(1998) 02 CAL CK 0008

In the Calcutta High Court

Case No : Writ Petition No. 1443 of 1996

Holtzman Chemicals India (P) Ltd. APPELLANT

Vs

Executive Director, West Bengal Small Scale Industries Corporation Ltd. RESPONDENT

Date of Decision : 24-02-1998

Acts Referred:

West Bengal Government Premises (Tenancy Regulation) Act, 1976 — Section 3(1)

Citation : (1998) 2 ILR (Cal) 542

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Judgement

Ruma Pal, J.—The issue involved in this writ application is whether the Petitioner is entitled to the benefit of a scheme named the State Scheme of Incentives for Cottage & Small Scale Industries, 1983. The Petitioner has also challenged a notice issued u/s 3(1) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 by the Prescribed Authority calling upon the Petitioner to quit the premises occupied by it. The notice was issued on the ground that the Petitioners had made default in payment of rent for three consecutive months.

2. As far as the challenge to the eviction is concerned, this appears to have been resolved between the parties. A settlement was arrived at by which the Petitioner agreed to deposit one months arrear rent and municipal taxes in addition to the current municipal rente and municipal taxes from November, 1996. It is nobody''s case that the Petitioner has defaulted in payment of the settled amount.

3. The only question that survives therefore is the question of subsidy.

4. The Petitioner No. 1 has been carrying on business in the premises leased to it by the West Bengal Small Scale Industries Corporation Limited under a deed of lease dated December 20, 1985. The period of lease was stated to be for 9 years and the monthly rent payable was Rs. 5,458.00.

5. On April 22, 1983 the State Government sanctioned an incentive scheme for

Cottage & Small Scale Industries in West Bengal called the State Scheme for Incentive for Cottage & Small Scale Industries, 1983 (referred to hereafter as the Scheme). The object of the scheme was to extend fiscal incentive to encourage entrepreneurs to set up or expand Cottage & Small Scale Industrial Units with a view to generate new employment. The scheme came into effect on the 1st of April, 1983 in the whole of West Bengal and was to remain valid upto the period ending March 31, 1988, if not withdrawn earlier by notification in the Official Gazette to that effect. The Incentive Scheme provided:

4. Applicability Unless specifically stated otherwise hereinafter the incentives extended hereunder shall be applicable to -(i) all eligible ancillary, Cottage & Small Scale Units and artisans including proprietorship, partnership, companies, registered societies and trusts, industrial co-operatives and joint sector undertakings (in equity capital of which, any of the corporations under the administrative control of the Cottage & Small Scale Industries Deptt. of the State Govt, have participated) and situated in backward areas of the State, as defined hereinafter.

(ii) Public sector undertakings under the administrative control of the Cottage & Small Scale Industries Deptt., Govt, of West Bengal, promoting, assisting or supporting cottage and small scale industries unless specifically excluded hereinafter shall be also entitled to the incentives stated hereinafter in respect of new units, expansion of their existing units and common service facility centres.

6. Clauses of the Scheme provides for the eligibility criteria and CI. 6 for disqualification. The word ''backward area'' has been defined in CI. 7.2 of the Scheme. It excludes among others, areas under the jurisdiction of the Corporation of Calcutta.

7. The Scheme provides for various incentives including subsidy towards rent for the sheds occupied by the concerned industry; This is the benefit which has been claimed by the Petitioner. This is provided for under CI. 8 of the Scheme which reads:

8. Item, Scope and Scale of Incentives

(1) x x x

(2) Subsidy towards rent for Sheds A new unit or an existing unit going in for substantial expansion in occupation of sheds in the industrial estates run by the West Bengal Small Industries Corporation Ltd. or other approved agencies irrespective of their locations in the State will be entitled to get subsidy at the following rates with effect from the dates of occupation or the 1st April, 1982, whichever is later:

(i) For the first year - 80% of the annual rent paid by the unit

(ii) For the second year - 60% of the annual rent paid by the unit

(iii) For the third year - 50% of the annual rent paid by the unit

(iv) For the fourth year - 25% of the annual rent paid by the unit

(v) For the fifth year - 10% of the annual rent paid by the unit

Eligibility to get refund of rent is, however, subject to commencement of production, processing or servicing, within the period specified in Clause 6(H) above and in case of failure to start production, processing or servicing operation within the above period without sufficient reason for such delay the payment on account of subsidy on rent shall start only from the date of commencement of production, processing or servicing operations and shall continue only upto the period the same would have been available had the production, processing or servicing started on the due date.

Subsidies due on account of rent shall first be adjusted against rent if any due in this regard or costs and interests thereon.

8. Clause 10 of the scheme indicates the sanctioning authority in respect of subsidies grantable under the scheme. As far as the Petitioners'' case is concerned, it has been claimed that the sanctioning authority is the. Director, Cottage & Small Scale Industries, West Bengal, who had power to sanction incentive where the units had invested in fixed capital, plant and machinery exceeding Rs. 10 lakhs. However, the sanction of the Director was subject to obtaining prior approval of a State Level Committee to be constituted by the State Government in the Cottage & Small Scale Industries Department. Clause 12 provides for appeals. In respect of the orders passed by the Director, the State Government in the Cottage & small '' Industries Department was the appellate authority.

9. According to the Petitioners they applied on February 28, 1989 to the Deputy Director, Cottage & Small Scale Industries Department for rent subsidy for the year 1985-86 ; 1986-87 and" 1987-88. There was no response to this application. On March 11, 1996 the Petitioner wrote to the Minister of Cottage & Small Scale Industries asking for payment of the subsidy. There is an endorsement on the letter which reads as follows:

Had talk with the person concerned. The particular type of industry is not eligible to get any subsidy being situated in the CMC area. Advice accordingly.

10. Challenging, inter alia, this decision, the writ petition was filed on July 1, 1996 praying for a writ of mandamus on the State Government to grant.the Petitioners the subsidy

11. No affidavit in opposition has been used by the State Government of the Directorate, Cottage & Small Scale Industries. At the hearing, however, their Counsel submitted that the 1983 scheme"~could not be availed of by the Petitioners as they had applied after the scheme had expired.

12. The endorsement on the Petitioners letter dated March 11, 1996 is clearly wrong. It is true that CI. 4 of the scheme provides that the scheme shall he

applicable to industries in backward areas of the State. It is also true that the area in which the Petitioner No. 1 has its unit is not within the definition of backward area. However, cls. 4 opens with the words ''unless specifically stated otherwise''.. It has been specifically stated otherwise in cl. 8 of the scheme. Under CI. 8 of the Scheme, a small scale industry was entitled to a.rent subsidy irrespective of its location and only subject to the new unit being run in a shed in an industrial estate run by the West Bengal Small Industries Corporation Limited.

13. However, I am of the opinion that the State Government is correct in its submission that the Petitioner is not entitled to the scheme once the scheme had expired. The scheme is an offer to subsidise during a particular period. The offer must be availed of or at least applied for within the period of validity before it stands withdrawn by efflux of time. The matter would have been different had the Petitioner applied during the validity of the scheme. In this case the Petitioner applied for the first time almost one year after the scheme had expired. If the Petitioner had made the application within the validity period of the scheme, a right might have accrued to the Petitioner as the State Government would have been put on notice. With the expiry of the scheme, the State Government cannot be expected to keep open the possibility of claims which may be lodged by industrial units subsequently and make provisions for the same.

14. This is clear from the notification dated May 12, 1983 issued by the Government of West Bengal in connection with, inter alia, for claiming incentives and in particular the procedure for sanction and disbursement of incentives. The later provides:

11. Procedure for sanction and disbursement of incentives

(i) On getting approval from the District/Zone/State Level Committee the sanctioning officer shall require the industrial unit concerned to execute a legally enforceable agreement/bond to the effect that the unit shall be liable to refund the entire amount of incentive and in case of failure to refund the entire amount shall be recoverable under the Public Demands Recovery Act if (a) the incentive has been claimed by misrepresentation as to an essential fact or by furnishing false information, (b) the unit shifts itself to any area outside West Bengal, (c) the unit fails to start production or processing or servicing operation without sufficient reason within two years after receiving subsidy on fixed capital investment in advance, and (d) the unit fails to repay within the prescribed period the interest-free loan on account of payment of sales tax.

(ii) After satisfaction as to the execution of an agreement/bond the sanctioning officer shall formally issue necessary orders sanctioning the incentive claimed by the industrial unit concerned with endorsement to the disbursing officer along with the legally enforceable agreement/bond executed by the unit. General Managers/Deputy Director of Industries (Employment) or the authorised officer will be the disbursing officers.

(iii) The disbursing officer shall in his turn draw the amount of incentive sanctioned by the sanctioning officer, obtain an advance stamped receipt for the amount to be disbursed and disburse the same to the unit concerned before expiry of the respective financial year.

15. The Petitioners have sought to rely upon the last paragraph of cl.8 which requires that subsidies should be adjusted firstly against rent due, to contend that unless the rent wa''s due there would be no question of applicability for subsidy. It is also contended that since the subsidy was calculated on the basis of annual rent paid, untill and unless payment was made, no claim would be made. If the. argument were correct, the Petitioners claim for subsidy for 1985-86 should have been made on March 31, 1986, for 1986-87 on March 31, 1987 and for 1987-88 on March 31, 1988 for soon thereafter. Not one year later.

16. For the reasons aforesaid as far as the claim of the Petitioners for subsidy is concerned the same is rejected.

17. The challenge to the notice of eviction issued by the prescribed authority is disposed by staying the operation of the impugned notice as long as the Petitioner continues to effect payment in terms of the settlement with the prescribed authority under the 1976 Act.