

(2001) 02 GUJ CK 0019

In the Gujarat High Court

Case No : Special Civil Application No. 10961 of 2000

Ashok Oxygen

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 14-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 49

Citation : (2006) 143 STC 640

Hon'ble Judges : M.S. Shah, J;J.M. Panchal, J

Bench : Division Bench

**Advocate : K.A. Puj, for the Appellant; Uday R. Bhatt, AGP for the Respondent
Nos. 1 and 2, for the Respondent**

Final Decision : Dismissed

Judgement

J.M. Panchal, J.—By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ, order or direction to declare that the resolution dated April 29, 2000 seeking discontinuation of sales tax based incentives provided under the Industrial Incentive Policy 1995-2000 and prescription of eligibility conditions for treating industrial units as pipeline cases to enable the units to have benefits of existing commitments in respect of incentives offered by Industrial Incentive Policy 1995-2000, is illegal, unlawful, unconstitutional, violative of principles of law, equity and justice and amounting to breach of principles of promissory estoppel. The petitioner has further prayed that retrospective implementation of the resolution dated April 29, 2000 be declared as void.

2. With a view to accelerating development of the backward areas of the State and creating large scale employment opportunities, the Government of Gujarat had formulated Industrial Incentive Policy 1995-2000 which, inter alia, provided for giving capital investment subsidy and sales tax incentives. The scheme had come into operation with effect from August 16, 1996 and was to be operative

for a period of 5 years, i.e., up to August 15, 2000. In the conference of Chief Ministers and Finance Ministers of States and Union Territories which was held on November 16, 1999, the State Governments and Central Government had evolved a consensus for abolition of sales tax related incentives and concessions. It was also decided in principle to give effect to this discontinuance of incentives with effect from January 1, 2000. The Standing Committee of State Finance Ministers which was constituted to monitor sales tax reforms in its meeting held on December 20, 1999 unanimously resolved that there should be no new incentives relating to sales tax for any industry and that the industrial units in pipelines should be given incentives only if such units fulfilled certain conditions. In view of this policy decision, the Government of Gujarat issued resolution dated April 29, 2000 to give effect to the decision taken in the conference held on November 16, 1999. The resolution, inter alia, provides that sales tax based incentives for new investments as well as for expansion/modernisation/diversification, etc., shall be discontinued with effect from January 1, 2000 which are granted earlier, but the existing commitments in respect of such incentives made/offered in respect of the industrial units eligible as on December 31, 1999 shall be continued for the period of their eligibility on fulfilment of conditions stipulated therein. The petitioner, which is a partnership firm and engaged in manufacture and sale of industrial oxygen, made application dated March 30, 2000 for obtaining provisional registration as small-scale industry. The petitioner was granted provisional registration certificate on March 30, 2000. Thereafter, the petitioner applied for permanent registration certificate which was granted on August 11, 2000. The petitioner wanted to avail of the benefits under the Industrial Incentive Policy which was in operation from August 16, 1995 to August 15, 2000 and made application accordingly. The respondent No. 2 issued a notice dated May 31, 2000, calling upon the petitioner to produce evidence to show that (i) provisional registration certificate was granted to the petitioner prior to January 1, 2000 indicating that the petitioner was a small-scale industry, (ii) the petitioner had obtained possession of the land before January 1, 2000 and (iii) the petitioner had made application prior to January 1, 2000 to the regular financial institutions for finances, to enable the respondent No. 2 to decide the question whether the petitioner-unit should be treated as a pipeline case within the meaning of resolution dated April 29, 2000. The petitioner could not produce the evidence before the competent authority and is not granted benefit of Industrial Incentive Policy 1995-2000. The petitioner has pleaded in the petition that before the date of new resolution, i.e., April 29, 2000, the petitioner was granted provisional registration as small-scale industry on March 30, 2000 and had also obtained land on lease and, therefore, the petitioner is entitled to the benefit of Industrial Incentive Policy 1995-2000. According to the petitioner, as the petitioner-unit has satisfied all the three conditions stipulated in the resolution dated April 29, 2000, the petitioner-unit ought to have been treated as a pipeline case and should have been granted benefit of Industrial Incentive Policy 1995-2000. What is claimed in the petition is that on the basis of promise held out by the respondents in Industrial Incentive Policy 1995-2000,

the petitioner had obtained provisional registration as small-scale industry as well as the land on lease and, therefore, now the respondents are estopped from refusing to grant benefit of Industrial Incentive Policy 1995-2000. The petitioner has also averred that the cut-off date prescribed by resolution dated April 29, 2000, is arbitrary and that the said resolution could not have been made applicable with retrospective effect from January 1, 2000. Under the circumstances, the petitioner has filed the present petition and claimed the reliefs to which reference is made herein-above.

3. On notice being served, Mr. J.N. Jadhav, General Manager, District Industries Centre, Vidhya Nagar, Bhavnagar, has filed reply affidavit controverting the averments made in the petition. In the reply, it is mentioned that after discontinuation of sales tax based incentives under the Industrial Incentive Policy 1995-2000, the petitioner was served with a notice dated May 31, 2000 calling upon it to produce necessary documents before him to enable him to decide the question whether the petitioner-unit should be treated as a pipeline case or not and as the petitioner was not able to produce the temporary registration certificate obtained prior to December 31, 1999 or rent agreement indicating that the petitioner had obtained possession of the land prior to December 31, 1999, or that the petitioner had made application before any financial institution prior to December 31, 1999 for finances, the petitioner-unit is not treated as a pipeline case and not entitled to incentive provided under Industrial Incentive Policy 1995-2000. What is mentioned in the reply is that the State Government is competent to lay down the policy by passing resolution and as the policy laid down is in the larger interest of public, the petitioner should not be granted reliefs claimed in the petition.

4. Mr. K.A. Puj, learned Counsel for the petitioner, submitted that Industrial Incentive Policy formulated for 1995-2000 was in operation till August 15, 2000 and as the petitioner has obtained provisional registration as small-scale industry on March 30, 2000 as well as the land on lease before the issuance of the resolution dated April 29, 2000, the petitioner ought to have been treated as a pipeline case and granted benefit of Industrial Incentive Policy 1995-2000. What was pleaded by the learned Counsel for the petitioner was that the petitioner relying on the industrial incentive policy which was operative up to August 15, 2000 has changed its position by obtaining provisional certificate as a small-scale industry as well as possession of land on lease and, therefore, on the principle of promissory estoppel the respondents should be directed to grant incentive benefits contemplated by Industrial Incentive Scheme of 1995-2000. In support of his submissions, the learned Counsel for the petitioner placed reliance on the decisions in (i) M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, and (ii) State of Rajasthan and Others Vs. Bhatnagar Cement Co. (P) Ltd., .

5. Mr. Uday R. Bhatt, learned Counsel for the respondents, submitted that the policy contemplated by resolution dated April 29, 2000 is neither arbitrary nor

irrational and as the petitioner does not satisfy all the conditions stipulated therein to be treated as a pipeline case, the petitioner is not entitled to the reliefs claimed in the petition. The learned Counsel stressed that the Government is competent to change its policy in public interest on the basis of resource crunch and as the petitioner had not obtained provisional certificate as small-scale industry prior to December 31, 1999 or obtained possession of the land before the said date, the principle of promissory estoppel would not be applicable to the facts of the present case. It was argued that the resolution dated April 29, 2000 was issued pursuant to decision taken at the conference of Chief Ministers and Finance Ministers of States and Union Territories which was held on November 16, 1999 and as the petitioner must be presumed to be aware of the said decision taken on November 16, 1999, the petition should not be entertained. In support of his submissions, the learned Counsel placed reliance on the decision in *Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another*, .

6. We have heard the learned Counsel for the parties and taken into consideration the documents forming part of the record as well as the affidavit-in-reply filed on behalf of the respondents. A bare reading of resolution dated April 29, 2000 makes it evident that in the conference of Chief Ministers and Finance Ministers of States and Union Territories which was held on November 16, 1999, the State Governments and Central Government had evolved a consensus for abolition of sales tax related incentives and concessions. It was also decided in principle to give effect to this discontinuation of incentives with effect from January 1, 2000. Moreover, the Standing Committee of the State Finance Ministers constituted to monitor sales tax reforms in its meeting held on December 20, 1999 had unanimously resolved that there should be no new incentives relating to sales tax for any industry and that the industrial units in pipelines should be given incentives only if such units fulfilled certain conditions. In the light of the said decision, resolution dated April 29, 2000 has been issued by the State Government. In the resolution, it has been specifically mentioned that the SSI unit which has applied to the registering authority before January 1, 2000 for obtaining a provisional registration certificate and has obtained land for the factory prior to January 1, 2000 as well as made application for finances from any regular financial institution prior to January 1, 2000 shall be treated as a pipeline case so as to be entitled to existing incentives. It is an admitted position that the petitioner had not made any application for obtaining the provisional registration certificate prior to January 1, 2000, nor obtained possession of the land for the factory prior to January 1, 2000 nor made any application to any regular financial institution for finances before January 1, 2000 and, therefore, the decision of the respondents not to treat the petitioner-unit as a pipeline case cannot be said to be illegal or arbitrary. We have gone through the decisions cited at the Bar by the learned Counsel for the petitioner and we are of the opinion that the principles laid down in those decisions are not applicable to the facts of the present case. In *M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others*, , the U.P. State Electricity Board

had issued three notifications u/s 49 of Electricity (Supply) Act, 1948, notifying revised rate schedules and the rate schedules which were incorporated in these notifications contained an item pertaining to incentives to new industries. The rebate provided under notification dated January 28, 1986 was deleted by another notification. It was found that new industries which were set up had altered their position irretrievably. In these circumstances, the Supreme Court invoked principle of promissory estoppel to pin down the U.P. State Electricity Board to the promise offered by it. Here, in this case, the petitioner has not availed of any benefit under Industrial Incentive Policy 1995-2000 nor altered its position and had made application for provisional registration as a small-scale unit as well as obtained land on lease, after cut-off date of January 1, 2000 prescribed by Government Resolution dated April 29, 2000. Therefore, the petitioner is not entitled to any relief on the basis of decision of the Supreme Court in *M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others*, . Again in *State of Rajasthan and Others Vs. Bhatnagar Cement Co. (P) Ltd.*, , the respondent-cement plant was granted 100 per cent exemption under Sales Tax Incentive Scheme, 1977 for a period of 7 years but by subsequent amendments to the scheme, exemption was restricted to 50 per cent with retrospective effect. Consequently the respondent was required to deposit tax for past period which, it was, at the relevant time, not required to collect nor had in fact collected. The demand of tax was challenged by the respondent before Taxation Tribunal which had annulled it and that decision has been upheld by the Supreme Court by observing that the tax could not have been demanded retrospectively when it was not collected. Here the fact situation, does not show that the tax was demanded from the petitioner, with retrospective effect and, therefore, the petitioner cannot be granted any relief on the basis of decision of the Supreme Court in *State of Rajasthan State of Rajasthan and Others Vs. Bhatnagar Cement Co. (P) Ltd.*, . However, in our opinion, the principle laid down by the Supreme Court in *Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another*, is applicable to the facts of the present case. In the said case, the Industries Department of the Government of Orissa had issued the Industrial Policy Resolution dated July 18, 1979 granting sales tax exemption. Clause (8) thereof provided that appropriate orders for benefits were to be passed by the authorities. A notification dated November 11, 1969 was issued u/s 6 of the Orissa Sales Tax Act exempting certain dealers from sales/purchase tax. Later on that notification was abrogated but restored by notification dated September 9, 1977. The respondent claimed that it had set up its industry pursuant to the industrial policy resolution by obtaining huge loan from bank and as it had commenced production on March 19, 1980, it was eligible for the exemption given by the notification dated September 9, 1977. The case of the respondent in the writ petition before the High Court was that by virtue of the principle of promissory estoppel, the State Government could not have changed the exemption notifications to the detriment of the assessee. The writ petition was allowed by the High Court. The question before the Supreme Court was whether the Government had made any promise to the respondent

and if so, can it depart from the promise made by it in the industrial policy resolution which was stated to be effective for 1977-1983. Allowing the appeal, the Supreme Court has held that any industrial policy resolution can be changed if there is an overriding public interest involved and the court will not interfere with any action taken by the Government in public interest. What is emphasised therein is that public interest must override any consideration of private loss or gain and the plea of change of trade policy on the basis of resource crunch should be treated as sufficient for dismissing the respondent's case based on the doctrine of promissory estoppel. In view of the principle laid down by the Supreme Court in the above quoted decision, we are of the opinion that the resolution dated April 29, 2000 cannot be treated as arbitrary one or irrational. The cut-off date prescribed by the said resolution also cannot be regarded as arbitrary because before the cut-off date, decision was already taken to abolish sales tax related incentives and concessions in the conference of the Chief Ministers and Finance Ministers of States and Union Territories which was held on November 16, 1999 and the petitioner must be presumed to be aware of the same. The petitioner has failed to establish plea of promissory estoppel. On overall view of the matter, we are satisfied that the action of the respondents in not granting the benefit of Industrial Incentive Policy 1995-2000 to the petitioner cannot be regarded as arbitrary or illegal so as to warrant our interference in the present petition which is filed under Article 226 of the Constitution. The petition, therefore, cannot be entertained and is liable to be dismissed.

7. For the foregoing reasons, the petition fails and is dismissed. Notice is discharged with no order as to costs.