(2009) 02 JH CK 0127

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1311 Of 2008

M/s Eastern Synpacks Limited — APPELLANT

Vs

State Of Jharkhand & Others — RESPONDENT

Date of Decision : 04-02-2009

Acts Referred:

Citation : (2010) 4 JLJR(Jhar) 423

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Advocate : M.S. Mittal, A.R. Choudhary, M.S. Akhtar, A.K. Mehta, Ramit Satender, A.K. Das

Judgement

1. Challenge in this writ application is to the order dated 04.05.2000 (Annexure-5) and the order dated 15.06.2007 (Annexure-10) issued by the Industry Department, Government of Bihar (respondent No. 4) declaring thereby that the petitioner company is not entitled to any power subsidy on account of the fact that the petitioner company has been obtaining power supply from the private company namely the TISCO and there is no provision under the Industrial Policy of 1993 for providing power subsidy to consumers who obtain electric supply from private companies. Similar challenge has been made to the order dated 27.09.2007 (Annexure-9) issued by the Director of Industries, Government of Jharkhand on the basis of the letter (Annexure-6) issued by the Director of Industries, Government of Bihar, communicating thereby that the petitioner is not entitled to get the power subsidy on power consumption under the Industrial Policy of 1993.

2. Facts of the petitioner's case in brief are that the petitioner has a medium scale unit at Jojobera, Jamshedpur carrying on the business of manufacturing HDPE/PP woven bags. Since the location of the petitioner's unit falls within the command area of operation of TISCO Ltd., which has exclusive right to supply electricity within its command area, the petitioner has been obtaining electric supply from TISCO.

The erstwhile unified state of Bihar had declared an Industrial Policy in 1993. One of the incentives offered in the said policy was that Government would pay power subsidy @ 18 paise per unit on power consumption to industrial units making an investment of Rs. 75 lakhs in plant and machinery and @ 15 paise per unit to those units making an investment of more than Rs. 75 lakhs upto Rs. 15 crores. Such subsidy was payable, if the unit comes into production between 01.04.1993 to 31.03.1998.

The petitioner establishment had made an investment of more than Rs. 75 lakhs and it commenced production w.e.f. 18.03.95. On the belief that it was entitled to claim subsidy on power consumption under the Government's Industrial Policy of 1993 for the period of five years commencing from 18.03.1995, the petitioner had put up its claim, as required, through the BICICO (respondent-6) in the prescribed proforma.

However, inspite of such claim and inspite of furnishing all the requisite documents and bills pertaining to electric consumption, the power subsidy was not released to the petitioner company.

Despite the clear stipulations in the State Government's Industrial Policy of 1993, the Manager, BICICO (respondent-6) sought for a clarification from the Industrial Development Commissioner, Bihar as to whether the petitioner company is entitled to get subsidy in view of the fact that the petitioner company has been obtaining power supply from a private licensee namely the TISCO Ltd.

While the clarification was being awaited, the state of Jharkhand was created w.e.f. 15.12.2000.

Since under the Bihar Re-organisation Act, 2000, the policies framed by the erstwhile State of Bihar was binding and applicable in the State of Jharkhand also, the petitioner Company approached the Director of Industries, Government of Jharkhand, Ranchi for release of power subsidy under the Industrial Policy of 1993. The Director of Industries, Jharkhand sought information on the issue from the BICICO. In response, the BICICO informed the Director of Industries, Jharkhand by its letter dated 05.01.04 enclosing therewith an earlier letter dated 04.05.2000, that since there was no provision under the State Industrial Policy of 1993 for giving power subsidy to private companies on electric supply, therefore, the power subsidy is not payable to the petitioner.

The petitioner, thereafter, submitted detailed representation before the Secretary, Department of Industries, Government of Jharkhand demanding power subsidy. On the petitioner's representation, an opinion was sought for from the Advocate General, Government of Jharkhand and ultimately by the impugned letter dated 27.09.2007, the petitioner was informed that on the basis of the earlier stand taken by the Department of Industries, Government of Bihar, Patna, the petitioner is not entitled to grant power subsidy.

3. Assailing the impugned orders, Sri M.S.Mittal, learned counsel for the

petitioner would submit that the decision taken by the respondents is on the face of it, illegal, arbitrary and contrary to the Industrial Policy of 1993. Referring to the relevant clauses of the Industrial Policy of 1993 (Annexure-2), learned counsel would explain that in none of the clauses does the policy declare that power subsidy would not be payable to the private company which obtain power supply from private licensees. Learned counsel adds that in fact when a similar issue was raised on a previous occasion, the Director of Industries, Bihar, Patna had by his Office Memo dated. 29.10.1986 (Annexure-1) had confirmed that the Industrial units obtaining electric supply from private licensees are entitled to the same benefit of power subsidy since the intention of the Industrial policy was to provide incentive by way of power subsidy to the industrial units irrespective of the source of obtaining the electric supply.

Learned counsel adds further that by illegally withholding the power subsidy for the period 09.05.1996 to 19.09.2000 to the tune of Rs. 9,61,464.02, the respondents have unjustly subjected the petitioner company to loss and detriment compelling the petitioner to pay interest on the working capital loan obtained from Union Bank of India.

4. A counter affidavit has been filed on behalf of the respondent State of Jharkhand. The stand taken in the counter affidavit is that though the subsidy is payable and is to be released by BICICO but the liability to pay the subsidy is with the State of Bihar on account of the fact that the entire claim of the petitioner relates to the period prior to 15.12.2000.

5. A counter affidavit has been filed on behalf of Department of Industries, Bihar, Patna (Respondent Nos. 3 to 5) denying the claim of the petitioner on the ground that the Industrial Policy of 1993 does not provide power subsidy to industrial units, in case such units claim power subsidy from private licensees.

A counter affidavit has also been filed on behalf of the BICICO (respondent No. 6) wherein the same stand as taken by the respondent Nos. 3 to 5, has been adopted.

6. Sri. Ramit Satendra, representing the respondent Nos. 3 to 5 would argue that the petitioner's claim for power subsidy was examined by the Department of Industries, Government of Bihar on the basis of the Industrial Policy of 1993 and on careful examination, it was found that the petitioner had obtained electric supply from private company namely TISCO Ltd. and the Industrial Policy does not provide power subsidy to such units which has taken electric connection from a private company. The claim of the petitioner for power subsidy was therefore rejected way back on 04.04.2000 and such rejection was communicated to the petitioner by letter dated 04.05.2000 (Annexure-D). The petitioner had not raised any issue against the aforesaid letter all along and it was only on bifurcation of State of Bihar that the petitioner had chosen to pursue his claim with the State of Jharkhand.

Reading out a Clause relating to conditions for sales tax exemption/deferment as contained in Annexure-IV of the Industrial Policy of 1993, learned counsel would argue that the policy declares that the facility of sales tax exemption will be admissible only to such unit/firm which has taken the electric connection in the name of its owner/partner/director/company and since the petitioner's establishment does not qualify under this condition, it is not entitled to sales tax exemption and by the same analogy, the petitioner having obtained power supply from a private licensee, it is not entitled to power subsidy.

7. The impression which I gather from the arguments of learned counsel for the respondent Nos. 3 to 5 is that it could not perhaps be more strange and irrational and is totally digressed from the main issue involved in the controversy. Learned counsel has failed to demonstrate from the entire reading of the Industrial Policy of 1993 that the policy prohibits the benefit of power subsidy to industrial units which obtain power supply from private licensee.

8. The Industrial Policy of 1993 declared by the Department of Industries, Government of Bihar, as the Industrial Incentive Policy of 1993, was with the clear objective of accelerating the industrial progress in the State. The policy was introduced to give incentives including various kinds of subsidy on power consumption, technical knowhow, capital investment, modernization, etc., besides incentives of financial assistance, exemption in sales tax/deferment facility to the industrial units. Clause-6 of the policy which relates to subsidy on power consumption reads as follows:-

" Industrial Unit coming into production between 01.04.1993 to 31.03.1998 and units defined under expansion and diversification will get the following incentive for five years from the date of production of such expansion/diversification.

1 (i) Exemption from payment of minimum guarantee charges for the units having connected load upto 500 KVA.

2 (i)(a) The Industrial Units with an investment upto 75 lakhs on plant and machinery will get power subsidy @ 18 paise per unit.

(b) The Industrial Unit with an investment on plant and machinery above Rs. 75 lakhs and up to 15 crores will get power subsidy @ 15 paise per unit.

(c) The Industrial Unit as mentioned in Para-A & B above coming under the defined expansion / diversification provisions will get power subsidy only on additional consumption of electricity which will be necessary for exemption or additional real production. Expansion capacity will be computed on the basis of maximum annual production in three years prior to the expansion."

It is manifest from the bare reading of the above provisions of the policy that it does not lay down any condition whatsoever for granting power subsidy nor does it qualify that the power subsidy in terms of the provisions would not be given to such industrial units which obtain power supply from any private licensee. The analogy which the learned counsel for the respondent Nos. 3 to 5 has attempted to draw from the Clauses in the Policy relating to exemption of sales tax, is thoroughly misconceived and not applicable in the facts and circumstances and on the claim of the petitioner which pertains to subsidy on power consumption.

10. It is not disputed that the petitioner industry had commenced its production from 18.03.1995 as confirmed from the Certificate (Annexure-3) issued by the Director, Technical Development, Department of Industries, Government of Bihar, Patna. It is not disputed that the petitioner has established its industry by making an investment of more than Rs. 75 lakhs. It is not denied that the location of the petitioner's industry falls within the command area of TISCO Ltd. who has exclusive right to supply electricity to units within its command area and therefore, the petitioner is obliged to obtain the supply of electric from TISCO Ltd. and none else. The petitioner has apparently fulfilled the requisite conditions as laid down in the Industrial Incentive Policy of 1993 for the grant of power subsidy and is entitled to claim and receive the subsidy irrespective of the fact that it had obtained power supply from TISCO Ltd. which incidentally is also one of the Government authorized licensees. The denial of the power subsidy to the petitioner, withholding the payment of power subsidy for the period claimed by the petitioner, by the respondents is, in my opinion, unjust, arbitrary and illegal, since it is not only contrary to the objectives of the Industrial Policy of the State Government but also deprives the petitioner's right on the ground of legitimate expectations created under the Industrial Incentive Policy.

11. For the reasons stated above, I find merit in this application. Accordingly, this writ application is allowed. The impugned orders of the respondents vide Annexure-5, Annexure-8, Annexure-9 and Annexure-10 are hereby quashed. The concerned respondents are directed to release the amount of power subsidy to the petitioner which had accrued from 09.05.1996 to 1999-2000 along with the interest @ 12 % per annum, within three months from the date of this order. Since the period of claim of subsidy relates to the period prior to the date of reorganization of the State, the Department of Industries, Government of Bihar, shall pay the amount of power subsidy as claimed by the petitioner, in accordance with the directions herein.

Let a copy of this order be given to the learned counsel for the State of Jharkhand, State of Bihar and also to the learned counsel for the respondent No. 6.