(2007) 05 PAT CK 0038

In the Patna High Court

Case No : CWJC No. 5983 of 2006

M/s. Gangotri Electrocastings Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 30-05-2007

Acts Referred:
Industrial Policy, 1993 — Clause 6b(ii)

Citation : (2008) 1 PLJR 568

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard the counsel for the petitioner and the counsel appearing for the State. Prayer of the petitioner in the present application is for quashing the order dated 23.1.2006 passed by the Industrial Development Commissioner, Bihar, Patna (respondent No. 2) rejecting the claim of the petitioner regarding power subsidy.

2. The State Government came out with Industrial Policy Resolution, 1993, Clause 6 of the Policy deals with subsidy on power consumption. Industrial Units coming into production from 1.4.1993 to 31.3.1998 and units defined under expansion and diversification have been made entitle to get incentives for five years from the date of production of such expansion/diversification. Different incentives have been mentioned under Clause 6 of the Industrial Policy, 1993. Under Clause 6b(ii), the Industrial Units with an investment on plan and machinery above 75 lacs and up to 15 Crores are entitled to get power subsidy at the rate of 15 paise per unit.

3. Petitioner''s case is that his unit came within the ambit of Clause 6b(ii) of the Industrial Policy, 1993. He submitted his claim for power subsidy from May, 1995 to March, 1998 for a sum of Rs. 20,59,300/-. His claim was processed but subsidy only for a sum of Rs. 3,66,100/-was sanctioned from July, 1995 to

March, 1996 by Memo No. 1571 dated 4.8.1998 and paid full through draft. For subsequent years, subsidy was not allowed. Petitioner moved before this court by filing CWJC No. 4289/04 and he was directed to represent his case before the competent authority, by the order passed in the writ application. Petitioner filed his representation which has been rejected by the impugned order on the ground that both the furnace of petitioner''s unit was installed during the Industrial Policy period, 1995, as such, cannot be considered under the Provisions of 1993 Policy. The other ground for rejecting petitioner''s claim is that by letter No. 2616 dated 117.2000, the Industrial Development Commissioner has restricted for entertaining the claims on the ground that the incentives pertaining to 1993 Policy has already lapsed as it was effective till 1998 only.

4. Counsel for the petitioner has drawn my attention towards Annexures-7, 12 and 12/A of the writ application, Annexure-7 shows that the petitioner has made all payments of Sales tax under 1.993 Policy. Annexures-12 and 12/A shows that the investments/payments for second furnace was made in the year, 1994 and it was accepted by the manufacturer in the same year. Petitioner''s case is that all investments were made prior to 1995. The Industrial Policy of 1995 mentions that the Industrial Units which have come into commercial production on or before 1.9.1995 and have made substantial fixed capital investment prior to 1995, will have option for availing package of incentives/ assistance as provided in the Industrial Policy, 1993 (Provided the unit is eligible under that policy). The option must be given in writing to the Director of Industries or Director, Technical Development within three months after date of notification of 1995 Policy in Bihar. The main object of this provision is that the Industrial Units which have come into commercial production on or before 1.9.1995 can avail benefit either under 1993 Policy or under 1995 Policy. Partial benefit under both these policies cannot be availed by the Industrial Units. Petitioner''s case is that it has not availed any of the benefits of 1995 Policy, as such, its entitlement for availing benefit of subsidy under 1993 Policy cannot be questioned.

5. Counter affidavit has been filed on behalf of the Director of Industries and the General Manager, District Industries Centre, Patna (respondent Nos. 3 & 4). It has been stated in the counter affidavit that claim of the petitioner is not maintainable as disbursement of power subsidy in case of petitioner was not sanctioned by competent authority. The production of the petitioner unit commenced on 8.6.1995. For additional loan, second furnace agreement was made by the petitioner unit with Electricity Board on 3.6.1998. First a sum of Rs. 3,66,100/- as power subsidy was sanctioned and disbursed to the petitioner for the period July, 1995 to March, 1996 on establishment of first furnace as it was under Industrial Policy, 1993. The establishment of additional furnace is covered under Industrial Policy, 1995 under Expansion Programme. The Industrial Policy, 1995 came into force on 1.9.1995 in which all types of subsidy have been stopped. In case petitioner wanted to avail the benefit of subsidy under 1993 Policy, it was noted to exercise its option as clearly mentioned in Industrial Policy, 1995. Since the petitioner has not exercised its option, it will not be entitled to

partial benefits under both these policies. It has also been stated that the State Government has issued letter No. 2616 dated 11.7.2000 to all competent authorities not to entertain the claim made under Industrial Policy, 1993 after 11.7.2000.

6. I find that the letter dated 11.7.2000 issued by the State Government was challenged in CWJC No. 15698/01. The Hon''ble High Court has considered the letter and recorded a finding as follows:---

On 5.7.2001, the petitioner submitted its claim for power subsidy for the period from October, 1998 to May, 2001 (Annexure-6) but the B.I.C.I.C.O. declined to release the amount of electrical subsidy in favour of the petitioner on the plea that the Commissioner. Industries Department had issued letter No. 2616 dated 11.7.2000 forbidding payment of any subsidy under Industrial Policy, 1993. "A copy of the letter dated 11.7.2000 issued by the Commissioner, Industries Department is at Annexure-7/A. This letter simply states that the period of validity of the Industrial Policy, 1993 expired on 31.3.1998 and that of the Industrial Policy, 1998 also came to an end on 31.8.2000. The last dated (31.3.1998) for entertaining any claims arising from the Industrial Policy, 1993 were also over but it was notices that even then fresh claims arising under the Industrial Policy, 1993 were being forwarded for consideration. The letters simply asked all concerned not to forward and/or entertain any fresh claims arising under the 1993 Industrial Policy, that is to say, claims for power subsidy and/or other benefits being raised freshly and for the first time on the plea that the effective date of production-expansion/ diversification of the unit fell between 1.4.1998 to 31.3.1993. The letter did not say that claims that has already accrued and were duly sanctioned by the competent authorities would be discontinued because the period of validity of the Industrial Policy was over notwithstanding the clause that the unit would enjoy the incentive for five years from the date of production. In fact, any such direction would have been contrary to the Industrial Policy and hence, illegal and unenforceable.

This court has, therefore, no hesitation in holding that the concerned authorities have completely misread and misinterpreted the direction of the Commissioner, Department of Industries, as contained in letter No. 2616, dated 11.7.2000.

7. I find that the plea taken by the respondents has already been decided by this court. Petitioner was allowed the benefit of subsidy in the year, 1995, in any case, he was entitled for this subsidy for 5 years i.e. after 2000, in between the installation of the second furnace cannot be treated as diversification or expansion, specially when all payments were made in the year, 1994 itself. Petitioner is entitled for power subsidy for the rest of the. period i.e. from the period April, 1998 to April, 2000 for sum amounting to Rs. 31,99,311/-. The respondents are directed to make payment of the subsidy of the petitioner. This application is allowed. Impugned order dated 23.1.2006 passed by respondent No. 2 is quashed.