(2018) 03 CHH CK 0228

In the Chhattisgarh High Court

Case No : Writ Petition (T) No.7 of 2007

K.N.OIL INDUSTRIES LIMITED AND ANR. APPELLANT

Vs

STATE LEVEL COMMITTEE AND ORS. RESPONDENT

Date of Decision : 22-03-2018

Acts Referred:

Citation : (2018) 03 CHH CK 0228

Hon'ble Judges : SANJAY K. AGRAWAL

Bench : Single Bench

Advocate : Smiti Sharma, Anand Dadariya

Final Decision : Allowed

Judgement

1. Petitioner No.1 is a Company incorporated under the provisions of the Companies Act, 1956 and is involved in the running of a solvent extraction

plant and generation of electrical energy from non- conventional sources. As per notification dated 28-2-1995, the dealers who would set up non-

conventional power generation system from non-conventional sources, were granted certain concessions under the Madhya Pradesh General Sales

Tax, 1958 and the Central Sales Act, 1956. The petitioner Company accordingly applied for provisional eligibility certificate claiming to be falling under

Category II of the said notification for availing such concession under the notification. Ultimately, the petitioner Company was granted provisional

eligibility certificate on 7-7-1998 and thereafter, on 18-7-2005, a permanent eligibility certificate was granted vide Annexure P-3 and thereafter, within

two months that certificate was cancelled on 8-9-2005. This writ petition has been filed stating that the order of cancellation of the petitioners'

permanent certificate without affording a reasonable opportunity of being heard that too with retrospective effect, is without jurisdiction and without

authority of law which has been opposed by filing return by the State/ respondents No.2 (a), (b),

(c) and 4. No rejoinder has been filed by the petitioners.

2. Mrs. Smiti Sharma, learned counsel appearing for the petitioners, would submit that the certificate of eligibility for availing the facility of exemption

from payment of tax under notification dated 28-2-1995 has been revoked / cancelled without authority of law as neither opportunity of hearing has

been afforded to the petitioners nor such grounds exist for such cancellation that too with retrospective effect, therefore, the order of cancellation of

the petitioners' permanent certificate deserves to be quashed.

3. Mr. Anand Dadariya, learned State counsel, would submit that the Member Secretary, State Level Committee, was not authorised to grant such

certificate and the petitioner Industry was not eligible for such an exemption certificate, therefore, its eligibility has rightly been revoked / cancelled.

4. Mrs. Sharma, learned counsel for the petitioners, would further submit that the notification dated 28-2-1995 (clause 8 of the Annexure appended to

it) clearly entitles the Member Secretary, State Level Committee to issue a permanent eligibility certificate under the said notification, therefore, it

would not have been held that the Member Secretary was not authorised to issue such eligibility certificate.

5. Mr. Dadariya, learned State counsel, would further submit that the State Level Committee has not considered the case of the petitioners.

6. It is not in dispute that the petitioner Company was granted permanent eligibility certificate for availing the facility of exemption from payment of

commercial tax under the notification dated 28-2-1995, on 18-7-2005 and it is also not in dispute that before cancelling the said certificate, reasonable

opportunity of being heard was not afforded to the petitioners and no notice was served to the petitioners before taking such extreme step of revoking

the said eligibility. Merely on the basis of instructions issued by the Principal Secretary, Department of Energy, Government of Chhattisgarh dated 8-9-

2005, the certificate has been revoked.

7. In the matter of State of U.P. v. Maharaja Dharmander Prasad Singh1, the Supreme Court has held as under: -

â??The show cause notice itself is an impalpable congeries of suspicions and fears, of relevant or irrelevant matter and has included some trivia. On a

matter of such importance where the stakes are heavy for the lessees who claim to have made large investments on the project and where a number

of grounds require the determination of factual 1 AIR 1989 SC 997 matters of some complexity, the statutory authority should, in the facts of this case,

have afforded a personal hearing to the lessees.â??

8. In the matter of Vishal Pharmaceutical Laboratories v. General Manager, District Industries Centre and others 2, the M.P. High Court referring to

Maharaja Dharmander Prasad Singh's case (supra) has held that before cancellation of certificate affording opportunity of hearing is imperative and

observed as under: -

Â â??6. Undisputedly the question of grant or refusal of eligibility certificate depends on examination of relevant materials and this aspect should be

better left to the competent authorities. However, when the eligibility certificate is refused or cancelled retrospectively, it naturally consigns the holder

of such eligibility certificate to extra burden and inconvenience. When stakes are so high, it is necessary that the competent authority should have

heard the petitioners in that behalf.â??

9. At this stage, the argument that the Member Secretary, State Level Committee was not competent to issue certificate deserves to be rejected, as

the State / respondents No.2 (a), (b), (c) and 4 could have produced the entire records before the Court along with the return to demonstrate that it

has not been considered by the State Level Committee, which has not been done. Therefore, the argument of learned State counsel that the Member

Secretary, State Level Committee was not competent to issue the certificate, in absence of record, cannot be adjudicated upon at this stage in absence

of record.

10. Reverting to the facts of the present case, it is quite vivid that the eligibility certificate, which has been issued to petitioner No.1, was revoked

unilaterally without affording opportunity of hearing and that too upon the instructions of the Principal Secretary of the State 2 (1995) 96 STC 125

Government which cannot be approved by this Court. If an authority was not competent to issue certificate or it was granted on irrelevant material,

the course open and permissible to the State Government was to afford opportunity of hearing and then to consider the reply of the Industry and could have taken decision thereafter which has not been done, as such, the order of the State Government is in teeth of the principles of natural justice.

11. As a fallout and consequence of the aforesaid discussion, the order Annexure P-5 dated 8-9-2005 is hereby quashed. However, the respondents

are at liberty to proceed in accordance with law.

12. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

