(2010) 02 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Kurukshetra Gases Pvt. Ltd. APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2010) 158 PLR 333

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The writ petition challenges a notification issued by the 1st respondent on 22.05.1998 setting out a policy of the State relating to grant of certain subsidies. This impugned policy dated 22.05.1998 made an alteration of the terms, which had been earlier issued on 17.04.1992. The petitioner''s contention was that as per the 1992 policy, an investor was entitled to obtain 15% capital investment subsidy to the maximum of Rs. 15 lacs. In respect of 68 blocks as per the list given in Annexure-A, he qualified for obtaining such a benefit. The policy was applicable in respect of all investments made after 01.04.1992. The petitioner had applied for grant of subsidies in the year 1999 setting out an alleged investment of Rs. 1,13,97,107 and claimed 15% capital investment subject to however a maximum of Rs. 15 lacs. According to him, the petitioner is entitled to obtain Rs. 15 lacs.

2. Subsequent to the application seeking for subsidy, an inspection appears to have been carried out by the Project Manager, District Industries Centre and he had assessed the investment vis-a-vis what was applied for as follows:

Applied Investment upto 31.07.97

Allowed Land Rs. 1,10,757-00 Rs. 57,510-00 Bldig. Rs. 6,16,383-00 Rs. 5,63,146-00 Mach. Rs. 1,06,69,967-00 - ____________________ ________________ Total Rs. 1,13,97,107-00 Rs. 620,656-00

3. It could be noticed that the calculations are challenged only on the basis that the investments had been taken only upto 31.07.1997 as per the revised policy dated 22.05.1998 and the restriction of investments upto 31.07.1997 ought not to be applied to the petitioner, for the State is barred by promissory estoppel in making such restrictions when under the 1992 Policy, there was no cut off period mentioned for investments subsequent to 01.04.1992. The contention in defence by the respondents was that the 1992 Notification itself was superseded by a subsequent notification dated 22/29.08.1997 and the subsidies of the year 1992 could apply only to cases of investment upto 31.07.1997.

4. In support of his claim that the respondents shall not be permitted to make any alterations with regard to the benefits which they had declared in the year 1992 also, learned Counsel appearing for the petitioner relies on the judgment in Mahabir Vegetable Oils Pvt. Ltd. and Another Vs. State of Haryana and Others, that dealt with the case of an amendment to Rule namely in Haryana General Sales Tax Rules that provided for certain benefits which stood amended and sought to be made applicable retrospectively. Dealing with the issue of promissory estoppel, the Hon''ble Supreme Court held that a statute cannot be construed to have a retrospective operation unless such construction appeared very clearly in the terms thereof or arising by necessary and distinct implication. In this case, the Rules read with Industrial Policy namely Haryana General Sales Tax Rules, 1975 read with Haryana Industrial Policy, 1988-1997 provided for an omission of Note 2, Schedule III prescribed under the Rules and it withdrew some benefits with retrospective effect. The Hon''ble Supreme Court held that the Act itself did not provide for retrospective operations and therefore, delegated legislation providing for withdrawal of certain benefits retrospectively will not be available. The promissory estoppel was considered in the context of how the Rules have to be suborned to the principal enactment. I have not been shown by the petitioner of any particular provision of an enactment under which the benefit accrues. On the other hand, a subsidy is invariably in the nature of grant of State largesse to promote industrial development in sectors where industrial investments are desired or to foster industrial growth in certain backward areas. It is really in the nature of incentives and such incentives could be claimed only to the extent to which the State Policy considerations would admit of. If under a Policy a particular date is mentioned before when the investments have to be done or a subsequent Policy sets out a cut off date before when investments shall be done, the same cannot be challenged as arbitrary if it was done uniformally and if there was nothing discriminatory in the way in which the Policy considerations are applied. In this case, it is not as if the State had withdrawn all subsidies. It had, on the other hand, delimited the consideration for applicability of subsidies to investments upto a particular date. On an assessment made after inspection that an investment had been done to the tune of Rs. 6,20,656/-, the State had also provided to the petitioner a subsidy upto Rs. 94,000/- and odd. The grievance of the petitioner is that the value of the machineries, which had been contracted to be purchased but which

admittedly had not been installed on the date before when the 1992 Policy was to be applied namely 31.07.1997, the State had not provided for the contract of purchase of machineries to the tune of Rs. 1,06,00,000/- and odd and which kept the amount out of reckoning in calculation of subsidy. It was also faintly argued by learned Counsel appearing for the petitioner that an advance of Rs. 16 lacs had been made and the amount had also been paid before 31.07.1997. The writ petition details in extenso the various expenditures incurred by the petitioner between 01.04.1996 to 26.08.1998. I do not see from the extensive list, any payment of Rs. 16 lacs as having been made as advance for purchase of machineries. I have not seen that any amount has been paid for the machinery before 31.07.1997. On the other hand, it is an admitted fact that no amount had been paid towards machinery before 31.07.1997. The Division Bench of this Hon''ble Court has considered the issue of enforceability of a claim to subsidy and withdrawal of certain benefits, in M/s A.V. Cottex Limited v. State of Haryana and Anr. in C.W.P .No. 9520 of 1999. The Division Bench of this Court held that the Policy framed, by the State Government for payment of capital investment subsidy does not contain anything from which it was inferred that mere sanction of capital investment subsidy creates an enforceable right in favour of an industrial unit concerned. They were indeed considering the very same policy, which is relied on by the respondents namely the 2nd amendment to policy dated 06.02.1997 which mentioned that the subsidy which was sanctioned by the State level Committee would be subject to availability of funds from the State Government. In this case, the rejection is not on the basis that funds were not available but on the other hand, there had been a partial acceptance of the claim and the rejection of the remaining in view of the fact that investment had not been shown to have been made before 31.07.1997. For whatever investment that had been made before the said date, subsidy had also been extended. If the enforcement of a subsidy itself cannot be a matter of legal right and if the Policy provides for delimitation of how the benefit shall have extended, the petitioner cannot successfully challenge the impugned policy dated 22.05.1998 unless it could be shown that there was anything arbitrary or discriminatorythat could fall foul of Article 14 of the Constitution. The petitioner is not entitled to challenge the same and the challenge to the said notification ought to fail.

5. The writ petition is accordingly dismissed.

