tax which they were proposing to give to new units. If they felt that units which were already established at lesser cost and which got well stabilised, should not be allowed to have any advantages over new industries, then such a classification would be perfectly valid.

15. It is well settled that it is for the State to decide what economic and social policy, it should pursue and what discriminations advance those social and economic policies. Of course, the classification made by the State under the policy must not be palpably arbitrary.

16. So far as the petitioner's claim for capital subsidy as against second expansion is concerned, admittedly the date of starting expansion was 1.4.87 and the date

when the unit started production after expansion was 1.9.1987. The State-Level Committee, therefore, committed grave illegality in rejecting the petitioner's claim on the ground that it was not in accordance with law. The decision taken by the respondent No. 3, the State Capital Subsidy Committee is illegal and arbitrary. The petitioner is entitled to State capital subsidy as against second expansion of the unit.

17. In the result, this application is allowed in part and the impugned decision rejecting the claim of the petitioner for grant of the capital subsidy as against second expansion is quashed. The respondents are accordingly directed to disburse the amount of State Capital Subsidy payable to the petitioner in respect of the second expansion.