(2001) 12 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25154 of 2001

D. Kamalakar Rao APPELLANT

Vs

The State of Andhra Pradesh RESPONDENT

Date of Decision : 12-12-2001

Acts Referred:

Citation : (2002) 127 STC 306

Hon'ble Judges : Ar. Lakshmanan, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : Vedula Srinivas, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Ar. Lakshmanan, C.J.—Heard Shri Vedula Srinivas, learned counsel appearing on behalf of the petitioner in this case. This Writ Petition is filed by way of Public Interest Litigation.

2. The petitioner by this Writ Petition challenging G.O.Ms. No. 540, Industries and Commerce (IP) Department, dated 30.10.2001 whereby the Government of Andhra Pradesh has extended benefit of Sales Tax Deferment in favour of the 3rd respondent, India Cements Limited, up to an amount of Rs. 200.00 Crores which is interest free, on the ground that the same is arbitrary, unreasonable, ultra vires the powers of the Government, and also opposed to the welfare of the public exchequer.

3. The petitioner states that he is a public spirited person and has no personal interest in the subject matter of the Writ Petition and, therefore, this Writ Petition is being filed only to bring to the notice of this Court about the illegal concession of more than Rs. 200.00 Crores granted by the State of Andhra Pradesh in favour of the third respondent.

4. We have perused the annexures filed along with the Writ Petition and the Order passed by the Government which is impugned in this Writ petition and also

perused the affidavit filed in support of the Writ Petition and heard the arguments advanced on behalf of the petitioner.

5. M/s. Cement Corporation of India (CCI for short), an Undertaking of the Central Government has got Cement Manufacturing Units at various places in the country and the Cement Factory at Yerraguntla of Cuddapah District is one among them. The Industry was set up in the year 1983.The 3rd respondent is also manufacturing cement with various Units working at different places in the country. The third respondent has agreed to buy the sick Unit of the CCI situated at Yerraguntla for a price of Rs. 200.07 and gave an undertaking before the BIFR to that effect. Accordingly the said Unit of the CCI stood transferred in favour of the 3rd respondent and it came out of the purview of the BIFR under the Sick Industrial Companies Act.

6. The State of Andhra Pradesh has been formulating various schemes for providing incentives to the industries from time to time and the same are monitored by the Department of Industries. The Government formulated new Industrial Policy in 1995, which is known as Target 2000 for providing various incentives for setting up of new Industries in the State. Under this Scheme, benefits like incentive subsidy, deferment/Tax Holiday of Sales Tax, Sales Tax exemption, rebate in electricity charges etc., are provided for encouraging setting-up of new Industries in the State. Even the expansion Projects i.e., the Industries which are already in existence are also provided with some incentives wherever there is 25% expansion of the existing Industrial Unit. This incentive is in the nature of deferment/exemption of Sales Tax in respect of the enhanced turn over for a period of 14/7 years. Other incentives provided under the said G.O.Ms. No. 108 dated 20.5.1996 under the Target 2000 are meant for diversification, forward integration Projects, backward integration Projects and captive Power Plants. We have perused the said G.O. in toto. It is made clear in the said G.O. that the said schemes will be in force from 15.11.1995 to 31.3.2000.

7. According to the learned counsel for the petitioner, the 3rd respondent is not eligible for the incentives provided under the Target 2000 since it is an existing Industrial Unit set up even prior to the G.O.Ms. No. 108 coming into force. However, it is eligible for the Sales Tax incentive if it extended its production by more than 25% of the existing capacity. The 3rd respondent has taken advantage of this incentive and extended its Unit and accordingly availed of the Sales Tax incentive. It is further submitted by the learned counsel that the 3rd respondent is not entitled for any other incentives under the said G.O. more particularly for the reason that the Target 2000 came to an end by 31.3.2001. The 3rd respondent again approached the Government seeking grant of further incentives on its investment of Rs. 200.00 Crores in the form of grant of Sales Tax deferment for a period of 14 years under the Target 2000 Scheme. The matter was referred to the Commissioner of Industries, Government of Andhra Pradesh, the 4th respondent herein by the Government and vide letter dated

6.6.1999 the 4th respondent made it clear that they are not eligible for the incentives under the Target-2000 as the assets owned by them are second-hand. The Revenue Department also reported to the Government that the 3rd respondent is not eligible for sales tax incentives. However, the State of Andhra Pradesh has now issued G.O.Ms. No. 540 dated 30.10.2001 reviewing the whole issue and granting Sales Tax Deferment under Target-2000 Scheme to a tune of Rs. 200.00 Crores in favour of the 3rd respondent. It is seen from the said G.O. that the 3rd respondent had invested Rs. 200.00 Crores by taking over to re-start the operation of the Unit. Secondly, they had paid the statutory dues of the Government. Thirdly, by virtue of take-over, employment of 900 workers of the CCI, Yerraguntla Unit was also protected by the 3rd respondent. Therefore, the Government of Andhra Pradesh did not agree with the views expressed by the Commissioner of Industries and the Revenue Department. Thus, the Government, after careful consideration of the merits of the proposal and in recognition of the substantial investment of Rs. 200.00 Crores made by the 3rd respondent in the Yerraguntla Unit, ordered to extend incentives of Sales Tax to the Cement Unit of the 3rd Respondent subject to the following 3 conditions:

a) Sales Tax Deferment shall be applicable to the said Yerraguntla Unit under Target 2000 Scheme, subject to a ceiling of Rs. 200.00 Crores investment made in the Unit by M/s. India Cements Limited.

b) Deferment shall be interest free.

c) G.O.Ms. No. 108, Industries & Commerce (IP) Department, dated 20.5.1996 shall stand modified in its application to the said Cement Unit at Yerraguntla, Cuddapah District.

8. In our opinion, the decision taken by the Government is perfectly in order. A reading of G.O.Ms. No. 540 dated 30.10.2001 would go to show that by extending the incentives of Sales Tax to the 3rd respondent Cement Unit, the Government has protected the livelihood of 900 workmen who were jobless because of the closure of the industry by the previous owner i.e., CCI. The decision taken by the Government, in our considered opinion, is in the line of socio-economic development in the State. No mala fides can be attributed to the State Government in passing the impugned G.O.Ms. No. 540 dated 30.10.2001, which, in our opinion, has been passed in the interests of the workers and the development of industries in the State and also with a view to earning further revenues to the State. In our opinion, the petitioner who is a Chartered Accountant-cum-Advocate has no interest in the subject matter and that, therefore, in our opinion, he has no locus standi to maintain this Writ Petition. In our opinion, the Government has always at liberty to extend Tax based incentives or Tax deferment incentives in backward areas in the public interest and in the interest of development of industries in the State. In matters of this nature where policy decisions of the Government are involved Courts would be rather slow and loathe to interfere. The Writ Petition fails and is dismissed.