

(2001) 10 AP CK 0094

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 6617 and 7519 of 1992

Lakshmi Ice Factory

APPELLANT

Vs

District Industries Centre, Krishna, Vijayawada and Others

RESPONDENT

Date of Decision : 12-10-2001

Acts Referred:

Citation : (2002) 1 ALD 812 : (2002) 1 ALT 668 : (2003) 1 RCR(Civil) 631

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J;S. Ananda Reddy, J

Bench : Full Bench

Advocate : S. Dwarakanath and K. Raji Reddy, for the Appellant; Special Government Pleader for Taxes and Government Pleader for Industries and Commerce, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.

REASON FOR REFERENCE

1. Noticing a difference of opinion between the decisions of Division Bench of this Court in Nilagiri Ice Factory v. District Industries Centre 1993 ALT SUPP. (1) 318 (DB) and Government of A.P. v. Nagarjuna Building Products (1997) 25 APSTJ 126, as regards the grant of benefits of the Liberalised State Incentive Scheme, 1989, these matters have been referred to Full Bench.

QUESTION

2. The question centres round interpretation of paragraph-10 of the Liberalised State Incentive Scheme, 1989 contained in G.O. Ms. No.498, dated 16-10-1989 which reads thus:

"As the Central objective of the new incentives Package is to attract new industrial units to the State it would not be applicable to units which have already taken any or all the steps for the project implementation. Accordingly, only new industrial units which hold valid registrations/letters of intent and have

taken steps for the first time on or after 3-10-1989 for project implementation such as applying for project finance, placing orders for any part of the machinery, commencement of constructions etc., would be eligible for these concessions provided they go into commercial production before 31-3-1995. On the question whether any industrial unit is a new industrial unit eligible for these concessions or not, decision of Government is final. Instructions would be issued separately prescribing forms, time-limits etc., for claiming the concessions."

FACTS.

3. The petitioner, which is a small scale industrial unit established to manufacture ice blocks, made an application to the Andhra Pradesh State Financial Corporation on 18-8-1989 for grant of term loan and the loan in a Sum of Rs.7,50,000/-was sanctioned on 14-10-1989. By G.O.Ms.No. 498. Industries and Commerce Department, dated 15-10-1989 the Government of Andhra Pradesh provided various incentives to industrial units in respect of which steps for their project implementations are taken for the first time after 3-10-1989 and commencement of commercial production before 31-3-1995. The petitioner paid advance for 14 items of machinery on 18-10-1989 and got itself registered under A.P. General Sales Tax and Central Sales Tax Acts on 31-1-1990. In the month of February, 1990, supplies and installation of machinery took place and unit commenced its commercial production. On 11-6-1990, the petitioner applied for registration under the Liberalised State Incentives Scheme, 1989 and on 19-7-1990 the said application was rejected by the first respondent. On 22-8-1991, the State Level Committee had decided that the sanction of loan from financial institutions after 3-10-1989 should be considered as criteria and as such the petitioner is eligible for registration under the said scheme. The petitioner was registered under the 1989 Scheme on 27-9-1991 and it applied to the first respondent for issuing temporary eligibility certificate for sales tax exemption. Temporary eligibility certificate was granted for exemption of sales tax on 22-10-1991. The second respondent, instructed all the District Industries Centres to withdraw the temporary eligibility certificates by his Circular dated 29-1-1992 as the application for loan is filed before 3-10-1989. Then the first respondent by his order dated 20-2-1992, which is impugned in the writ petition, cancelled the registration of the petitioner under the 1989 Scheme and also withdrew the temporary eligibility certificate. The third respondent issued demand and assessment notice for sales tax on 30-4-1992.

4. A counter affidavit has been filed on behalf of the respondents inter alia stating that the petitioners are not eligible for any incentives under G.O.Ms. No. 498, dated 16-10-1989 as their applications were filed prior to 3-10-1989 and the Government did not approve the proposal of the State Level Committee to treat the date of sanction of loan as relevant in lieu of date of application for loan. The respondents, therefore, justify the withdrawal of temporary eligibility certificates and the demand and assessment notice for payment of sales tax.

FINDINGS:

5. It is evident from the above facts that an application had been made by the petitioner to the A.P. State Financial Corporation for term loan on 18-8-1989 and the same had also been sanctioned on 14-10-1989. A bare perusal of paragraph 10 of G.O.Ms. No. 498, dated 16-10-1989 would clearly go to show that the objective of the new incentives package was to attract new industrial units to the State and it is specifically made inapplicable to units which have already taken any or all, the steps for the project implementation. The words "only new industrial units, which hold valid registrations/letters of intent and have taken steps for the first time on or after 3-10-1989 for project implementation", must be read in their entirety. Such steps as are referred to in the said paragraph are applying for project finance, placing orders for any part of the machinery, commencement of construction, etc. Any of the aforementioned steps taken prior to 3-10-1989 would, therefore, disentitle the entrepreneur from getting the benefit of the said incentive package.

6. It is a well-known principle of construction of statutes that all words employed therein must be given their full meaning unless the same results in absurdity. In *Gurudevdatla VKSSS Maryadit and Others Vs. State of Maharashtra and Others*, , it has been held:

"Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver."

7. In *Sutlers v. Briggs* 1922 (1) App Cas 1, the Privy Council held:

There is indeed no reason for limiting the natural and ordinary meaning of the words used. The term "holders or indorsees" means any holder and any indorsee, whether the holder be the original payee or a mere agent for him, and the rights of the drawer must be construed accordingly. The circumstance that the law apart from the section in question was repealed in 1845, without any repeal of the section itself, may lead to anomalies, but cannot have effect in construing the section.

8. In *Dental Council of India and Another Vs. Hari Parkash and Others*, , it was held:

The intention of the Legislature is primarily to be gathered from the language used in the statute, thus paying attention to what has been said as also to what has not been said. When the words used are not ambiguous, literal meaning has to be applied, which is the golden rule of interpretation.

9. It is not in dispute that in the decision reported in Nagarjuna Building Projects (supra), the Division Bench was considering the case wherein the loan was sanctioned by the A.P. State Financial Corporation on 11-10-1989 and 14-10-1989 after the cut-off date 3-10-1989. It was held that only because enquiries were made by the entrepreneurs prior to 3-10-1989 for obtaining loan would not be a step within the meaning of paragraph-10 of the aforementioned GO. Thus, the said decision is not applicable in the facts and circumstances of this case.

10. The matter has been considered by another Division Bench of this Court in Nilagiri Ice Factory (supra) wherein a case of cancellation of the eligibility certificate, which had previously been granted, was being considered. Justice Sivaraman Nair, speaking for the Division Bench, held:

"We are of the opinion that in terms of para-10 of G.O.498 dated 16-10-89 a person like the petitioner who had filed application for project finance prior to 3-10-89 could not have been granted the benefits of the Liberalised Incentive Scheme, 1989. Any recommendation by the State Level Committee, which itself was only a creature of the Government, cannot alter the terms of G.O.498 on the question of eligibility. If at all a relaxation could have been made, the only authority competent to do so, is the State Government and not the State Level Committee, much less the 1st respondent, who is only a ministerial officer who has to implement the terms of the Government order. We are therefore of the opinion that there is no merit in the contention of the petitioner that the State Level Committee having decided in favour granting registration and eligibility certificate in favour of units which had filed applications for project finance earlier than 3-10-89 but could avail of such finance only thereafter, would also be entitled to the benefits of the scheme. We also understand Clause 10 of G.O.498 to mean that "the decision of the Government in relation to eligibility of any person or where such person or industrial unit is a new industrial unit in terms of the Government order shall be final." In the present case, we have seen that the order of the State Government treating industrial units which had applied for project finance earlier than 3-10-1989 not to be new units eligible to claim benefits of the scheme in terms of G.O. 498."

11. Recently in State of Kerala Vs. M/s. Vattukalam Chemicals Industries, , it was held that exemption under a Notification would apply to goods of description that are taxable at the point of first purchase in the State and since the good in question viz, Copper scrap was not such good, exemption under the notification is not applicable. Such decision is an authority to show that in a case of this nature, the benefit of notification does not extend in relation to the good and cannot be extended beyond the provisions of the statute.

12. We are, therefore, of the opinion that those industrial units, which have taken any steps whatsoever for the purpose of construction of the factory prior to 3-10-1989, would not be entitled to the benefits of the said Scheme.

13. In WP No.7519 of 1992 the learned counsel appearing on behalf of the petitioner would contend that therein the petitioner had also applied for the benefits under the old Scheme contained in G.O.Ms. No. 375, dated 23-8-1985. By reason of the Government Order in G.O.Ms. No. 498, dated 16-10-1989, that scheme has been superseded. No legal right, therefore, subsists in favour of the petitioner for a direction to consider its case for grant of the benefit under the both the schemes old and new.

14. The questions referred to are answered accordingly. The writ petitions are dismissed. No order as to costs.