
(2012) 04 PAT CK 0125
In the Patna High Court
Case No : CWJC No. 7228 of 2009

M/s Dumraon Textiles Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-04-2012

Acts Referred:

Bihar Electricity Duty Act, 1948 — Section 9
Industrial Incentive Policy, 2006 — Clause 2(v)

Citation : (2012) 4 PLJR 450

Hon'ble Judges : Samarendra Pratap Singh, J

Bench : Single Bench

Advocate : S.D. Sanjay, Gautam Kejriwal and Sushila Agrawal, for the Appellant; Vinay Kirti Singh, for the Respondent

Judgement

Samarendra Pratap Singh, J.—The petitioner prays for a direction to the respondent authorities to grant exemption from payment of Electricity Duty as well as from payment of A.M.G. charges for a period of seven years from the date of recommencement of production upon rehabilitation on 31.3.2007. Besides this, the petitioner also sought for a direction for grant of benefit under the Industrial Policy in totality. Before I take up the grounds on which the petitioner has sought his reliefs, it would be necessary to notice the facts of the case in brief. The petitioner is a registered company under the Companies Act and is engaged in production of cotton and staple fibre yarn. The petitioner unit was started in the year 1968 with installed capacity of 12320 spindles which was subsequently increased to 25960 spindles by 1981. Gradually, the net worth of the Mill started eroding and on 31.3.1999, the petitioner made a reference to the Board for Industrial and Financial Reconstruction (hereinafter referred to as "the BIFR") under the provisions of the Sick Industrial Company (Special Provision) Act, 1985 giving rise to BIFR Case No. 52/2000. The unit was declared sick on 19.7.2000 and Punjab National Bank was appointed as Nodal Agency for possible rehabilitation of the unit. A draft rehabilitation scheme was prepared on 18.2.2002 which was sanctioned by the BIFR on 6.8.2002. The hearing before

the BIFR proceeded from time to time in which the representatives of State Government and the Bihar State Electricity Board also participated. A modified rehabilitation scheme was prepared and circulated and finally approved by the BIFR on 10.1.2008 and forwarded to the petitioner on 24.1.2008.

2. After series of negotiation, an agreement was arrived for restoration of power supply and settlement of the disputed dues. As per arrangement worked out in August, 2008, the electric supply was restored on payment of 10% of the demand due e.g. Rs. 48,53,739/- besides payment of additional sum of Rs. 50,000/-. It was also agreed that with regard to the settlement of old disputed dues, a Committee consisting of four officers of the Board and one representative of the company would be constituted.

3. It is the case of the petitioner that the Board agreed to provide exemption from payment of AMG/MMG and was entitled to exemption from payment of electricity duty in terms of Industrial Policy, 2006. A copy of the Industrial Policy, 2006 is contained in Annexure-2.

4. The petitioner states that in violation of the Industrial Policy, 2006 and tripartite agreement arrived at by both the State Government and the Board, a Committee under the Chairmanship of Chief Secretary denied the benefit of exemption from AMG/MMG charge as well as exemption from Electricity Duty. The minutes of meeting dated 27.2.2009 was communicated vide memo no. 226 dated 18.3.2009 (Annexure-3).

5. The petitioner states that it would appear from the minutes of meeting dated 27.2.2009 that neither any concession except for few minor ones, has been made in accordance with the recommendation of the BIFR nor any relief or benefit has been provided as per the Industrial Policy, 2006.

6. I will take up the issues one by one.

7. The petitioner states that the respondents in its meeting dated 27.2.2009 and by the impugned order dated 18.3.2009 has wrongly denied exemption from payment of electricity duty for a period of seven years from the date of recommencement of production. The petitioner submits that exemption of electricity duty has been denied without assigning any reason in spite of Clause 2(viii) of the Industrial Policy which provides for 100% exemption of electricity duty. The petitioner submits that this concession is in addition to the concessions and subsidies mentioned in the earlier clause.

8. On the other hand, counsel for the State submits that Clause 2(v) of the industrial Incentive Policy, 2006 provides that only a new industrial unit will be entitled to relief from payment of electricity duty under the Bihar Electricity Duty Act, 1948 for the generation and for own consumption of electricity from D.G. Set and captive power unit. It is further case of the State that clause 2(viii) of the Industrial Policy, 2006 relates to clause 2(v). It is submitted that such exemption is for the new unit and not for the old unit like the petitioner.

9. Counsel for the petitioner submits that in exercise of power conferred u/s 9 of the Bihar State Electricity Duty Act, 1948, the Governor of Bihar has exempted levy of electrical duty on electrical energy in respect of units commencing production between 1.4.2006 and 31.3.2011. A copy of S.O. 148 dated 12.10.2006 is annexed as Annexure-A to the counter affidavit filed on behalf of respondent no. 3. Even the Board's counsel submits that there is no direction by the BIFR to grant exemption from electricity duty for seven years from the date of reproduction upon rehabilitation on 31.3.2007.

10. In order to appreciate the rival contentions of the parties, it would be expedient to quote Clauses 2(v), (vi), (vii) and (viii) of the Industrial Policy, 2006 which runs as under:--

2(v) New Industrial units will be granted relief from payment of electricity duty under the Bihar Electricity Duty Act, 1948 for the generation and for own consumption of electricity from D.G. Set and Captive Power Units.

2(vi) Subsidy/Incentive on VAT.--is facility will be available to small/large/medium industries. The industrial unit will get a pass-book from the State Government in which the details of the tax paid under Bihar VAT would be entered and verified by the Commercial Taxes Department in the form prescribed in Appendix-III. The Director, Industries will be authorized to pay the incentive amount on the basis of the verification.

The new units will avail 80% reimbursement against the admitted VAT amount deposited in the account of the Government, for a period of ten years. The maximum subsidy amount is payable 300% of the capital invested.

Clarification: The incentive would not be payable on the amounts imposed as penalty and the difference of amount between tax assessed and accepted under the Central Sales tax/Bihar Value Added Tax Act, 2005 and Bihar Entry Tax Act.

2(vii) Zero VAT.--Zero VAT means the production of items, which do not attract VAT. Such units which produce items attracting Zero Vat and pay income tax would be eligible for incentive up to a maximum utilization of 70% of the installed capacity (maximum limit) as per para (vi) above. Incentive will be payable after the inspection/recommendation by a committee constituted under the chairmanship of the Director, Industries on the basis of inspection and recommendation by technical officer of the Department.

2(viii) In addition to aforesaid subsidy/concessions, the following exemptions will be provided:--

- a. 100% exemption for seven years in luxury tax for seven years.
- b. 100% exemption in electricity duty for seven years.
- c. 100% exemption in conversion charge.
- d. 100% exemption in market Fee for seven years

11. Clause 2 of the Industrial Policy deals with Post-Production incentives. Clause 2(v) states that new industrial unit would be granted relief from payment of electricity duty for the generation and for own consumption from the D.G. Set and Captive Power Unit. Clause 2(vi) deals with subsidy and incentive onwards. It also refers to the new industrial unit. Clause 2(vii) refers to Zero VAT. Clause 2(viii)(b) would be relevant for consideration of the electricity duty. Clause 2(viii) states that in addition to aforesaid subsidy/concessions, the exemptions mentioned therein will be provided which also includes 100% exemption in electricity duty for seven years.

12. I am in agreement with the submission of learned counsel for the respondents that the exemption of electricity duty mentioned in Clause 2(viii) is in reference to new units. The aforesaid submission of mine would also find support from Annexure-A which is a notification issued on 12.10.2006 by Governor of Bihar u/s 9 of the Bihar State Electricity Duty Act, 1948, wherein it is provided that such exemption would be admissible to new units which comes into commercial production between 2006 to 2011. The petitioner's unit is admittedly not a new unit. Furthermore, the industrial policy does not state that such benefit is permissible to old units which has been rehabilitated. Thus, the petitioner is not entitled to exemption from payment of electricity duty under the Industrial Policy.

13. Now I will take up the next issue whether the petitioner would be entitled to AMG/MMG in view of orders of the BIFR and the benefits conferred under the Industrial Policy, 2006. The petitioner's case that it is entitled to exemption from AMG charges under Clause 11.2.3 of Modified Rehabilitation Scheme for one year from 19.7.2000 as subsequently the electric line was disconnected, and for further four years from the date of recommencement of production on rehabilitation on 31.3.2007. The petitioner contends that high powered committee meeting dated 27.2.2009, held under the Chairmanship of Chief Secretary, erred in concluding vide Clause 13 of the proceedings that AMG exemption would not be available to the petitioner unit, as it does not fall within the meaning of working unit nor it is a new unit.

14. Learned counsel for the petitioner contended that the high powered committee misconstrued Clause 2(xii) of the Industrial Policy, 2006. The disputes relates to interpretation of Clause 2(xii) which is quoted hereinbelow:--

2(xii) Exemption from AMG/MMG.--Working units at present and new units will avail exemption from AMG/MMG from the date of declaration of the New Industrial Policy. This facility will be granted for five years.

15. The petitioner submits that as its unit has become working unit on 31.3.2007, it would be entitled to exemption from AMG/MMG under Clause 2(xii), apart from additional benefit under Clauses 3(i) to Clause 3(iii) being provided to a sick unit.

16. On the other hand, counsel for the Board submits that the petitioner would

not be entitled to the exemption from AMG charges as the unit was not a working unit in the year 2006, when the Industrial Policy, 2006 was introduced. Learned counsel submits that petitioner's unit is a sick unit and would be entitled to benefit under Clause 3.3 which is quoted hereinbelow:--

3.3(vi) Facilities to sick and closed units.--Exemption of Annual Minimum Guarantee (AMG), Monthly Minimum Guarantee (MMG) and delayed payment surcharge to the unit will be granted from the date of declaration of unit as a sick unit. This facility will be available for five years.

17. Learned counsel submits that exemption of AMG/MMG and delayed payment surcharge is available to a sick unit for five years from the date of declaration of the unit as sick. The petitioner unit was declared sick on 19.7.2000 and it was entitled to exemption from payment of AMG from 19.7.2000 to 18.7.2005. The petitioner unit has remained sick and it was not under production nor energy line was energized for most of these periods. The petitioner cannot claim exemption beyond 18.7.2005 and as such the claim for exemption from commencement of production of rehabilitation on 31.3.2007 is not permissible under the Policy.

18. Learned counsel for the Board submits that as per clause 3(v) of the Industrial Policy, a sick and closed unit which has availed the benefits under the earlier Industrial Policy in the past can avail even second time the facilities under his policy. If any sick or closed units want to avail the benefits under the Industrial Policy for the second time, it will, avail only the difference between the prior availed amount and the proposed amount under new policy. Sub-clause (v) of Clause 3.3 of the Industrial Policy, 2006 is quoted hereinbelow:--

3.3(v) Those sick and closed units which have availed the benefits of any Industrial Policy in the past can avail even second time the facilities under this policy. If any sick or closed unit wants to avail the benefits under the Industrial Policy for the second time it will avail only the difference between the prior availed amount and the proposed amount under new policy. But this facility for rehabilitation to the unit will be made available only on the recommendation of the concerned committee constituted by the State Government. Such facility to the unit can be made available maximum up to two times only.

19. The State in its second supplementary counter affidavit filed on 2.6.2011 at running page 107, states in paragraph 3 that B.I.F.R. circulated a modified Draft Rehabilitation Scheme for revival of M/s Dumraon Textiles in Case No. 52/2000 and on the basis of such scheme i.e. DRS, a high level empowered committee was held and with reference to reliefs and concessions, some recommendations were made.

20. It would appear from Clause 2(xii) of the Industrial Policy that exemption from AMG/MMG for five years is available to "working units at present" and new units as stated in clause 2(xii) of Industrial Policy, 2006. One of the issues is whether the petitioner's unit would come within the meaning of Clause 3.3. Admittedly, the petitioner unit is not a new unit as it was established in the year

1968 and had got electric connection long time back. The new unit referred to in clause 2(xii) for the purposes of exemption from AMG charge would mean those units which got electric connection after coming into force the Industrial Policy in 2006 and also commenced production within 5 years of the Policy. In such instance the unit would be considered a new unit and would be entitled to exemption from AMG/MMG charges for 5 years from the date of connection of electric fine.

21. Now we have to examine whether the petitioner would come within the meaning of "working unit at present" as per Clause 2(xii) of the Industrial Policy, 2006. The term working unit mentioned in Clause 2(xii) is referring to units which are in working position on the date of introduction of Industrial Policy established any time before introduction of Industrial Policy, 2006. Such units in view of Clause 2(xii) would be entitled to benefit under the Industrial Policy, 2006 though they may have availed similar benefits under the earlier Industrial Policy. The petitioner-unit admittedly was not a working unit in the year 2006 when the Industrial Policy was introduced. Even as per own case of the petitioner, the unit came into production on rehabilitation only on 31.3.2007. As such, there is no infirmity in the decision of the high powered committee denying exemption of AMG/MMG charges under Clause 2(xii) of the Industrial Policy, 2006.

22. It would be relevant to state herein that the total dues calculated against the petitioner as on 1.8.2008 was Rs. 3,85,03,486.47. The aforesaid amount included bill raised against the unit being a H.T. Unit for the notice period of one year from December, 2000 to November, 2011 amounting to Rs. 56,59,050.14 towards the MMG charge alongwith D.P.S. amount of Rs. 20,68,744.17 paise towards the fuel surcharge. The petitioner vide agreement dated 7.10.2009 agreed that the said bill raised for the period December, 2000 to November, 2011 be kept in abeyance for 12 months. The petitioner agreed that in case the State Government does not pay the aforesaid amount to the Electricity Board, it would pay the said amount. A concession was given to the petitioner in the agreement to pay the balance net dues of Rs. 2,35,21,923 in 30 equal monthly installments without interest. The deed of agreement dated 7.8.2009 entered into by the petitioner is contained in Annexure-B to the counter affidavit filed on behalf of respondent no. 2 at page 129 and the office order in respect of the same issued by the Chief Engineer (Civil) dated 7.8.2009 contained in Annexure-C at page 132.

23. The Board states that the State Government has not paid the said AMG and DPS charges and as such as per agreement the petitioner is liable to pay the same. Counsel for the State submits that the State Government was not under any obligation to pay the said amount on behalf of the petitioner and as such the petitioner would be liable to pay the MMG charges and DPS charges amounting to Rs. 77,27,794.31 for the notice period commencing from December, 2000 to November, 2011.

24. I find that the petitioner is liable to pay MMG charge and D.P.S. for the period

December, 2000 to November, 2011 totalling Rs. 77,27,794.31. However, in the facts of the case, I am inclined to grant 12 months time to the petitioner commencing from July, 2012 to pay the aforesaid dues in 12 equal monthly installments.

25. The petitioner has filed a supplementary affidavit on 9.2.2012 stating that vide letter no. 2668, dated 21.12.2011, the Secretary of the respondent Electricity Board has written to all the bill officials of the Board about extending the benefit of Industrial Policy Resolution, 2011 to the industrial units in view of clarification of the Industrial Development Commissioner wherein he has clarified even those industrial units which had availed the benefit of incentive under the Industrial Policy Resolution, 2006 would also be entitled for benefit for a period of 5 years as working unit.

26. The benefit of 2011 Industrial Policy is not a subject matter of dispute in this writ application and as such it would not be appropriate for this court to express any opinion in respect of the same. This court does not prohibit the petitioner seeking relief from the respondents in terms of Industrial Policy, 2011. With the aforesaid observations and directions, this writ application stands disposed of.