(1994) 02 GAU CK 0009

In the Gauhati High Court

Case No : Civil Rule No. 729 of 1993

Brahmaputra Steel Pvt. Ltd. and Another — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 01-02-1994

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1994) 1 GLR 334

Hon'ble Judges : R.K. Manisana Singh, C.J;D.N. Baruah, J

Bench : Division Bench

Advocate : J.P. Bhattacherjee, G.K. Joshi and R.K. Joshi, for the Appellant; S.N. Bhuyan. A.G. for Assam, N.N. Saikia, Standing Counsel ASEB and J. Chutia, for the Respondent

Judgement

R.K. Manisana Singh, C.J.—In this application under Article 226 of the Constitution of India, the Petitioners have prayed for a direction to the Respondents to pay power subsidy, transport subsidy, capital subsidy, etc.

2. The Government of Assam made an Industrial Policy styled as "Industrial Policy of Assam 1986" (which we shall refer to as the "Policy of 1986"). The policy provides, inter alia, "interest subsidy" and "power subsidy" in the following terms:

Interest Subsidy;

Entrepreneurs will be provided interest subsidy on working capital above 8 percent for SSI and Sick Industrial Units for such loans taken from banks and financial institutions. This benefit will be available for the first three years from the date of commercial production/revival of the unit respectively.

Power Subsidy:

Power subsidy will be granted as follows:

With regard to the Small Scale Sector, Power Subsidy will be granted to the extent of 50% for the first five years of commercial production. There will be no ceiling to the subsidy amount which can be availed of by the small scale sector.

Subsidy on drawal of power lines:

For the SSI units 50% of the cost incurred on drawal of Electrical Power Line, from the main line to the factory sheds, will be subsidized upto a ceiling of Rs 20.000/- for each industrial unit.

The implementing Agency is the Udyog Sahayak. Guidelines issued and published by the Udyog Sahayak Division indicates that the reimbursement of the subsidy amount would be done directly by the Udyog Sahayak on a quarterly basis. In order to ensure effective and proper implementation of the "Policy of 1986", committees have been constituted at the Divisional level as well as at the State Level. The Divisional Level Committee consists of nine members. A representative of the Assam State Electricity Board (ASEB) is one of the members and the Commissioner of Division is the Chairman. The committee is to meet quarterly to review implementation of the "Policy of 1986" and to ensure effective and close supervision about the implementation of the scheme, As regards the State Level Committee, the Minister of Industries is the Chairman and the Chairman of the ASEB is one of the members. The main function of the State Level Committee is to review the entire implementation of the "Policy of 1986" and to direct various departments and agencies concerned to expedite required clearance within the stipulated time.

3. The case of the Petitioner company is thus. The Petitioner company started production on and from 20.7.88 and was granted eligibility certificate for claiming subsidy under the "Policy of 1986". Therefore the Petitioner company is entitled to subsidy under the "policy of 1986" for five years, viz, from 20.7.88 to 19.7.93. For the said period of five years, the Government has to pay to the Petitioner company power subsidy amount of Rs 305.93 Jakhs (being 50% of the actual power consumption charge). The Government paid only five (5) lakhs on ad-hoc basis on 5.4.91. The Government has also not paid Rs 20,000.00, subsidy on drawal of power lines. The Petitioner company is also entitled lo interests subsidy for the said five years but only a sum of Rs. 17,55,981.00 had been sanctioned by the Respondent-5 vide letter dated 20.12.93. Under these circumstances, Petitioner company could not pay some of the bills Raised by the ASEB for electricity consumption charges and, therefore, the ASEB has issued notice for disconnection of power supply. The ASEB has also surcharged the Petitioner company a huge amount of money. Had the power subsidy been received in lime, the question of default in payment of electricity charges and surcharge would not have arisen and the Petitioner would have been entitled to rebate. That apart, no action has so far been taken for payment on the applications of the Petitioner company made to the competent authority claiming capital investment subsidy of Rs 10,00,000,00 and transport subsidy of Rs 30,00,000.00. On failure of the Government to pay the subsidy amount and on receipt of notice of disconnection of power supply this application has been filed by the Petitioner company

claiming "Power subsidy", "interest subsidy" and "subsidy on drawal of power lines" under the "Policy of 198$" and also "capital subsidy", "transport subsidy" and exemption of surcharge. The Petitioner has also claimed interest on the unpaid subsidy amount.

4. It is not disputed that the Petitioner company is entitled to subsidy under the "Policy of 1986"; that the company started production with effect from 20.7.88; and that some amount had been paid towards "power subsidy". It will be appropriate to mention here that the Government wrote letters to the ASEB to the effect that claims of ''power subsidy" payable to the Petitioner company was under examination and finalisation might be delayed due to financial constraints of the Government and not to disconnect the power supply. However, the case of the ASEB is that the Petitioner company is to pay full electricity charges to the ASEB and thereafter the company is to be reimbursed by the Government. In so far as reimbursement is concerned, it is between the Government and the Petitioner, company and not with the ASEB. The Petitioner company is bound by the terms of the contract of supply of electricity energy and, therefore, the company is bound to pay the electricity charge in terms of the contract. The State has not filed counter. However, Learned Advocate General has submitted that though the Petitioner company is entitled to subsidy under the "Policy of 1986", due to financial constraints of the Government subsidy amount could not be given in time. As for "Capital subsidy" and "Transport subsidy", the learned Advocate General submitted that if the Petitioner company have claimed the subsidy amount in time complying with the instructions and other requirements for payment of subsidies the Government would consider for payment and pay the same if they are at all entitled to.

5. The learned single Judge made an interim order on 18.6.93 directing the State of Assam to pay within one month from 18.6.93 the arrears of electricity charges arid the current charges payable upto June 1993 by the Petitioner company to the ASEB and also directing the ASEB not to disconnect the supply of electricity a to the Petitioner company.

6. The question which arises for consideration is what would he the effect of the interim order. The Advocate General. Assam, has made the following submission. Under the "Policy of 1986", the Government has to reimburse 50% of the amount paid by the Petitioner company for the electricity charges. Therefore, payment of entire amount of electricity charges, as ordered by the Court, does not arise. The Advocate General Assam has further submitted that even assuming that the Government has to pay 50% of the bill to the ASEB or to contribute 50% of the bill to the Petitioner company, the order made by this Court is in excess of the amount payable by the Government to the Petitioner company. Tills being the situation, the interim order requires modification as it is not in terms of the "Policy of 1986.

7. The word "subsidy" means a grant of money made by the Government in aid of the promoters of any enterprise or work, and the expression "reimourse"

means to pay back, to'' make'' restoration or to indemnify. Therefore, the Petitioner company has to pay the energy charges to ASEB and then the Government has to pay back 50% of the amount paid by the Petitioner company. That apart, in any event the Government has to grant "power subsidy" to the extent of 50% only. Therefore, the contention of the learned Advocate General has some force. But the interim order was made rightly or wrongly and that interim order is enforceable or executable one. The order was not appealed and, therefore, it became final It is also settled that the doctrine of res judicata is applicable to different stages of the same proceedings, that is to say matter decided at one stage cannot be reagitated in subsequent stage. Be that as it may, it is not disputed that the Petitioner company paid sufficient amount of electricity charges to the electricity Board, about 523 lakhs according to the Petitioner company. The Petitioner company has produced tables of account showing outstanding as on 3.12.93. The tables show that the electricity charges still outstanding (including surcharge and rebate disallowed) is about Rs 252 lakhs and the power subsidy amount payable to the Petitioner company is about 300 lakhs, the tables are placed on record. We are not expressing about the correctness of me account, But the tables, if it is found correct show that the power subsidy amount to be paid to the Petitioner company under the "Policy of 1986" will be more than the entire amount to be paid by the Petitioner company for the electricity consumption for the period ending 1993 and one or two months of 1994. As already stated, reimbursement of subsidy amount was to be done on quarterly basis but it was not done. The Petitioner company has the legitimate expectation of receiving the subsidies and, as such, the Court must protect it expectation as a matter of public law. Had the Government paid the subsidy amount in time there might not have been default in payment of electricity charges. The Government is not only to pay power subsidy, but also interest subsidy and subsidy on drawal of power lines. The Petitioner company also claims capital subsidy and transport subsidy, as already stated, The account can be settled afterwards. On the facts and circumstances of the case, we are of the view that the interim order was a just one at that point of time.

8. As regards the claim of interest on the unpaid subsidy amount, since the subsidy is a grant of money made by the Government in aid of promoter of any enterprise or work we are not inclined to award interest. Hence the interest is rejected.

9. As for surcharge, learned Counsel for the ASEB Mr. Saikia, has referred us to a decision of the Supreme Court reported as Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, In that case, the Supreme Court has held : "A supply agreement to a consumer makes his relation with the Board mainly contractual, where the basis of supply is held to be statutory rather than contractual". Relying on the above decision of the Supreme Court, Mr. Saikia has contended that the Petitioner company is bound by the contract and has to pay me surcharge in terms of the contract. The ASEB has surcharged the Petitioner company at 5% per month on compound calculation at monthly rest,

namely 80% per annum approximately. In a series of similar cases, this Court has awarded 18% per annum on the unpaid amount of electricity charges. We are therefore inclined to follow those decisions to have uniform orders.

10. In the result, the petition is disposed of with the following directions:

(i) The State Government shall, out of the subsidy amount payable to the Petitioner company, pay the electricity charges to the ASEB. The parties concerned shall settled the account within a period of 6 months In this regards.

(ii) The Slate Government of Assam shall pay all other subsidies payable under the "Policy of 1986" to the Petitioner company within a period of 6 months.

(iii) The Government of Assam shall consider the payment of Capital Subsidy and Transport subsidy in the light of discussion in this Judgment within 6 months from today.

(iv) There shall not be disconnection of supply of electricity to the Petitioner company on the grounds of arrears till 31.12.93 and/or a part of January 1994.

(v) The ASEB shall consider, on the facts and circumstances of the case whether rebate shall be granted or not.

(vi) Surcharge is fixed at 18% per annum on the entire amount payable to the ASEB.

11. With me above direction and observation the Petitioner is disposed of.