

(2010) 11 AHC CK 0194
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17118 of 2010

Bajaj Hindusthan Sugar & Industries Limited, Vishal Khand, APPELLANT
Gomti Nagar Lucknow

Vs

State of U.P. and others. RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Citation : (2010) 11 AHC CK 0194

Hon'ble Judges : Amitava Lala, J and Sanjay Misra, J

Final Decision : Allowed

Judgement

We have heard Sri Kesari Nath Tripathi, learned Senior Counsel assisted by Sri Ashish Misra, learned counsel for the petitioner and Sri Satish Chaturvedi, learned Additional Advocate General, Sri Ravi Shankar Prasad, learned Additional Chief Standing Counsel and Sri S.N. Srivastava, learned Standing Counsel appearing for the respondents.

The petitioner is aggrieved by the order dated 3.3.2010 (Annexure13 to the writ petition) passed by the Cane Commissioner, U.P. Lucknow (respondent no.3) and prays for quashing of the same as also for a direction to the respondents to grant eligibility certificate to the petitioner's Company under the Sugar Industry Promotion Policy, 2004 with the consequential benefits. A further prayer has been made to quash the recovery certificate issued by the respondents for realising of purchase tax and benefits/exemption obtained by the petitioner in pursuance to the Sugar Industry Promotion Policy, 2004. They also pray that the Government Order dated 4.6.2007 be not given effect too.

According to Sri K.N. Tripathi, the Government came out with a Sugar Industry Promotion Policy, 2004 on 24.8.2004 (hereinafter referred to as the "Policy") providing certain exemption benefits to Sugar Industries coming within the eligibility criteria fixed under the Policy. It is submitted that the Policy provided that it would be effective till 31.3.2007 but subsequently it was extended to be effective till 31.3.2008. However, by the Government Order dated 4.6.2007, the

Policy was withdrawn/discontinued with immediate effect. The petitioner alleges to have assailed the order dated 4.6.2007 in Writ Petition No. 24926 of 2008, which was dismissed by the judgement dated 12.10.2009 with liberty to the petitioner to make a detailed application with his grievance against the demand notices and that he fulfilled the terms and conditions of the Policy for getting benefits therefrom. The petitioner filed such an application before the Cane Commissioner on 31.12.2009 but when recovery proceeding were pursued by the respondents, the petitioner filed a Writ Petition No. 1142 of 2010 (M/B) before the Lucknow Bench but it became infructuous since during its pendency the representation of the petitioner was decided on 3.3.2001 by the Cane Commissioner. It is the said order that has been assailed in this writ petition.

According to Sri Tripathi a perusal of the impugned order will indicate that the grievance of the petitioner was addressed in a very cryptic manner and the petitioner has been unsuited by default and not on the rejection of the merits of his claim. While elucidating upon the reason assigned in the impugned order, he submits that the first reason given is that the petitioner's Company had passed a resolution on 26.12.2007 for applying for the benefit of the 2004 Policy, which itself indicates that it was a resolution passed nearly 6 months after the Policy had been withdrawn by the Government Order dated 4.6.2007. The second reason referred to by him is that the resolution dated 26.12.2007 passed by the petitioner's Company was not presented before the Cane Commissioner through an authorised Officer. The third reason given in the impugned order as pointed out by Sri Tripathi is that although the representation dated 31.12.2009 refers to certain documents as enclosed but in such documents in column 4 the date of total capital invested after 1.4.2004 has been shown as "31.0" hence it has not been shown as to during which period such capital investment was made inasmuch as the column does not contain a complete last date. The fourth reason for rejection is that although the representation dated 31.12.2009 refers to a certificate to the effect that there are more than 1000 persons employed under the petitioner but no such certificate was found by the Cane Commissioner alongwith the representation. The fifth reason is that there was no evidence submitted by the petitioner relating to payment for purchase of sugar cane. The sixth reason is that although the petitioner Company had started crushing in the season 200708 but it had not started crushing in the season 200809 or thereafter and hence it has not come with clean hands while claiming the benefits of the 2004 Policy. A reference has been made to the order dated 12.10.2009 passed in Writ Petition No. 24926 of 2008 relating to such conduct of the petitioner found by the Writ Court and lastly that there was no new ground taken by the petitioner in his representation hence in view of the order dated 12.10.2009 passed by the Writ Court, the representation requires to be rejected. The Cane Commissioner has then recorded that the 2004 Policy does not subsist any more and the Committee constituted under the Policy for consideration of an application for exemption has since been desolved and cannot be reconstituted since the Policy does not exists any longer. For these reasons, the representation

of the petitioner was rejected and recovery proceeding were directed to continue. According to Sri Tripathi the findings recorded in the impugned order are not a decision on the merits of the petitioner's case and hence unless the petitioner is found to be ineligible he cannot be denied the benefits of the Policy, particularly when the petitioner had started crushing in the first part of the year 2007 when the Policy was in force prior to 4.6.2007.

Sri Satish Chaturvedi, learned Additional Advocate General had contested the writ petition on behalf of the respondents to state that once the Writ Court in the earlier writ petition had refused to grant relief to the petitioner and has dismissed the writ petition by recording a clear finding that the petitioner has come with unclean hands then such order of the Writ Court having attained finality cannot be reopened or reviewed by means of a subsequent writ petition. He has pointed out to the findings recorded in the order dated 12.10.2009 in Writ Petition No. 24926 of 2008. His further submission is that the petitioner's representation was considered in pursuance of the direction issued by the Writ Court in the earlier writ petition and it was a consideration made by the Cane Commissioner. The impugned order has given specific reasons for rejection of the petitioner's representation and it cannot be said that even on facts as pleaded by the petitioner he can be made entitled to the benefits of the 2004 Policy. According to him the undisputed fact is that the 2004 Policy came to an end with the issuance of the Government Order dated 4.6.2007 and the application of the petitioner was received later on 26.12.2007, therefore, it has been rightly concluded by the Cane Commissioner that the petitioner cannot be entitled to the benefits of the 2004 Policy. He has further stated that the petitioner may have started crushing in the season 200708 but under the terms of the Policy he could not be entitled to any benefit because he stopped crushing in the season 200809 and subsequently. He further submits that the relevant documents in support of the total investment, number of persons employed and purchase of Cane was not submitted along with the representation hence, the petitioner's case as taken up therein was not duly established. As such after the Policy of 2004 came to an end on 4.6.2007 no Committee can now be reconstituted to reconsider the claim of the petitioner.

We have considered the submission of learned counsel for the parties and have perused the record. We are conscious that in exercise of our jurisdiction under Article 226 of the Constitution of India, we cannot record any finding on disputed questions of fact nor can we substitute our opinion with that of a Committee formed by the State Government to consider purely factual aspects. But when we go through the impugned order we find that the application of the 2004 Policy in the case of the petitioner was a question raised which was based on facts and record. The Cane Commissioner while considering such grievance has rejected the eligibility claimed by the petitioner under the Policy not on merits but by an alleged default on the part of the petitioner. Such default is with respect to the following 3 issues, which are quoted from the impugned order (as per the English version supplied by learned counsel appearing for the petitioner):

"(ga) In the documents enclosed with application of the sugar mill dated 31.12.2009, the dates of total capital investment after the date 1.4.2004, has been illegibly typed.

(gha) Although in the applications dated 31.12.2009 mentions about the certificate providing employment to 1000 persons, but no such certificate has been found enclosed.

(ch) Although in the applications dated 31.12.2009 mentions about the payment certificate in respect of cane purchased, but no such certificate has been found enclosed."

The petitioner alleges that he had annexed all the documents with his representation. The form where it is alleged that the last date is not shown was produced but a finding has been recorded from a photostat copy whereas the petitioner ought to have produced the original. Secondly, the dispute here is of non availability of certificates alongwith the representation before the Cane Commissioner and the petitioner's insistence is that he had filed the certificates. These are purely averments and denial made by the parties. The Writ Court cannot record any finding on such dispute since writ proceedings are to be decided only on exchange of affidavits. But when we see that the petitioner's claim is rejected on such technical ground we find that it is not a rejection on merits. That was not what was required to be done in pursuance of the direction issued by the Writ Court for redressal of grievance of the petitioner by the respondents. The order dated 12.10.2009 passed in the earlier writ petition has found that the principle of promissory estoppel would apply in this case but the material placed in that writ petition was such that the Court found fault of the petitioner. However, having found the fault at the hands of the petitioner and upon dismissing the writ petition, the court was of the opinion that the petitioner can make an application for redressal of his grievance even then. In case the petitioner had filed the appropriate certificates there was no reason for the Cane Commissioner not to consider his claim on merits but when the Cane Commissioner found that the appropriate certificates had not been filed he rejected the claim on that score. Therefore, the admitted position is that on 3 points the petitioner has been unsuited for default.

At this stage we would like to make it very clear that the benefits provided by the State as of Policy decision can be availed by an eligible person. Eligibility was to be considered by the Committee and it could hold that the petitioner was not eligible on merits of the claim. In the present case, the decision has been taken by the Cane Commissioner on the aforesaid three points which is not based on merits. Therefore, in case the petitioner can submit the original certificates required under three points referred to above before the Cane Commissioner there is no reason why the Cane Commissioner should not consider the same again because it would not amount to review of his decision but it would be taking a decision on merits of the claim. Therefore, in case the petitioner files the appropriate certificates relating to point no.(ga), (gha) & (ch) referred to above

before the Cane Commissioner he ought to consider that aspect of the matter on the basis of such documents submitted by the petitioner in original.

So far as making the application dated 26.12.2007 is concerned, admittedly the term of the Policy of 2004 was extended up to 31.3.2008. The petitioner alleges to have started crushing in the season 200708. He could not make such an application before he started crushing. The Policy came to an end by the Government Order dated 4.6.2007 and the petitioner has been nonsuited on the ground that the policy has come to an end on 4.6.2007 and on the ground that the application has been made after 4.6.2007. Admittedly the Policy was in force prior to 4.6.2007 from the date of its issue i.e. 24.8.2004 and the eligibility is to be seen between these two dates. The petitioner's application dated 26.12.2007 claimed the benefits by virtue of its eligibility for the season 200708 at which time prior to 4.6.2007 admittedly, the Policy was in full force. Therefore, if during the period of life time of the Policy, an applicant shows his eligibility and is found to be eligible, he would be entitled to the benefits even if the application was made after the Policy came to an end. With respect to the period when the Policy was fully alive he was entitled to a consideration. Hence, the conclusion on the issue given in the impugned order appears to be due to a faulty reasoning.

On the submission that after the Government Order dated 4.6.2007 the Committee constituted under the Policy of 2004 has been disbanded we find no reason why, in case the Cane Commissioner comes to a conclusion that the petitioner was eligible for benefits of the 2004 Policy due to the circumstances existing during the life time of the Policy and prior to 4.6.2007, he would not refer the matter to the State Government for reconstituting the Committee, which could be only for the purpose of taking a decision on the facts and circumstances existing during the period of life time of the Policy and not at any point of time after 4.6.2007. Therefore, such submission of the State respondents does carry any convincing force and cannot be accepted.

For the aforesaid reasons we are of the view that the findings in the impugned order being not a finding on merits it requires to be set aside only for that reason and the Cane Commissioner should reconsider the application of the petitioner on merits and in accordance with law. The petitioner should file the original documents upon which he is placing reliance to be brought within the ambit of the 2004 Policy within seven days of obtaining certified copy of this order and upon the same being done the Cane Commissioner should proceed in accordance with law and conclude the proceedings before him within three weeks thereafter.

The writ petition is allowed as above. The impugned order shall be kept in abeyance and shall be subject to the final decision taken by the Cane Commissioner.

No order is passed as to costs.