(1995) 02 RAJ CK 0056

In the Rajasthan High Court

Case No : Civil Writ Petition No. 692 of 1992

Modern Woollens Ltd. APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 06-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 1 RLW 192 : (1996) 1 WLC 607 : (1995) 1 WLN 233

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Yadav, J.—The petitioner compnay has filed the instant writ petition for quashing the impugned order dated 24 9 91 which was communicated to the petitioner company on 5.10.91 Anx. 2 to the writ petition passed by respondent No. 2 District Level Screening Committee, Bhilwara refusing grant of eligibility certificate under the Rajasthan Sales Tax Deferment Scheme for Industries, 1987 framed in exercise of the powers conferred by Sub-Section on (2B) of Section 7 of the Rajasthan Sales Tax Act, 1954 (in short ''the Sales Tax Deferment Scheme, 1987'').

2. The factual matrix of the case for disposal of the instant writ petition are that the petitioner company of the Modem Worsted Sinners was constructed on the land situated in khasra Nos 3411, 3412 and 3413 The State Govt. also accorded the sanction for change of this land from Ware Housing Godown to Industrial purposes and orders have been passed for the change In the proposed draft master plan The relevant documents in support of the aforesaid averments are filed as Anx. 3, 4 and 5 to the writ petition It is also alleged that the Collector Bhilwara issued the orders and converted the agricultural land for industrial purposes and the same was allotted to the petitioner company under the Rajasthan Industrial Area Allotment (amended) Rules, 1987 (in short ''the Rules of 1987'') In view of the aforesaid facts and circumstances stated above it is

alleged by the petitioner company that its case if fully covered under the proviso of sub-Clause (dd) of Clause 2 of Definition given under the Sales Tax Deferments Scheme, 1987.

3. Since it is alleged that the petitioner compnay falls within the proviso of sub-clause (dd) of clause 2 of Definition clause given under the Sales Tax Deferment Scheme, 1987, therefore, It moved an application for eligibility certificate under the said scheme on 1.11.88 indicating in its application that it started production w.e.f. 1.10.88 The application moved by the petitioner company is filed to the writ petition and marked as Anx. 10 to the writ petition It is pertinent to mention that in the said application moved by the petitioner company the date of commencement of commercial production is indicated at serial No. 8 to be 1.10.88.

4. It is further alleged that the aforesaid application moved by the petitioner company for grant of eligibility certificate under the Sales Tax Deferment Scheme 1987 was rejected by the respondent No. 2 earlier on 24 3 89 against which the petitioner company has filed S B Civil Writ Petition No. 4336 of 1990 which was decided on 11 7 1991 and the aforesaid order passed by the respondent No. 2 was set aside and the case was remanded back for decision In the light of the State Government order dated 23 3 88 which was marked as Anx. 6 in the earlier writ petition and in the present writ petition it is marked as Anx. 3 There was a direction by this court while deciding the aforesaid writ petition that the respondent No. 2 will decide the matter after giving an opportunity of being heard to the petitioner company.

5. After remand of the case the respondent No. 2 after affording an opportunity of hearing to the petitioner company passed the impugned order Anx. 2 to the writ petition and again refused to grant eligibility certificate to the petitioner company against which the present petition is filed.

6. After service of notice, the respondent Nos 1 and 2 have filed a joint reply denying the averments made in the writ petition and it is stated that the petitioner company is not entitled to get the benefit under the Sales Tax Deferment Scheme 1987 It is stated in the reply that the grounds for refusing to grant eligibility certificate to the petitioner company by the respondent No. 2 are eminently just and proper and allegations contrary to it are devoid of truth and merit.

7. I have heard the learned Counsel for the petitioner company Shri Rajendra Mehta and learned Additional Government Advocate Shri C R Jakhar at length and have critically gone through the material available on record.

8. The main thrust of the argument of the learned Counsel for the petitioner is that petitioner company''s application dated 1.11.88 has been rejected by the respondent No. 1 on three grounds, firstly, that the principles which were applied in the case of M/s Chitlangia Cotton and Ginning and Processing Factory, National High Way No. 15, Ganganagar v State Rqjasthan and Others decided on 6 12 88

are not applicable to the facts and circumstances of the present case, secondly that on page No. 3 of the writ Petition No. 4336 of 1990, the unit was described as expansion while application was filed as a new unit and thirdly that the Modern worsted Spinners has been established on the site of the existing unit manufacturing similar goods According to the learned Counsel for the petitioner company the grounds of rejection given in the impugned order by the respondent No. 2 are erroneous and are not sustainable in eye of law.

9. The aforesaid argument of the learned Counsel for the petitioner company is not acceptable to me for the reasons that the respondent No. 2 has not rejected the application dated 1.11.88 moved by the petitioner company only on the aforesaid grounds but one of the grounds given by the respondent No. 2 is that the Deputy Secretary to the Government, Urban Development Authority, Jaipur has conveyed approval for modification in the draft Master plan of Bhilwara from Ware Housing to Industrial area in respect of the land measuring 300 Ft x 450 ft falling in khasra Nos. 3411, 3412 and 3413 situated in south of the existing woolen mill to the Chief Town Planner, Jaipur vide his letter dated 23 3 88 Anx. 3 to the writ petition which was marked as Anx. 6 In the earlier writ petition and in pursuance of that letter, the Collector, Bhilwara has declared the said land for the industrial purpose instead of Ware Housing shown in the proposed Master Plan and inform accordingly to the Dy Secretary Urban Development and Housing Department, Jaipur vide his letter dated 15 7 89 Anx. 6 to the present writ petition and actual lease-deed was registered in favour of the petitioner company on 5 1 1990.

10. In view of the aforesaid facts and circumstances it is incorrect to allege that the petitioner company has started production w.e.f. 1.10.88 It is also stated in the impugned order by the respondent No. 2 that the petitioner comany has given an impression to this Court in earlier writ petition No. 4336 of 1990 as if all the actions and formalities in respect of conversion of agricultural land into industrial purposes its allotment and execution of lease deed have been completed prior to the year 1987 In support of aforesaid finding the respondent No. 2 had quoted the following observations made by this Court in SB Civil Writ Petition No. 4336 of 1990 as under:

The petitioner company applied to the Collector, Bhilwara for conversion of agricultural land for non-agricultural purposes for establishing its factory on this land The application of the petitioner company was accepted by the Collector, Bhilwara and the land was converted into non-agricultural purposes The petitioner established the present factory on this land A lease deed was executed between the petitioner company and the Governor of the State of Rajasthan for the purpose of establishing an industry Thereafter, the Government of Rajasthan issued the Rajasthan Sales Tax Deferment for Industries, 1987 and the petitioner applied for exemption under the aforesaid scheme.

11. I have examined the aforesaid reasons given by the respondent No. 2 while rejecting the application moved by the petitioner company on 1.11.88 for grant

of eligibility certificate under the Sales Tax Deferment Scheme 1987 The learned Counsel for the petitioner company has supplied a copy of the earlier writ petition No. 4336 of 1990 and a bare perusal of paragraphs 3 to 7 of that writ petition leads towards an irresistible conclusion that the petitioner company has not stated the correct facts fairly in aforesaid paragraphs of its earlier writ petition and the case has been remanded by this Court vide Anx. 1 to the writ petition to the respondent No. 2 for decision afresh as if all the formalities in respect of conversion of agricultural land into industrial purposes its allotment, execution of lease deed and its inclusion in Master plan for industrial purposes instead of Ware Housing have been completed prior to the year 1987 only then the petitioner company has moved an application on 1.11.88 Anx. 10 to the writ petition alleging at serial No. 8 about commencement of commercial production w.e.f. 1.10.88 in order to get the benefit of Sales Tax Deferment Scheme 1987.

12. The conduct of the petitioner company is reprehensible and as a matter of fact the petitioner company is guilty of material concealment inasmuch as if the actual lease deed was registered in favour of the petitioner company on 5.1.90 then it is not conceivable that the petitioner company has started production w.e.f. 1.10.88 After execution of lease deed the petitioner company is to be installed in Khasra Nos 3411, 3412 and 3413 and before execution of lease deed on 5.1.90 its existence is not believable by any strech of imagination Thus, if the petitioner company has come into existence after 5.1.90 how it can be presumed to have stalled production w.e.f. 1.10.88 and as such how the petitioner company is entitled to get the benefit under clause 2(dd) under the Sales Tax Deferment Scheme, 1987.

13. The learned Counsel for the petitioner company is not able to convince the Court as to how the petitioner company will start production w.e.f. 1.10.88 while as a matter of fact Khasra Nos 3411, 3412 and 3413 were allotted to it under the Rules of 1987 and registered lease deed was executed in its favour on 5.1.90 Since the petitioner''s counsel is not able to satisfy me on the aforesaid count, therefore, the instant writ petition is liable to be dismissed on this count alone without further ceremony.

14. In my considered opinion the petitioner company has no authority or legal justification to claim benefit under clause 2(dd) of Sales Tax Deferment Scheme 1987 upon its application dated 1.11.88 Anx. 10 to the writ petition claiming commencement of commercial production w.e.f. 1.10.88 prior enclusion of plot Nos. 3411, 3412 and 3413 in proposed master plan.

15. It is not disputed before me that on the basis of Anx. 3 to the writ petition which was Anx. 6 in earlier writ petition dated 23.3.88 the Collector, Bhilwara has declared the said land for industrial purposes instead of Ware Housing duly shown in proposed Master plan and informed according to the Deputy Secretary, Urban Development & Housing Department, Jaipur vide his letter dated 15.7.89 Anx. 6 to the writ petition and thereafter on the land where petitioner company is alleged was established It is important to note that possession of the land over

which the petitioner company is alleged to have been established was handed over by Tehsildar, Bhilwara on 23.12.89 and registered lease deed was executed on 5.1.90, therefore, in my humble opinion the application dated 1.11.88 Anx. 10 to the writ petition claiming the benefit of Sales Tax Deferment Scheme 1987 by the petitioner company under clause 2(dd) of the said scheme was premature and the respondent No. 2 has rightly rejected the same.

16. It must be taken to be a settled law that if an impugned order is challenged before this Court under Article 226 of the Constitution of India which are based on several grounds even if one ground remain unassiable then are demonstrated to be erroneous or non-est and even if one ground remains unassailable then the petitioner company is not entitled to get a relief under Article 226 of the Constitution of India.

17. Since in the instant writ petition the petitioner company is not able to demonstrate as to how the afore mentioned ground on which its application for grant of eligibility certificate under the Sales Tax Deferment Scheme 1987 has been rejected by the respondent No. 2 is erroneous or non-est, therefore, the instant writ petition is liable to be dismissed on this ground alone without going into other grounds urged before me.

18. A close look of the impugned order Anx. 2 to the writ petition passed by the respondent No. 2 leads towards an irresistible conclusion that it is eminently just and proper and does not require interference under equitable extra-ordinary jurisdiction under Article 226 of the Constitution of India.

19. As a result of the afore mentioned discussion, the instant writ petition is dismissed with cost to the contesting respondents.

