(2003) 04 PAT CK 0049

In the Patna High Court

Case No : C.W.J.C. No. 15698 of 2001

Kamper Concast Limited APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 21-04-2003

Acts Referred:

Citation : (2004) 3 PLJR 309

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : S.D. Sanjay and Sushila Agrawal, for the Appellant; R.P. Bhagat, for State, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—The Industrial Incentive Policy, 1993 of the Government of Bihar in Clause 6 relating to subsidy on power consumption provided as follows:

6. Subsidy on power consumption:

Industrial units coming into production between 1.4.93 to 31.3.98 and units defined under expansion/diversification will get the following incentive for five years from the date of production/of such expansion/diversification:

i) Exemption from payment of Minimum guarantee charge for the units having connected load upto 500 K.V.A.

ii)(a) The industrial units with an investment upto 75 lakhs on plant and machinery will get power subsidy @ 18 paise per unit.

(b) The Industrial Units with an investment on plant and machinery above 75 lakhs and upto 5 crores. will get power subsidy @ 15 paise per unit.

(c) Industrial units as mentioned in paragraphs (a) and (b) above coming under the defined expansion/diversification provisions will get power subsidy only for additional consumption of electricity which will be necessary for expansion or additional real production. Expansion request will be computed on the basis of maximum annual production in three years prior to the expansion.

iii) industrial units mentioned in annexures (iii) will not be entitled for this incentive. (emphasis added)

2. On a plain reading of the afore-quoted clause it is clear that industrial units, covered by the policy that came into production between 1.4.93 to 31.3.98 (i.e. the period of the policy) would get power subsidy as indicated in the clause for five years from the date of production/of such expansion/diversification. In other words, if an industrial unit covered by the policy came into production on 1.2.1998, it would get the power subsidy in terms of Clause 6 of the Policy till 31.1.2004. It seems that the Respondent authorities do not wish to understand and accept this simple fact and that has given rise to this unnecessary and avoidable litigation.

3. The Petitioner is a company incorporated under the Indian Companies Act, 1956. It set up an industrial unit for manufacturing. M.S. Ingots, M.S. Billets etc. and the unit came into commercial production from 16.5.1997. A certificate to this effect was issued by the Director, Technical Development, Department of Industries under his memo No. 427, dated 22.7.1997 (Annexure-1). The unit having come into production within the period stipulated in Industrial Policy, 1993 (i.e. between 1.4.1993 to 31.3.1998) claimed power subsidy in terms of Sub-clause ii(b) of Clause 6 of the Policy. Its claim was allowed and the disbursement of power subsidy upto September 1998 in terms of Clause 6(ii)(b) of the Policy was made by the B.I.C.I.C.O. as evidenced from the letters at Annexure-5 series.

4. On 5.7.2001 the Petitioner submitted its claim for power subsidy for the period from October 1998 to May, 2001 (Annexure-6) but the B.I.C.I.C.O. declined to release the amount of electric subsidy in favour of the Petitioner on the plea that the Commissioner, Industries Department had issued letter No. 2616, dated 11.7.2000 forbidding payment of any subsidy under Industrial Policy, 1993. A copy of the letter, dated 11.7.2000 issued by the Commissioner, Industries Department is at Annexure 7/A. This letter simply states that the period of validity of the Industrial Policy, 1993 expired on 31.3.1998 and that of the Industrial Policy, 1998 also came to an end on 31.8.2000. The last date (31.3.1998) for entertaining any claims arising from the Industrial Policy, 1993 were also over but it was noticed that even then fresh claims arising under the Industrial Policy, 1993 were being forwarded for consideration. The letters simply asked all concerned not to forward and/or entertain any fresh claims arising under the 1993 Industrial Policy, that is to say, claims for power subsidy and/or other benefits being raised freshly and for the first time on the plea that the effective date of production expansion/diversification of the unit fell between 1.4.1993 to 31.3.1998. The letter did not say that claims that has already accrued and were duly sanctioned by the competent authorities would be discontinued because the period of validity of the Industrial Policy was over

notwithstanding the clause that the unit would enjoy the incentive for five years from the date of production. In fact any such direction would have been contrary to the Industrial Policy and hence, illegal and unenforceable.

5. This Court has, therefore, no hesitation in holding that the concerned authorities have completely misread and misinterpreted the direction of the Commissioner, Department of Industries, as contained in letter No. 2616, dated 11.7.2000.

6. The decision of the B.I.C.I.C.O. not to give any further power subsidy to the Petitioner as communicated to it by letter, dated 31.7.2001 (Annexure-7) is quashed and the concerned authorities are directed to reconsider the Petitioner''s claim for power subsidy from October, 1998 onwards, in accordance with law and in the light of this judgment.

7. In the result, this writ petition is allowed but with no order as to costs.

