(2008) 02 AP CK 0073

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 14789 of 1999 and 1631 of 2001

Ashwin Agro Tech Pvt. Ltd. APPELLANT

Vs

Government of Andhra Pradesh and Others RESPONDENT

Date of Decision : 21-02-2008

Acts Referred:

Electricity (Supply) Act, 1948 — Section 78A
State Financial Corporations Act, 1951 — Section 29

Citation : (2008) 3 ALD 665

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Duba V. Nagarjuna Babu, in WP No. 14789 of 1999 and N. Jayasurya, in WP No. 1631 of 2001, for the Appellant; Government Pleader for Industries for Respondent Nos. 1 to 3 in WP No. 14789 of 1999 and for Respondent Nos. 4 and 5 in WP No. 1631 of 2001 and O. Manohar Reddy, for Respondent Nos. 4 to 6 in WP No. 14789 of 1999 and Respondent Nos. 1 to 3 in WP No. 1631 of 2001, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—As common questions of fact and law arise in both the writ petitions, they are being disposed of by a common order.

2. WP No. 14789 of 1999 is filed to declare Clause (b) of B.P. (Oppn. & Comml.) Ms. No. 1, dated 3.4.1997 issued by the Transmission Corporation of A.P. (A.P. TRANSCO) (4th respondent) as illegal, arbitrary, unjust and contrary to the policy of the Government contained in CO. Ms. No. 108, Industries and Commerce (IP.II) Department, dated 20.5.1996 and consequently set aside the same and declare , that the petitioner is entitled to 25% rebate on the power tariff for a period of three years with effect from 19.12.1997 in terms of the eligibility certificate dated 16.11.1998 issued by the General Manager, District Industries Centre, Guntur (3rd respondent).

3. WP No. 1631 of 2001 is filed to direct the Transmission Corporation of A.P.

(A.P. TRANSCO) (1st respondent) and its employees mentioned as other respondents in the writ petition to extend the benefit of 25% rebate in the electricity charges in terms of G.O. Ms. No. 108, Industries and Commerce (IP.II) Department, dated 20.5.1996 for a period of three years with effect from 16.2.1999 and direct refund of the amounts already collected from the petitioner.

4. The case of the petitioner in WP No 14789 of 1999 is that M/s. Lakshmi Srinivasa Oil and Fats Private Limited, a sick unit, was purchased from APIDC in an auction conducted u/s 29 of State Finance Corporation Act, 1951 and thereafter the purchaser took steps for establishing the petitioner industry for manufacture of rice bran oil and deoiled rice bran, and obtained necessary permissions from the Industries and other Departments and purchased machines by spending huge amounts and commenced production with effect from 18.5.1997 and submitted an application for release of power on 15.7.1997. 4th respondent collected huge amount for release of power supply to the petitioner unit. As the Government of Andhra Pradesh vide G.O. Ms. No. 108, Industries and Commerce (IP.II) Department, dated 20.5.1996 granted certain incentives including tax holiday on sales tax and rebate in electricity charges, a request was made on behalf of the petitioner to the 4th respondent to grant such rebate, after obtaining the eligibility certificate from the 3rd respondent. But the 4th respondent rejected the said request on the ground that B.P. Ms. No. 1, dated 3.4.1997 lays down that a new owner is not eligible for sanction of 25% rebate on power tariff and as the petitioner unit is set up in an old industry, it is not entitled to the benefit sought. The case of the petitioner is that inasmuch as B.P. Ms. No. 1 is contrary to the policy decision taken by the Government of Andhra Pradesh, the said B.P. Ms. No. 1 is not valid, and so, it also entitled to the benefit of 25% rebate as per G.O. Ms. No. 108, Industries and Commerce (IP.II) Department, dated 20.5.1996.

5. The case of the petitioner in W.P. No 1631 of 2001 is that, being attracted by the incentives offered in G.O. Ms. No. 108, Industries and Commerce (IP.II) Department, dated 20.5.1996, it got itself registered as a small scale industry and started business in manufacture of Egg Trays with waste paper as raw material after acquiring the property in which M/s. Vijaya Krishna Rice Mill was run, and after removing the old machinery from the premises it sought for a fresh electricity connection in its name, and so, the power supply in the name of old industry was transferred in its name with effect from 24.12.1998. Thereafter it made an application for additional load, and went into commercial production from 16.2.1999 after additional load of 35 HP was sanctioned on 29.4.1999, when it sought for 25% rebate on power charges as per G.O. Ms. No. 108, Industries and Commerce (IP.II) Department, dated 20.5.1996, it was denied the benefit on the ground that it is not eligible for such benefit in view of the fact that it is established an old industrial premises and as it is not a new unit.

6. The case of the respondents in both the petitions is that inasmuch as the petitioners are not new industries and are established in the old premises, they

are not entitled to the benefit of 25% rebate envisaged by G.O. Ms. No. 108, Industries and Commerce (IP.II) Department, dated 20.5.1996.

7. The contention of Sri D.V. Nagarjuna Babu, appearing on behalf of the petitioner in W.P. No. 14789 of 1999, is that in view of Section 78A of Electricity (Supply) Act, 1948, the policy decision taken by the Government prevails over the executive instructions issued by the A.P. TRANSCO, and so, B.P. Ms. No. 1 does not come in the way of enforcing G.O. Ms. No. 108, Industries and Commerce (IP.II) Department, dated 20.5.1996 and so the respondents cannot set at naught a G.O. by making use of B.P. Ms. No. 1. Relying on Uni Metal Alloys Ltd., Hyderabad Vs. APSEB, Hyderabad and others, , Sree Rayalaseema Alkalies and Allied Chemicals Limited Vs. A.P. State Electricity Board and Others, , which was confirmed in A.P. State Electricity Board and Others Vs. Sree Rayalaseema Alkalies and Allied Chemicals Ltd., he contended that the petitioner in VVP No. 1631 of 2001 is entitled to the relief sought.

8. The contention of Sri N. Jayasurya, learned Counsel for the petitioner in W.P. No. 1631 of 2001, is that though the petitioner did not seek the relief of quashing the B.P. Ms. No. 1, inasmuch as the petitioner is denied the benefit of G.O. Ms. No. 108, Industries and Commerce (IP.II) Department, only on the ground that it has set up an industry in an old premises, and as respondents cannot deny the benefit of the said G.O. to the petitioner merely because it was established in an old factory premises, as the petitioner in fact removed the old machinery and established a new industry and obtained a fresh connection from the APSEB for supply of electricity, and so, for all practical purposes the industry established by the petitioner which is a ''new industry'' is entitled to the benefit of G.O. Ms. No. 108.

9. The contention of Sri O. Manohar Reddy, learned Standing Counsel for A.P. TRANSCO (hereinafter referred to as ''the Board'') is that G.O. Ms. No. 108, Industries and Commerce (IP.II) Department contemplates benefit of 25% rebate being extended only to new industries and as the purchasers in sales made u/s 29 of the A.P. Financial Corporations Act would get the property free from all encumbrances, there can be no scope for the Board to recover the arrears, if any, from the purchasers, the Board is finding it difficult to realize the arrears, if any, from the previous owners, and so, in order to protect its interest, the Board does not extend the benefit of G.O. Ms. No. 108, Industries and Commerce (IP.II) Department to the industries set up in the old premises, and that is the reason why the Board did not extend the benefit of G.O. Ms. No. 108 to the petitioners, and so, the petitioners are not entitled to any relief.

10. It is not the case of the respondents that the previous owners of the premiseses in which the petitioners established their industries, owed any amount, to the Board. In fact, petitioners are not denied the benefit of G.O. Ms. No. 108 on the ground that the previous owners owed some amounts to the Board. The specific case of the respondents is that inasmuch as the industries established by the petitioners are not new industries as they are established in

old premises, they are not entitled to the benefit of the said G.O. in view of B.P.Ms. No. 1, I am of the considered opinion that merely because new industry is established in a premises in which another industry was run therein earlier, it would not become an old industry. If the petitioners started the same business by making use of the same machinery in the premises purchased by them, it can be said that the industries set up are not new industries. Petitioners in both these cases claim that they, after purchase of the premises, dismantled the earlier machinery and established new machinery after obtaining loans and started new industries. So, for all practical purposes they are newly established industries. For determining whether an industry is a new industry for being entitled to the benefit of G.O. Ms. No. 108, it is not necessary that it should be established in a newly constructed building. Just like an old industry shifted into a new building would not become a new industry, a new industry set up in an old building does not become an old industry. Therefore, the age of the building in which the industry is established is not and cannot be the criteria for finding out if it is a new industry or not. The criterion should be whether the industry established is an old building is a new industry or not. Petitioners in both these cases had after purchase of the premises, established new industries and obtained certificates from the competent authority i.e., Industries Centre about their eligibility to claim the benefit of the G.O. Ms. No. 108.

11. In view of the ratio in the decisions relied-on by Sri D.V. Nagarjuna Babu, it is clear that the policy decision of the Government prevails over the executive instructions of the Board, and so, petitioners cannot be denied the benefits, which is due to them under G.O. Ms. No. 108. Therefore, the action of the respondents in refusing the request of the petitioners for extending the benefit of G.O. Ms. No. 108 is unsustainable and is liable to be set aside and is accordingly set aside.

12. The writ petitions are allowed with costs and the respondents are directed to grant the benefit of G.O. Ms. No. 108 by granting rebate of 25% for a period of three years from the date of establishment. The payments already made by the petitioners shall be adjusted in the future bills to be paid by the petitioners.

