(2000) 03 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 3168 of 1999

Lamifab Industries APPELLANT

Vs

State Government RESPONDENT

Date of Decision : 08-03-2000

Acts Referred:

Citation : (2000) 03 GUJ CK 0004

Hon'ble Judges : C.K.Thakker, J

Bench : Single Bench

Advocate : Nanavati and Nanavati, for the Appellant; M.A. Bukharia, AGP, for the Respondent

Judgement

C.K. Thakkar, J.—Rule. Mr. Bukhari, learned AGP appears and waives service of rule on behalf of the respondents. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. This petition is filed against an order passed by the Additional Industries Commissioner (Extension) on March 30, 1998 , Annexure `A'' to the petition. By the impugned order, the petitioner was informed that its unit was found to have gone into commercial production on 23rd August, 1995 considering its first sale bill of even date. It was then stated that as the unit had not gone into commercial production during operative period of the Incentive Scheme 1990-95, the subsidy sanctioned vide sanction letter dated 21st September 1995 was required to be cancelled and was accordingly cancelled. Petitioner was, therefore, advised to get registration as pipeline case under the scheme 1990-95 for sales tax benefit through the District Industries Centre, Valsad.

3. The case of the petitioner was that as per the Government resolution, a scheme was framed known as "New Industrial Policy- Capital Investment Subsidy Scheme 1990-95" and the petitioner unit came to be granted capital investment subsidy registration certificate. The petitioner was entitled to the subsidy as per the scheme, but no payment was made by the respondents. Regarding

disbursement of amount, relevant clause of the resolution dated 16th October 1990, Annexure `B'' read as under:

"8. Disbursement:

The subsidy shall be disbursed either by the District Industries Centre, Industries Commissioner, Gujarat State Financial Corporation or Gujarat Industrial investment Corporation for the cases which have been sanctioned by the respective agency. The disbursement of subsidy will be done in proportion to the creation of the fixed eligible assets upto 85% of the sanctioned amount of subsidy. The balance 15% will be disbursed only after the unit commences commercial production. If the unit fails to commence commercial production within two years after receiving 85% of the subsidy, the amount of subsidy will be liable to be recovered as arrears of land revenue."

4. The contention of the petitioners was that from the above clause, it is abundantly clear that disbursement of subsidy would have to be done in accordance with the above clause which provided for disbursement of 85% amount before production and 15% of the balance amount only after the unit commences commercial production. The respondent authorities, in these circumstances, had no power, authority or jurisdiction not to disburse 85% subsidy amount on the ground that commercial production had not started by the petitioners. On the contrary, as per disbursement clause 85% of the subsidy amount must precede commercial production and remaining 15% only will be paid thereafter. It was also contended that the impugned order dated 30th March 1998 was passed without issuing notice calling for explanation and affording opportunity of hearing. It was, therefore, submitted that the order deserves to be quashed and set aside by directing the authorities to release subsidy.

5. Reliance was placed in this connection on a recent order passed by a Division Bench in SCA No. 4388 of 1999 with SCA No. 4398 of 1999 decided on 10th February 2000. The Division Bench , almost in similar circumstances, set aside the action taken by the respondent authorities and directed them to reconsider the case of the petitioners of those petitions.

6. In affidavit in reply filed by the Manager, Raw Material, DIC, Valsad, it was stated in para 4 as under :

"4. With reference to para 2 of the petition, I say that State cash subsidy worth Rs. 15,78,180/- sanctioned under 1990-95 scheme in State level committee meeting No.169, held on 4.9.1995 on following eligible assets. Annexed hereto and marked as Annexure I is 1990-95 policy.

Land: Rs. 418800/- Building Rs. 1875100/- Machinery Rs. 5100000/- Electrification Rs. 5000000/- -------------- Rs. 7890900/- --------------

I further say that accordingly sanction order issued to the petitioner as on 21.9.1995. Annexed hereto and marked as Annexure II is the copy of the order dated 21.9.1995. Petitioner has made subsidy agreement with the respondent as on dated 24.10.1997. Annexed hereto and marked as Annexure III is the copy of the same.

I further say and submit that before going to disbursement of subsidy to the petitioner it is observed and decided by the respondent (General Manager- DIC) that as per policy unit is found to be gone into commercial production on dated 23.8.1995. As per the incentive scheme of 1990-95, unit wants to avail benefit under this scheme then the unit may commence its production on or before 15.8.95. hence, considering the date of sale bill ie. not before dated 15.8.1995, I further say that subsidy sanctioned vide sanction letter No. IC/INC/SLC/ Sanction/ T-I/67/ 8451 dated 21.9.1995 is cancelled by sanctioning authority."

7. It was contended by the learned AGP that since no commercial production was started by the petitioners, action was taken by the authorities and it cannot be said to be contrary to law.

8. In my opinion, the petition deserves to be partly allowed. The policy of the Government is clearly reflected in the subsidy Scheme at Annexure `B''. Clause 8 thereof in no uncertain terms provides for disbursement of subsidy in two instalments: (i) in creation of fixed eligble assets to the extent of 85% and (ii) 15% after commencement of production .

9. So far as disbursement of 85% subsidy is concerned, it should precede production. Question of remaining 15% subsidy would arise after the unit starts production. It was also contended by the petitioners that date of commercial production was unilaterally changed by the respondent authorities and no notice or hearing was afforded to the petitioners. It was also stated that the said decision was contrary to earlier decision taken by the same authority as communicated on 24th June 1999.

10. I may state that it is not necessary for me to express any opinion on merits of the matter at this stage. Since the impugned order deserves to be quashed and set aside, in the light of the scheme of the Government as also decision of the Division bench in the aforesaid two petitions, it would be for the respondents to decide the matter afresh.

11. The petition deserves to be partly allowed and is accordingly allowed. Respondent authorities are directed to consider the case of the petitioners afresh in the light of the scheme as also judgment of the Division bench of this Court and to take appropriate decision in accordance with law, as early as possible preferably in the next meeting. Rule is made absolute to that extent. No order as to costs.