(2004) 03 PAT CK 0093

In the Patna High Court

Case No : C.W.J.C. No. 3665 of 2002

A.R. Chemicals Pvt. Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 10-03-2004

Acts Referred:

Citation : (2004) 2 PLJR 795

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : S.D. Sanjay and Suraj Samdarshi, for the Appellant; J.C. to G.P. IV for State and Ramesh Kumar Datta and Piyush Lall for Respondent No. 3 and Navniti Pd. Singh, for BSFC, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—Heard learned Counsel for the parties.

2. In this writ petition, the Petitioner has sought for direction to the Respondent to release and disburse the amount of capital subsidy along with seed money, diesel generator set subsidy and project subsidy in their favour in terms of the Bihar Industrial Policy, 1986, which the Respondent have kept withheld now for almost 18 years.

3. Counter affidavit and supplementary counter affidavit have been tiled on behalf of the Director, Industries (Respondent No. 2).

4. It is not disputed that the Petitioner was entitled for the grant of said subsidy rather it is accepted that the Petitioners unit is entitled for grant of subsidy but the same was not released due to paucity of fund as is evident from the statement made in paragraph 7 of the counter affidavit itself. However, it is stated that as the Petitioner''s unit is closed Since November, 1995 and there is no provision for grant of capital subsidy to a closed unit, the Petitioner is not entitled for the same.

5. In the supplementary counter affidavit it is stated that the Department of Industries, vide order contained in letter No. 1061 dated 21.2.1997 para 5 (II) has categorically stated that the subsidy will be given to only working units and as such the Petitioner being a closed unit is not entitled to subsidy. A photo copy of the said letter has been annexed as Annexure A to the supplementary counter affidavit. In fact, Annexure A to the supplementary counter affidavit itself would show that the said condition relates to the grant of subsidy of Rs. 74,61,000/- to the minor/rural industrial units in other parts of the State during the year 1996-97 and it has nothing to do with the earlier policy of the year 1986.

6. Learned Counsel for the Petitioner, however, with reference to the decision of the Apex Body, contained in Annexure-10, at page 42 submitted that even the present norm to release subsidy only to functional units was decided to be relaxed. In my opinion, even so called relaxation was not required when Annexure A to the supplementary counter affidavit does not relate to the grant of subsidy as per 1986 Policy. It is not the case of the Respondent that there was any such condition in the 1986 Policy. Moreover, it is not the case of the Respondent that the unit never started production rather, as I have already mentioned above, the Respondent have admitted that the Petitioner was entitled for grant of subsidy which was not paid only on account of paucity of fund.

7. This Court in the case of M/s Prabha Electrocastings Pvt. Ltd. v. The State of Bihar and Ors. (C.W.J.C. No. 4687 of 2002) disposed of on 24.2.2004, has expressed anguish upon such attitude of the Director. This Court has observed that it is really unfortunate that industry is made to suffer on account of non-compliance of the promise made under such policy, which results in industries going into debts and finally closure of the unit itself. This only shows callousness on the part of Respondent No. 2 in dealing with such claim, as, is evident from the facts of the present case itself that despite service of notice of this writ petition on 10.4.2002 the Respondent No. 2 instead of redressing the grievance of the Petitioner has contested the claim on flimsy ground. The Court, thus, allowed the said writ petition with a cost of Rs. 10,000/- with a direction to release the remaining subsidy amount and pay the same with interest at the rate of 10% per annum along with cost within two weeks.

8. The instant case also is of similar nature where denial of payment of subsidy pursuant to policy has resulted in the unit going into debts and finally closure of the unit itself, which is really unfortunate.

9. Earlier, this Court granted indulgence to the Director to consider the claim of the Petitioner in right perspective but by filing supplementary counter affidavit he has relied upon the so-called Government decision (Annexure A) which has got no application to the present case, as has already been held above.

10. Accordingly, this Court finds it to be a fit case for awarding heavy cost to be paid by the Director from his pocket be sides interest at the rate of 10% per annum on the subsidy amount from due date.

11. This writ petition is thus allowed with a cost of Rs. 10,000/- (ten thousand) to be paid by the Director, Industries (Respondent No. 2) from his pocket. Respondent No. 2 is directed to release the entire subsidy amount and pay the same with interest at the rate of 10% per annum from due date and cost within two weeks, failing which the Petitioner will be at liberty to file two pages affidavit for initiating appropriate action.