(2000) 02 GUJ CK 0086

In the Gujarat High Court

Case No : Spl. Civil Application No''s. 4388 and 4398 of 1999

Bhavesh Gas Suppliers APPELLANT

Vs

District Industries Centre and Others RESPONDENT

Date of Decision : 10-02-2000

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 2001 Guj 99

Hon'ble Judges : J.N. Bhatt, J;C.K. Buch, J

Bench : Division Bench

Advocate : K.H. Kaji and Manish K. Kaji, for the Appellant; P.G. Desai, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, J.—Since both these petitions, under Article 226 of the Constitution of India, raise identical and common questions, upon request, they are being disposed of by this common judgment.

2. The petitioners have invoked the powers of this Court under Article 226 of the Constitution of India, contending that the letter dated 13th January, 1999, and the earlier orders mentioned in this connection, dated 31-7-1998, are unreasonable, unjust and illegal and therefore, required to be quashed and the respondents be directed to hold the petitioners as eligible for cash subsidy under the scheme and the resultant grant of such subsidy, as provided under the Scheme.

3. The petitioners are proprietary firms engaged in the manufacture of industrial oxygen gas. The factory in each case was set up at Khakharia, Tal, Sihar, Dist. Bhavnagar, sometime in 1995. Since the facts are common in both the petitions, facts of first petition are highlighted so as to appreciate and examine the merits of the matters.

4. The petitioner by its letter dated 24-11-1995 made an application for cash

subsidy under the Capital Investment Subsidy Scheme, 1990-95, proclaimed by the Gujarat Government in view of the new industrial policy and manifested in resolution dated, 16th October, 1990, which was to be operative from 16-8-1990 till 15-8-1995.

5. The new industrial policy proclaimed by the Government of Gujarat has a purpose and policy. In order to give emphasis for rapid industrialisation and to encourage balanced growth of industries and to generate employment in the rural and less developed areas certain incentives were granted earlier to new entrepreneurs which came to be, upwardly, revised. The earlier scheme of incentive was made effective from April 1, 1986. It was based on classification of talukas into four categories for providing different scales of incentives. The classification was based on the recommendations of High Power Committee for Development of Backward Area year 1983-84, whereas, the new industrial policy is referable to the years 1990-95.

6. One of the relevant provisions made in the said resolution is in para 8 which pertains to the mode of disbursement of subsidy. As per this provision, subsidy shall be disbursed either by the District Industries Centre, Industries Commissioner, Gujarat State, Financial Corporation or Gujarat Industrial Investment Corporation for the cases which have been sanctioned by the respective agency. The disbursement of the subsidy will be done in proportion of the creation of the fixed eligible assets upto 85 per cent of the sanctioned amount of subsidy. The balance 15 per cent would be disbursed only after the unit commences commercial production. If the unit fails to commence commercial production within two years after receiving 85 per cent of the subsidy, the amount of subsidy would be liable to be recovered as arrears of land revenue. There are other conditions, terms and procedure, to which we are not, vitally, concerned, at this juncture.

7. According to the case of the petitioners, they were entitled to have the full benefits of the said Scheme. Therefore, the petitioners by their letter dated 24-11-1995 applied for cash subsidy under the Scheme setting out the total investment made by the petitioner at Rs. 63,48,006.14 ps. which was received on 27-11-1995. The respondent No. 1. District Industries Centre, at Bhavnagar, issued a certificate dated 6-2-1998, stating that the petitioner had opted for sales tax exemption and it was located in Sihor in category 2 and in the certificate the registration No. 04/105/06719 dated 28-6-1996 as small scale industry was indicated. As per the said certificate, the petitioner was engaged in manufacturing industrial oxygen gas and investment in fixed assets was computed at Rs. 59,87,294/-. The certificate also sets out the date of commencement of production as 10-8-1995. It, also, recorded that the limit for sales tax exemption was Rs. 14,96,823/- from 10-8-1995 to 9-8-2001.

8. The petitioner had also applied for permanent registration as small scale industry in the prescribed form and in that application also, the date of commencement of production was, specifically, stated as 10-8-1995, under the

certificate issued by the respondent No. 1. However, the office of the respondent No. 2, Industries Commissioner, by sending letter dated 31-7-1998, informed the petitioner that its application for cash subsidy had been rejected only on theground that the first bill was dated 17-9-1995, beyond the period of the scheme, like that, 15th August, 1995.

9. The petitioners, therefore, approached by way of representation to this Hon''ble Minister for Industry claiming said cash subsidy under the Scheme 1990-95. The representation contained following aspects:

"Commercial production of the unit was started on 10-8-1995, which is amply verified and certified by the local authority, i.e. General Manager of District Industries Centre. They have checked, verified and cross examined on each and every ground few is like:

a) Checked, verified challan, bills and further cross examined with the parties to whom I have supplied finished product. The Authority is fully satisfied and confirmed the date of commencement of production i.e. 10-8-1995.

b) Checked, verified muster rolls and cross examined the same with workers and they satisfied and confirmed commercial date of production as 10-8-1995.

c) Authority have checked and verified generator set, LR of fuel oil, Bill of Fuel Oil and production filing sheet. Authority satisfied and confirmed date of commencement of production as 10-8-1995."

10. It was, also, pointed out in the representation that in case of M/s. Chen Marine Products, Taluka Okhaa, Dist: Jamnagar, the company claimed that it had started production from 5-8-1995, but the said quantity was exported on 5-9-1995 and the case of the said company was considered and the benefit was accorded. In short, the entire thrust of representation was that the petitioners are entitled to claim the benefits emerging from the Scheme and their claims were wrongly and illegally rejected by the Industries Commissioner. The objective of the State Government through the Industrial incentives is to encourage dispersal of Industrial development for the balanced development of the State and the sanctioning and disbursing authorities are expected to take a pragmatic approach in clearing the applications expeditiously. The representation was accompanied by as many as six enclosures, including copies of challans and bills.

11. The respondents have, inter alia, contended in the affidavit in reply that the first sale bill was beyond the period of the Scheme which ended on 15th August, 1995. In short, the main ground for rejecting the claim for benefits of the new Scheme is that the first sale bill was beyond the period of limitation and, therefore, the State Level Subsidy Committee In its meeting No. 198 held on 23rd June, 1998 had taken a decision to reject the applications of the petitioners as the unit had not started commercial production within the period of 15th August, 1995. It is, therefore, the case of the respondent authorities that

uniform policy of the State is not to grant the benefit to the entrepreneurs who have not started commercial production on or before 15th August, 1995 and since the petitioners in each case in these two petitions had submitted the sale bills of the period beyond 15th August, 1995, they are not entitled to the benefit of the said Scheme. Virtually, the facts enumerated in the petition are not in controversy.

12. It, therefore, would lead us to the consideration as to whether the rejection of the claim of the petitioners on the grounds stated in the affidavit in reply and in the resolution passed in the meeting No. 198 held on 23rd June, 1998, is vulnerable or sustainable. After having heard the learned counsels appearing for the petitioner and the learned Government Pleader for the respondent authorities and considering the factual scenario emerging from the record of the present case and the underlying purpose and design of the new industrial policy manifested in the resolution dated 16th October, 1990, we are of the, clear, opinion that the rejection of the claim of the petitioners, merely, on the ground that the sale bills were of the dates after 15th August, 1995, cannot be justified, since from the record, it is clear that the production after installation had been started and which is supported by documentary evidence of production register, copy whereof is placed on record, indicating the opening and closing stock and also showing the number of cylinders delivered on each date right from 10-8-1995 till 15-8-1995. Needless to reiterate that this aspect has not been questioned. Could it, now, be said that the rejection of the claim for the benefits of the said new Scheme in the resolution of the Government, by virtue of impugned letter dated 13-1-1999, is justified or reasonable, maintainable and legal? Our spontaneous answer would be in the negative. It cannot be contended that the production had not been started prior to 15-8-1995 merely because the sale bills indicated dates beyond 15th August, 1995. Therefore, in our opinion, the impugned letter manifesting the decision of rejection of the claim is required to be quashed. Of course, the petitioners have sought releif that the respondents be directed to grant cash subsidy under the scheme as provided in the resolution under consideration. Ordinarily, a writ Court in a case like the one on hand deems it expedient to direct the authorities to reconsider the case, expeditiously, leaving aside the grounds on which it came to be rejected, being unsustainable and meritless and we find no justification in making a departure from such a practice of directing the Department to reconsider the case of the petitioner in each case.

13. Before parting, we cannot resist the temptation of saying that when the State has a professed and avowed object and policy to encourage enterpreneurship and make rapid industrialisation, more so in the time of globalisation, the entrepreneurs aspire and wish to have red-carpet treatment rather than red-tapism.

14. In the result, both the petitions are allowed. The respondent authorities are directed to take up the case in the State Level Subsidy Committee for

reconsideration of the case of the petitioners on merits for the grant of the benefits under the Scheme known as Capital Investment Subsidy Scheme, 1990-1995, highlighted in Government resolution dated 16th October, 1990, as expeditiously as possible and preferably in the next meeting, since much time has lapsed and also earlier the respondent authorities have taken a period of about three years in deciding the representation, but in any case not later than the end of May, 2000. Rule is made aboslute accordingly, with no order as to costs.

