
(2000) 01 PAT CK 0049
In the Patna High Court
Case No : C.W.J.C. No. 11952 of 1996

Hindeutsch Impex Pvt. Ltd.	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 13-01-2000

Acts Referred:

Citation : (2000) 2 PLJR 140

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : Sadanand Jha, Anil Kumar Upadhyay and Binodanand Mishra, for the Appellant; S. Nayyar Hussain, for State and Braj Ballabh Kumar, for the Respondent

Final Decision : Allowed

Judgement

S.K. Katriar, J.—This writ petition has been preferred with the prayer to issue a writ of certiorari quashing the decision dated 26.4.96 (Annexure 16), of the State Level Capital Subsidy Committee, in so far as it relates to the Petitioner, and the follow-up letter dated 17.5.96 (Annexure 7), issued by Respondent No. 4, whereby the Petitioner is being denied the differential of the subsidy promised to them by the Respondents to the Petitioner.

2. The Government of Bihar, in the Department of Industries, issued its resolution No. 13730, dated 1.9.86 (Annexure 4), whereby the State Govt. declared an industrial policy to promote industries, and to revive sick industries, within the State of Bihar, and promised different subsidies to such entrepreneurs in an effort in that direction. The Petitioner is an industry which came into existence after 1.4.83, and, according to para 4.2.(c) of the same, central subsidy in the specified districts @ 10% with respect to investment made on fixed capital assets on or after 1.4.83 was admissible to an industrial unit subject to a maximum of Rs. 10 lacs, besides this, additional amount of 5% of the investment on the fixed assets on or after 1.4.83 will be admissible to the industrial unit subject to maximum of Rs. 5 lacs as the State Capital Subsidy,

thus making a total of 15% of the subsidy subject to the maximum of Rs. 15 lacs. Paragraph 7.2 of the said resolution stated that small scale industries, which the Petitioner Company is, will get subsidy @ 25% of the cost of purchase and installation of captive diesel/K. oil, Generating sets, subject to a limit of Rs. 5 lacs. Respondent No. 5 (the Bihar State Credit and Investment Corporation Ltd.), had sanctioned and granted a term loan of Rs. 86.26 lacs to the Petitioner to set up an industry, vide its letter dated 21.6.89 (Annexure 5), which has a number of annexures. Annexure C is relevant in the present context, and the relevant portion of which is set out herein below for the facility of quick reference:

Means of Finance

(Rs. in lacs)

1.

Promoter's Contribution 25.51

2.

State Govt. Subsidy

15.00

3.

Long term loan

86.26

Total:

Rs. 126.77

3. The aforesaid industrial policy dated 1.9.86 (Annexure 4), was partially modified by the State Government vide Annexure 6, paragraph 2.2 of which states that "The maximum amount of the State capital subsidy payable to a unit shall be Rs. 15 lacs (Rs. 20 lacs in the case of units notified in Growth Centers, Hundred percent export oriented units, and NRI owned units) "In other words, the entire industrial subsidy meant for small scale industries was to be provided by the State Government, instead of the major portion provided by the Central Government, as was the case earlier (vide Annexure 4). Thus, the entire subsidy of Rs. 15 lacs was after issuance of Annexure 6 to be provided by the State Govt. It is the Petitioner's case that it is neither a unit notified in Growth Centers, nor is export oriented unit, nor NRI owned unit, but is a small scale industry. Pursuant to issuance of the said revised industrial policy dated 21.2.90 (Annexure 6), Respondent No. 5 had revised the Petitioner's project, vide its letter No. Proj/HIPL/139/4558, dated 8.3.91 (Annexure 7), the relevant portion of which is set out herein below for the facility of quick reference:

Means of Finance

Term Loan from Bisico

84.00

Term Loan from SBI

4.16

Subsidy

15.00

Promoter's Contribution Security deposits,

30.00

sundry creditors and unsecured loans

14.77

Total

Rs. 147.93

It is thus manifest that even after applying the revised industrial policy, Respondent No. 5 had stated that the subsidy admissible to the Petitioner was to the tune of Rs. 15 lacs. Respondent No. 6 had recorded its minutes dated 8.3.91, reviewing the position with respect to the Petitioner, the relevant portion of which is set out herein below for the facility of quick reference:

4. The Petitioner had accordingly set up its small scale industry at Hajipur for manufacture of Ice creams. The Respondents released a sum of Rs. 7,25,400 towards the industrial subsidy and the balance sum of Rs. 7,74,600 is still due to the Petitioner and for which it is struggling. The Petitioner made innumerable representations to the Respondents, but they refused to release the differential amount of Rs. 7,74,600. However, the Petitioner's case is that the Respondents had sanctioned a subsidy of Rs. 2,62,500 on 3.12.91, and sanctioned further sum of Rs. 1,80,000 on 12/23.10.92, as is evidenced by Annexures 10 and 11 towards the differential amount of the subsidy. In other words, the Respondents have sanctioned, though not till date released, a sum of Rs. 4,42,500 against the balance of the differential amount of Rs. 7,74,600. In other words, the sum of Rs. 4,42,500 is the admitted amount, and notwithstanding which the same has not so far been released to the Petitioners.

5. The Petitioner had, therefore, moved this Court by preferring CWJC No. 7856 of 1995 (M/s Hindeutsch Impext Pvt. Ltd. v. State of Bihar), which was disposed of by order dated 19.1.96 (Annexure 15), whereby the Respondents were directed to dispose off the Petitioner's matter with a reasoned order. Accordingly Respondent No. 6 (the State Level Capital Subsidy Committee of the State Government), considered the matter at its meeting held on 26.4.96 (Annexure 16), and rejected the Petitioner's claim, the relevant portion of which is set out

herein below for the facility of quick reference:

Letter No. 4175, dated 17.5.96 (Annexure 17), is the consequential letter conveying to the Petitioner the decision of Respondent No. 6. Hence the writ petition.

6. While assailing the validity of the impugned orders, learned Counsel for the Petitioner submitted that it is manifest from the impugned order (Annexure 16), relevant portion of which has been set out hereinabove, that the subsidy is being rejected according to the rules which is not stated therein, nor has been explained to this Court as to which are those rules. He, therefore, submits that refusal on the part of the Respondents to take into account the six items mentioned in Annexure 16 and excluded for consideration for purposes of computation is not permissible by any rules, and has not been done on any known or recognised basis, or any guidelines given in the industrial policy. In other words, in his submission, the entire approach of the Respondents is arbitrary. Learned Counsel next submits that it is manifest from Annexure 5, 6 and 9, relevant portions of which are set out hereinabove, that the Respondent although proceeded on the basis that the Petitioner shall be allowed and granted industrial subsidy to the tune of Rs. 15 lacs. Approach of the Respondents is thus hit by the principles of promissory estoppels. He has placed reliance on a number of reported judgments of this Court. He next submitted on the strength of the averments made in paragraph 18 of the writ petition read with Annexure 10 and 11 that a sum of Rs. 4,42,500 towards the differential amount of the industrial subsidy of Rs. 7,74,600 has already been sanctioned and has not been released. In his submission, therefore, the sum of Rs. 4,42,500 is surely an admitted due. Learned Counsel for the Petitioner lastly submits that it is now well settled by decisions of this Court that such cases of belated release of industrial subsidy, the authority which has granted the principal loan to the entrepreneur shall not be allowed to charge interest to the extent of belated payment of the industrial subsidy. He relies on two unreported judgments of this Court marked Annexures 12 and 13.

7. Mr. Nayyar Hussain, learned Counsel for Respondent Nos. 1 to 4 and 6, invites by attention to the impugned order dated 26.4.96 (Annexure 16), and submits that pursuant to the order of this Court marked Annexure 15, the Respondent authorities reconsidered the matter and have rejected the Petitioner's claim on relevant considerations. He has also relied on certain portions of the counter affidavit.

8. Learned Counsel for Respondent No. 5 has supported the contentions advanced on behalf of the learned Govt. Pleader. Let it be recorded that Respondent No. 5 (the Bihar State Credit and Investment Corporation), has not filed any counter affidavit.

9. Having considered the rival submissions of the parties, I am of the view that this writ petition has to be allowed. Learned Counsel for the Petitioner is right in

his submission that the Respondent authorities, while passing the impugned order dated 26.4.96 (Annexure 16), have stated that the claim is being rejected according to the rules which has neither been indicated therein, nor has been brought to the notice of this Court as to which are those rules. Nor has it been explained to the satisfaction of this Court as to how and why it is permissible for the Respondent authorities to exclude the six items mentioned therein (and set out in paragraph 5 hereinabove), from consideration for purposes of computation of the amount of industrial subsidy. In fact, there is not the slightest effort on the part of the Respondent authorities to explain the same in its counter affidavit. On the contrary, the Respondent authorities have confronted this Court with their conclusion that the Respondents are competent to take the decision that they have taken. The relevant portion of paragraph 5 of the counter affidavit is set out herein below for the facility of quick reference:

5. ... It is further stated that the State level Committee is fully competent to take decision in the matter of sanction of State Capital subsidy and the said committee has carefully examined the claim of the Petitioner unit as per norms of the Industrial Policy Guidelines issued by the Govt. for computing the amount of investment in fixed assets for the purpose of determining capital subsidy.

9.1. This Court expresses its strong displeasure on the approach of the Respondent authorities in confronting this Court with their conclusion, rather than making a sincere effort to justify their action by placing full materials before the Court, enabling the Court to reach its own conclusions. Reference may be made to the judgments reported In 1973 (2) SLR 659 (Prem Praveen v. Union of India, as well as 1980 (1) SLR 788 (P.C. Saxena v. State of M.P.). This Court is thus not convinced about the mode and manner in which the Respondent authorities have reached the conclusion which is unsupported by cogent logic. In fact, the Court gets an impression that the Respondent authorities were in an undue anxiety to reject the Petitioner's claim, providing only an apology for reasoning for the reason that it was faced with the order dated 19.1.96 of this Court (Annexure 15).

10. Learned Counsel for the Petitioner is equally right in his submission that the Respondent authorities are bound by the principles of promissory estoppels. It is manifest from Annexures 5, 6 and 9 that the Respondent authorities although promised to the Petitioner to grant industrial subsidy to the tune of Rs. 15 lacs. The same had led the Petitioner to set up the industry in question. The Respondent authorities cannot, therefore, be allowed to resile from that position and disown its promise at this belated stage. The proposition is fully covered by the judgments of the Supreme Court reported in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., and Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., The proposition is also covered by judgment reported in (1948)2 All. E.R. 767 (Robertson v. The Minister of Pensions). Speaking for the court, Denning, J. held as follows:

... if a man gives a promise or assurance which he intends to be binding on him and to be acted on by the person to whom it was given, then, once it is acted on he is bound by it The next question is whether the assurance is binding on the Crown. The Crown cannot escape by saying that estoppels do not bind the Crown, for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, i.e. the doctrine that the Crown cannot find itself so as to fetter its future executive" action In my opinion, the defence of executive necessity is of limited scope.... I come, therefore, to the most difficult question in the case. Is the Minister of Pensions bound by the War Office Letter? I think he is He was entitled to assume that they had consulted any other departments that might be concerned, such as the Minister of Pensions, before they gave him the assurance He does not know, and cannot be expected to know, the limits of its authority. The department itself is clearly bound, and as it but an agent for the Crown, it binds the Crown also, and as the Crown is bound, so are the other departments, for they are also but agents of the Crown. The function of the Minister of Pensions is to administer the Royal Warrant issued by the Crown and he must so administer it as to honor all assurances given by or on behalf of the Crown....

11. In view of the conclusions arrived at hereinabove, there is no need to decide the submission advanced on behalf of the Petitioner that the Respondents have on two occasions sanctioned a combined amount of Rs. 4,42,500 towards the differential amount of industrial capital subsidy which, being admitted dues, are not being released.

12. Counsel for the Petitioner has next submitted that Respondent No. 5 should be restrained from charging interest on the loan amount to the extent of delayed payment of the industrial subsidy. In his submission, the aforesaid sum of Rs. 7,74,300 should be adjusted against the loan amount from the date the former became due to the Petitioner, and no interest to that extent should be charged by Respondent No. 5. The contention is correct and is hereby upheld. This proposition is covered by a Division Bench judgment of this Court dated 2.12.99 (Annexure 12), passed in CWJC No. 71 of 1991 (R) [Om Flour Mills (P) Ltd. v. State of Bihar and Ors.].

13. In the result, this writ petition is allowed, and the impugned order dated 26.4.96 (Annexure 16), to the extent it concerns the Petitioner, is hereby quashed. The consequential letter communicated through memo No. 4175, dt. 17.5.96 (Annexure 17), is also quashed. The Respondent authorities are directed to sanction the aforesaid sum of Rs. 7,74,600, being the differential amount of industrial subsidy, which shall be adjusted against the loan amount sanctioned and paid by Respondent No. 5 to the Petitioner. Respondent No. 5 shall not be entitled to charge interest on the loan amount to the extent of Rs. 7,74,600 from the date the same by way of industrial subsidy had become due to the Petitioner.