

(1985) 01 DEL CK 0052

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 1729 of 83

Dhampur Sugar Mills Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-01-1985

Acts Referred:

Citation : AIR 1985 Delhi 344 : (1985) ILR Delhi 851

Hon'ble Judges : S.B. Wad, J;Rajinder Sachar, J

Bench : Division Bench

Advocate : S.N. Kumar, B.S. Parthyal and C.L.Choudhry, for the Appellant;

Judgement

S.B. Wad, J.

(1) The petitioners' sugar mill was established in 1933. A substantial expansion of its capacity was allowed by the Government under the Industries (Development and Regulation) Act, in 1965. The cane crushing capacity under the said expansion Scheme was increased from 2,000 tonnes to 2250 tonnes of sugar cane per day. On 16-2-1973 the Government of India issued a Notification u/s 29-(B) of the said Act and inter-alia, exempted the sugar industry from application of Section 10, 11, 11-A and Section 13 of the Act as well as the Rules framed under the Act. Broadly speaking, the exemption was applicable for setting up new industry and expansion of the existing industry. The exemption could be granted where the investment did not exceed Rs. one crore. The said new liberalised Scheme envisaged that the undertaking should merely register itself with the Government, without requirement of a license and other conditions laid down by the said Sections of the Act. On 6/12/1975 the Directorate of Sugar and Vanaspati, Ministry of Agriculture and Irrigation issued an Incentive Scheme for new factories and for expansion programmes by established undertakings. All sugar factories were informed of the Incentive Scheme. The object of the Scheme was as follows:

IN order to achieve the targeted production envisaged in the Fifth Five Year Plan

period, licenses have been issued for the establishments of new sugar factories and for effecting substantial expansion in the existing sugar factories. In recent years, there has been a steep increase in the cost of plant and machinery required, for the sugar projects and at this high cost the new projects were not proving economically viable units. The Central Financial Institutions were, therefore, finding it difficult to advance term-loan to the entrepreneurs of new factories as well as the sugar factories for effecting expansion in the existing units. The establishment of projects has thus received a serious set back, which may delay the achievement of the targeted productionAfter examining the recommendations of the Committee in great detail the Government have sanctioned a scheme to provide incentives to the new sugar factories and expansion schemes based in part on excise duty concession and in part on higher percentage of levy-free sugar quota."

The Incentive Scheme was, to operate from]:,t November,1975 to 31/10/1980.

(2) In order to take the benefits of the liberalised licensing and incentive policy of the government of India. the petitioners decided upon further expansion of their crushing capacity. In 1978, the Government of India decided to further liberalize the licensing policy and issued a Notification to that effect on 26/04/1978. Under the new Scheme the investment limit of I crore was raised to three crores. The Notification further laid down that the industrial undertaking which was exempt under the said Notification "shall register itself with the Directorate General of Technical Development..and shall furnish return in Form-G appended to the registration and licensing of Industrial Undertakings Rules, 1952 in respect the progress made by the undertaking and shall also submit production returns every month in such form as may be notified under the provisions of the said Rules to the concerned authority mentioned above."

(3) Through a press note issued along with the said Notification, the industry was further informed that on receipt of the application for registration, the D.G.T.D. etc. will take the applications on record expeditiously and communicate the facts of registration and the registered number to the party. The industry was further informed that the "industrial undertakings which have license-application pending with Government, should review their application and any application which is covered by the new exemption limit, may be withdrawn by writing to the Government." The industry was also assured that in the light of the above clarification, Government expected that the new licensing policy would ensure greater freedom and opportunity for entrepreneurs. Along with the liberalisation of the licensing policy, the Government continued the policy of giving incentives to sugar industries started in 1975. Before the first Scheme of incentives came to an end on 31/10/1980, a new Scheme for incentives was issued by the Government on 4/10/1980. The new Scheme was applicable,inter-alia. to all licensed expansions completed on or after 1/10/1980, The Scheme was also applicable to the expansion projects already licensed.

(4) The petitioners submit that after the liberalised licensing scheme was announced on 26-4-1978, the petitioners decided to raise their crushing capacity and sent their technicians and engineers to Australia to study and master the cane milling technology used in that country. It is admitted on both sides that Australia has developed high and efficient technology in this area. After acquiring the know-how, the petitioners started developing designs and manufacture of equipment indigenously. The petitioners also invited firm quotations and placed firm order by investing more than Rs. 2 crores. The limit under the new licensing scheme was Rs. 3 crores. With this preparation the petitioners applied for registration to Directorate of Sugar on 10/06/1980.

(5) The Directorate of Sugar called for further information from the petitioners regarding the contemplated increase in the daily cane crushing capacity, costs and specifications of new machineries, costs of land and building etc. and schedule of machinery of the factory. This letter was sent by the Directorate on 8/07/1980. On 3-9-1980, the Directorate asked the petitioners about the composition of the Board of Directors and their share-holdings. On 13-7-1980, the Govt. of India wrote to all sugar industries commending the Australian technology and its adoption. "The petitioners had already introduced the said technology at great cost. On 26-10-1980 the Directorate of Sugar appreciated the efforts of the petitioners' factory in talking up the fabrication of new type of equipment for the first time in India and trying to introduce the same for improving the technical efficiency in the sugar factories." Then came the new Incentive Policy of the Government on 4-10-1980. On 13-12-1980, the Government informed all sugar factories that the Incentive Scheme of 4/10/1980 was applicable to all sugar factories proposing expansion of their capacity under the Liberalised Licensing Policy. They were informed that they should register themselves with the Directorate of Sugar and also obtain prior approval of the Directorate of Sugar for item of plant and machinery to be installed before any additions or alterations are made with regard to the proposed expansions". They were also informed that unless these conditions were complied with they would not get the benefits of the incentives.

(6) Thereafter, (for the first time) on 13/03/1981 the Directorate informed the petitioners that the application of the petitioners for registration was under consideration of the Government. The petitioners were also informed that about the contents of Government's letter dated 23-10-1980. The petitioners again requested for registration on 20-4-1981, the Directorate asked the petitioners to furnish the information on the additions made in the plan for Five Years, the copies of information of the items of machineries proposed for the expansions and to satisfy the Directorate that the investment was not more than 3 crores. All the required informations were supplied by the petitioners on 27/05/1981 along with revised estimated costs, sixty-six photostat copies of quotations and forty five copies of orders placed on the third party. Inspire of this no decision was taken. On 3-7-1981 the Directorate informed the petitioners that the matter was under consideration of the Government. It appears that on 18/08/1981, a

Notification was issued by Government of India withdrawing exemptions u/s 29-B and requiring the undertakings to obtain licenses as required by the Act. Obviously, the Said order was to apply prospectively. On 2-9-1981 the Directorate again informed the petitioners that its application for registration was still under consideration of the Government. The petitioners duly completed the expansion in Feb. 1982 and informed the Directorate accordingly. With the starting of the new crushing season in November, 1982, the petitioners started its regular production of the increased capacity 4,000 tonnes per day from 2-12-1982 and informed the Directorate. As the registration application was not yet disposed of and the petitioners did not get any benefit of the Incentive Scheme, The petitioners were required to file the present petition.

(7) Initially, at the time of arguments the respondents contested the petitioners' claim on the ground that the petitioners had not obtained prior permission for installation of machinery and plant required by circular dated 30-12-80. It was also submitted by the Respondents that the petitioners had not obtained the registration as required by the Liberalised Licensing Policy of 1978. It was then submitted that the petitioners, had not produced satisfactory evidence to show that expansion was within the limits of three crores. They also submitted that the petitioners had not supplied information in Form-G. On examining of the documents produced by the petitioners, and after hearing the arguments it was found by the Bench that none of the objections raised by the respondents had any merit. The requirement of the prior permission before machinery and plant were put up was not mandated by the Liberalised Licensing Policy. What was required by the said Circular was that The petitioners should register themselves without any compliance of stringent licensing requirement under the I.D.R. Act the petitioners had filed their application for registration on 10-6-1980 and at that time such prior permission was, not required. It may be noted that when the petitioners "filed the application, the earlier Incentive Scheme was still in operation. Indeed, one of the prayers of the petitioners is to give them the benefit of the earlier Incentive Scheme. Moreover, the Circular dated 30-12-1980 is only in the nature of administrative instructions. It can be made applicable only prospectively. It appears that para 3 of the said Circular recognises this legal position. Before the application was made by the petitioners they had already completed technical and feasibility reports, collected quotations and were in the process of fabricating indigenous machinery. From the documents produced by the petitioners it was found that the petitioners had been regularly filing information in Form-G and were reporting the progress made in the expansion programme. We also found that after the petitioner submitted their application in June. 1980. "The respondents had on several occasions asked for information and documents. Every information called for and documents required furnished by the petitioners. As we found that the only requirement of the "Licensing Policy (and Incentive Policy) was that the investments should not be exceeded Rs. 3 crores and that this aspect was not fully gone into by the respondents, we directed the respondents to decide this aspect of the matter afresh after giving

full. opportunity to the petitioners to produce the additional documents and information, if so needed by the respondents.

(8) Pursuant to our order the Directorate of Sugar asked for following information from the petitioners :

(1) Certificate from the Chartered Engineer indicating that no other other , has been added other than those which were proposed to be added for expansion for which I he request for registration was made

(2) Certificate from the Chartered Accountant verifying the total as well as item-wise cost of machinery added to the existing plant and the expenditure incurred on building etc., for the expansion implemented.

(3) Crushing rate/24hrs.. operation for each day of the seasons ,1981-82, 1982-83 and 1983-84.

(4) Details of machinery added, if any. after the completion of expansion up to 4000 TCD.

(5) Total value of the assets of the company molding the assets of other units covered under this Company.

(6) Documentary evidence showing that installation of all the plant, and machinery including the building etc.. were completed prior to 18/02/1982.

(9) The petitioners supplied all the information with the necessary documents .On September 15. 1984 the Chief Director (Sugar) rejected the petitioners application on the ground that the Liberalised Licensing Policy was rescinded on 18/08/1981. The Chief "Director also held that there was no material to show that the petitioners had finished Form-G return and the progress report. The Chief Director,however, held that the expansion made by the petitioners was within the prescribed limits, of Rs. 3 crores.

(10) Even at the earlier stage of arguments we had found that there was no substance in the respondents contention that information in Form-G was not. supplied by the petitioners .It maybe noted that the Director General of Technical Development had recommended the expansion Scheme of the petitioners asit was satisfied that the necessary information in Form-G and progress report was already made by the petitioners. One such. letter dated 20-7-1981 furnishing copy of Form-G duly filled in and the progress report addressed to Ministry of Industry and Supply is produced by the petitioners The statement of the Chief Director in this regard is a case of left hand not knowing what the right hand done. The other ground of rejection of the. petitioners" application for registration is, equally misconceived. The Liberalised Licensing Policy and the Incentive Policy were drawn up by the Central Government for a major National objective of achieving targeted growth in the Five Year Plan. The Government as well as the industry had felt that red-tape and cumbersome procedure of licensing were major hurdles in rapid industrial growth/expansion. Various

Technical Committees were constituted from time to time. Liberalisation Policy was the result of the technical findings of such committees and considered decisions of the Government. The 1978 Policy only made a few additions to 1973 Policy. The main policy framework, therefore, continued. In this background the industrialist like the petitioners took up expansion programme in all good faith. Every industry has its gestation period. The Government should know it better since they are themselves running industries in public sector. Policy is an antithesis of adhocism. Policy is a projection in future. It must have relative durability and predictability. The petitioners had applied for registration 14 months before the Scheme was rescinded. Respondents were requiring the petitioners to furnish information and assuring that the matter was under consideration. A month before the rescission of the policy (i.e. 5-7-1981) the respondents had told the petitioners that the application was under consideration. But what is of greater interest is a fact that on 2-9-1981 when the Liberalised Licensing Policy was already withdrawn, the respondents were still assuring the petitioners that the application was under consideration. It is not explained either in the counter-affidavit or at the time of arguments as to why no respondents were still assuring the petitioners that the application was under consideration? long with the 1978 Policy the industry was assured that the D.G.T.D. etc. will take on the record the applications for registration expeditiously and communicate the fact of registration and the registration number to the parties. The industry was even told to withdraw their pending application, for licenses and to avail of the liberalisation Scheme. The industry was promised that the new Licensing Policy will ensure greater freedom and opportunity for entrepreneurs. The delay in granting the registration was totally unjustified and arbitrary. It was contrary to assurances made to the industry. To permit the respondents, after such an inordinate and unexplained delay, to withdraw registration on the ground that the policy was rescinded would be contrary to equity and law. Another equitable aspect, namely, the investment up to Rs. 3 crores and the planning and labour that has gone in the expansion programme, cannot be ignored by the Court.

(11) For the reasons stated above the order of the Directorate of Sugar dated 15/09/1984 is quashed and aside. The respondents are directed to register the petitioners immediately and give them a registration number under the Liberalisation Scheme dated 26/04/1978. As the petitioners are entitled to registration under the said Scheme, they are also entitled to the incentives under the Scheme. The petitioners had informed the Government that they had completed their expansion in February, 1982. The documents produced by the petitioner the information supplied from time to time in Form-Grand the progress reports, support the conclusion that the expansion in fact was completed in February, 1982. Intimation to this effect was also sent to the Government. From the next sugar season commencing in November, 1982 the petitioners started the production, the actual date being 2-12-1982. The petitioners have fairly conceded that they cannot get the benefits of First incentive Scheme because expansion was not completed before 31/10/1980. But the petitioners are

certainly entitled to the benefits of the Second Incentive Scheme issued on 4/10/1980. "The petitioners are entitled to the concession of the free sugar quota and" relief in excise duty under the said Scheme .The petitioners had already submitted the production figures since 1981 to the respondents. The petitioners shall furnish additional data and particulars as required by the Incentive Policy Circular dated 4/10/1980 within a fortnight from today. The respondents shall pass necessary orders giving the benefits of the Incentive Scheme dated 4/10/1980 within three months thereafter .The respondents should also ensure that further incentive benefit is given to the petitioners beyond the date of this judgment and within the five year period prescribed by the said Incentive Scheme.

(12) The petition is allowed with costs, counsel's fee at Rs. 2,000.00. We, however having; regard to the general policy of the State and with "special reference to Article 39 of the Constitution of India feel that half of the amount of the costs should be paid to a legal aid society We would. Therefore, direct that this half amount of the costs i.e. Rs. 1,000.00 be given for the Indian Council of Legal Aid and Advice, "Lawyers" Chamber No .3, High Court of Delhi, New Delhi. Such a course has the approval of the Supreme court in "Priya Wart B.K.D. Dubaldhan and others v. State of Haryana and others (1982) 11 SCC"142 and State of Maharashtra Vs. G.A. Pitre and Others, ." The rule is made absolute.