Ankur Mining Private Ltd. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Sep-07-2006

Reported in : II(2007)BC568; RLW2007(1)Raj760

Judge : Shiv Kumar Sharma, J.

Appellant : Ankur Mining Private Ltd.

Respondent : State of Rajasthan and anr.

Judgement :

Shiv Kumar Sharma, J.

1. Ankur Mining Private Limited, petitioner herein, filed this writ petition claiming disbursement of subsidy in the amount of Rs. 8,38,396 sanctioned by the State Level Comrritee constituted under the State Capital Investment Subsidy Scheme for Industries 1990 (in short Scheme of 1990) vide order dated July 3, 1995.

2. The case of the petitioner is that they established the Unit of Crushing Plant at Sanu Limestone Mines in Distt. Jaisalmer for excavation, screening and crushing of steel grade limestone. On November 24, 1992 the petitioner company also installed balancing equipment conveyer belt system as required by the Rajasthan State Mineral Development corporation. On February 12, 1994, the petitioner company submitted application along with requisite papers as required by the Subsidy Scheme for claiming subsidy amount of Rs. 14,90,380. After due scrutiny

subsidy amounting to Rs. 8,38,396 was sanctioned by the State Level Committee in its 37th meeting held on June 6,1995. The decision of the Committee was conveyed to the petitioner company vide communication dated July 3, 1995. In its meeting dated November 8, 1995 the State Level Committee also took decision directing the petitioner company to give an undertaking to the effect that if the said industrial unit does not continue its production for a period of 5 years then the entire amount disbursed to the petitioner company shall be recoverable along with interest. The Managing Director of the petitioner company submitted undertaking on stamp paper on or about December 11, 1995. The case of the petitioner company is that they have completed entire required formalities but the subsidy amount was not paid to them after repeated requests. Hence, they filed the present writ petition claiming the subsidy amount as ordered by the State Level Committee.

3. The respondent State of Rajasthan filed reply to the writ petition. It was given out in the reply that the State Level Screening Committee vide order dated July 18,1998 rejected the sanction dated June 6, 1995. The petitioner has not challenged the said order dated July 18, 1998 and on account of this the writ petition is not maintainable. It was submitted that respondents were fully empowered to withdraw fiscal incentives concessions in due course as per the policy of the State Government and thus the question of promissory estoppel did not arise. It was given out that the petitioner company's plant merely provide service and the land on which the plant was set up belong to the State Mines and Minerals Limited and further the petitioner company neither purchased raw material nor sold the finished material in the open market. As per the contract between the petitioner company and the Rajasthan State Mines and Mineral Limited it is clear that the petitioner company merely providing services to them. The unit of the petitioner company merely providing services to them. The unit of the petitioner company is a service unit. The said aspect of the petitioner company being merely a service unit was not considered by the State Level Committee in its 37th Meeting held on June 6, 1995. The petitioner company being a service unit is not eligible for Subsidy as per the provisions of the Scheme of 1990. The letter dated July 3, 1995 was issued under bonafide mistake. On August 28, 1997, the State Level Committee decided to give an opportunity to the petitioner company in

the matter of subsidy. Shri Bagla representative of the petitioner company argued the case before the State Level Committee on December 16, 1997. Shri Bagla submitted before the Committee that they have been awarded the contact by the RSMM for five years for providing classified grids to the RSMM after excavation and crushing. The Committee observed in its decision that the petitioners unit is doing the job work for RSMM and thus did not come under the purview of industries. Thereafter vide letter dated July 18, 1998 canceled the sanction dated June 6, 1995. In these circumstances the respondents given out that the petitioner company is not entitled for any subsidy.

4. The petitioner filed rejoinder to the reply filed by the respondents reiterating the grounds raised in the writ petition and submitted that they have not received any letter dated July 18, 1998 rejecting the claim of subsidy. It is for the first time that the respondents had made a mentioned about the alleged letter in the reply filed in the month of May 1999. It seems to be an after thought to introduce such a letter with a view to deny the disbursement of the subsidy that was granted on June 6, 1995.

5. I have given my thoughtful consideration to the submissions advanced by learned Senior Advocate and carefully scanned the record as well as the case law cited before me.

6. In Indo Afgan Agencies case (AIR 1968 SC 718) their Lordships of the Supreme Court laid down that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted the Government need not make a promise knowing or intending that it would be acted on by the promise and the promise would alter his position relying upon it. But if Government makes such a promise and the promise acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual.

7. In M.P. Sugar Mills v. State of U.P. : [1979]118ITR326(SC) the Hon'ble Supreme Court propounded that the Government cannot claim to be exempt from

liability to carry out the promise on some indefinite and undisclosed ground of necessity or expediency. The Government cannot claim to be the sole judge of its liability and repudiate it.

8. The instant writ petition was filed by the petitioner on July 2, 1998 and the alleged letter dated July 18, 1998 cancelling the sanction dated June 6, 1995 came to be issued during the pendency of writ petition. There is nothing on record to suggest that prior to issuance of said letter opportunity of hearing was provided to the petitioner. In my opinion the contention of respondents that they were fully empowered to withdraw fiscal incentives concessions in due course as per the policy of the State Government is devoid of substance. This Court would not act on the mere ipse dixit of the Government for it is the court which has to decide and not the Government whether the Government should be held exempt from liability.

9. In Under Secretary, Ministry of Industries and Ors. v. Marchon Textile Inds. (P) Ltd. and Anr. (2005) 10 SCC 554, the Hon'ble Apex Court indicated as under (Para 8).

The schemes floated by the State releasing grant of subsidy for industrial units to be set up in certain selected backward districts/areas have a benevolent and public purpose to achieve, and that is, to promote the growth of industries in such districts/areas which but for the State encouragement would continue to remain backward and the industrial investment will not be attracted to such areas. Such schemes have to be construed with practical and pragmatic approach so as to achieve and not frustrate the purpose sought to be achieved. The benefit of the scheme ought to be allowed, if it can be done. The applications should not be dealt with a hypertechnical approach or in a pedantic manner. If the application filed before the cut off date is substantially in order and satisfies the formalities expected of the scheme; then an opportunity should be allowed to the applicant to cure the defects which are not of substantial nature or are capable of being cured so that the deserving units are not left out of the scheme.

10. In State of Rajasthan v. Khemka Cement JT 1999 (5) SC 120 it was held that the subsidy could not be withdrawn with retrospective effect.

11. As a result of the above discussion we allow the writ petition and direct respondents to disburse the subsidy amount as sanctioned by the State Level Committee on June 6, 1995. The letter dated July 18, 1998 which was issued during the pendency of the writ petition stands quashed. There shall be no order as to costs.