

(2017) 03 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 3332 of 2007

M/s J.S. Cotton Industries

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 09-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : (2017) 3 MhLJ 142

Hon'ble Judges : Smt. Vasanti A Naik and V.M. Deshpande, JJ.

Bench : Division Bench

Advocate : Shri S.M. Agrawal, Counsel and Shri S.C. Mehadia, Counsel, for the Petitioner in W.P. No. 3332 of 2007 and W.P. No. 5429 of 2007; Shri K.L. Dharmadhikari, Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Smt.Vasanti A Naik, J.(Oral) - Since the issue involved in these petitions is identical and similar prayers are made therein, they are heard together and are decided by this common judgment.

2. By these petitions, the small scale industries have sought a declaration that the communications issued by the respondent no.2 District Industries Centre, Akola cancelling the orders sanctioning additional amount to the petitioners as incentive are bad in law.

3. Few facts giving rise to the petitions, are stated thus:

The Government of India, Industries Department, had floated a scheme called Special Capital Incentives under the Package Scheme of Incentives, 2001 on 31.03.2001. By the said scheme, certain incentives were offered to the small scale industrial units with a view to grant a boost to the said industries, specially for their expansion and dispersal in lesser developed parts of the State of Maharashtra. The petitioners are the small scale industrial units manufacturing

dal and cotton. According to the petitioners, being desirous of availing the incentives, they got themselves registered with the District Industries Centre, Akola. The petitioner in Writ Petition No.5429 of 2007 got itself registered with the District Industries Centre, Akola on 24.01.2003, whereas the petitioner in Writ Petition No.3332 of 2007 got itself registered with the District Industries Centre, Akola on 06.03.2004. The petitioner in Writ Petition No.5429 of 2007 invested a sum of Rs.59,05,000/for the establishment of the industry, whereas the petitioner in Writ Petition No.3332 of 2007 had invested a sum of Rs.76,00,000/. As per the scheme and specially clause 5.1 thereof, a group D+ small scale industrial unit was entitled to special capital incentive upto Rs.25,00,000/. As both the petitioners fall in the area group of D+ industries, a letter of intent was issued in favour of the petitioner in Writ Petition No.5429 of 2007 by the District Industries Centre on 29.03.2006 and a letter of intent was issued in favour of the petitioner in Writ Petition No.5429 of 2007 on 12.02.2004. An amount of Rs.25,00,000/was sanctioned to the petitioners in Writ Petition No.5429 of 2007 and 3332 of 2007 by the District Industries Centre on 29.03.2006 and 20.03.2004 respectively. Both the petitioners then desired to expand their units and completed the formalities for expansion as per the requirements of the incentive scheme. Another application was made by both the petitioners to the District Industries Centre seeking the incentive as per Clause 3.7 of the scheme. An additional investment of Rs.76,00,000/and Rs.58,36,000/ was made by the petitioners in Writ Petition No.5429 of 2007 and 3332 of 2007 respectively. An eligibility certificate was issued in favour of the petitioner in Writ Petition No.5429 of 2007 and a sum of Rs.18,75,000/was sanctioned in favour of the petitioner in Writ Petition No.5429 of 2007 towards incentive on expansion. That a sum of Rs.15,32,000/was sanctioned and released in favour of the petitioner in Writ Petition No.3332 of 2007 towards incentive on expansion. The petitioner in Writ Petition No.3332 of 2007 was, however, of the view that it was entitled to Rs.18,75,000/towards incentive on expansion and, therefore, an application was made by the petitioner to the District Industries Centre for sanctioning and releasing an additional sum of Rs.3,42,000/. By issuing a letter of intent for the additional amount, the petitioner in Writ Petition No.3332 of 2007 was informed that the said amount would also be released. It is the case of the petitioners, that to the surprise of the petitioners, the petitioner in Writ Petition No.5429 of 2007 was informed that the amount of Rs.18,75,000/would not be released in favour of the said petitioner and the petitioner in Writ Petition No.3332 of 2007 was informed vide the impugned communication, dated 11.05.2007 that the amount of Rs.15,32,000/released in favour of the petitioner towards incentive on expansion was liable to be refunded to the District Industries Centre, Akola. According to both the petitioners, they were entitled to the incentive on expansion and the respondent no.2 could not have denied the incentive to the petitioners after the expansion of their units by referring to the corrigendum issued by the District Industries Centre, Akola, dated 11.05.2007, that provides that the total special capital incentive should not be more than Rs.25,00,000/.

4. The learned counsel for the petitioners, submitted that the respondents are estopped from denying the incentives to the petitioners after the expansion of their units. It is submitted that in view of Clauses 3.7 and 5.1 of the Incentives Scheme, the petitioners had decided to expand their small scale industrial units. It is submitted that if an incentive would not have been available under the scheme of the year 2001 on expansion of the industry, the petitioners would not have expanded their units by investing huge amount to the extent of Rs.76,00,000/and Rs.58,36,000/in respect of the petitioners in Writ Petition Nos.5429 of 2007 and 3332 of 2007 respectively. It is submitted that the principle of Promissory Estoppel would apply to the case in hand and the respondents would be estopped from resiling from their promise to grant the incentive to the small scale industrial units after their expansion. It is submitted that the corrigendum, dated 11.05.2007 would not entitle the respondents to refuse the benefits of the incentive scheme to the petitioners after the expansion of their small scale industrial units. It is submitted that it is apparent from Clause 3.7 of the scheme that the small scale industrial units are entitled to the incentive on two occasions, on the first occasion, on the establishment of the unit to the maximum of Rs.25,00,000/and on the second occasion, after the expansion to the maximum of 75% of the initial maximum of Rs.25,00,000/, i.e. Rs.18,75,000/. It is submitted that the petitioners were entitled to a sum of Rs.18,75,000/as an incentive on expansion as per Clause 3.7 of the Incentives Scheme of 2001. It is submitted that the action on the part of the respondents, of withdrawing the amount that was sanctioned in favour of the petitioners after the expansion of the units towards incentive, in view of Clause 3.7 of the scheme, is arbitrary and violative of the provisions of the constitution of India.

5. Shri Dharmadhikari, the learned Assistant Government Pleader appearing for the respondents, supported the impugned communication and the action on the part of the District Industries Centre. It is submitted that the maximum amount that could be paid to a small scale industrial unit as per the scheme of 2001 would be Rs.25,00,000/and even if there is an expansion of a small scale industrial unit, the unit would be cumulatively entitled for a sum of Rs.25,00,000/ from its initial establishment to its expansion. It is submitted that it is apparent from the corrigendum, dated 11.05.2007 that the respondents intended to grant the incentive of Rs.25,00,000/to one industry at the maximum and the said sum would include the amount that is payable to an industry on expansion.

6. It appears on a perusal of the scheme of 2001 that the action on the part of the District Industries Centre in refusing to grant the incentive benefit to the petitioners on expansion of their small scale industrial units, is arbitrary and illegal. It is apparent from Clauses 3.7 and 5.1 of the scheme that a small scale industrial unit was entitled to the incentive on two occasions, on the first occasion to the maximum of Rs.25,00,000/and on the second occasion to the maximum of 75% of the initial maximum of Rs.25,00,000/. It would be worthwhile to reproduce Clauses 3.7 and 5.1 of the Scheme of 2001 which read thus:

"Clause 3.7 Gross Fixed Capital Investment

(I) Gross Fixed Capital Investment shall mean and include in the case of :

(i) New Fixed Assets - The value of new Fixed Assets acquired at site and duly paid for.

Explanation

(a) Only new Fixed Assets as per the project scheme accepted by the implementing Agency based on the project assessment done by the concerned term lending agency, or by the Implementing Agency in case of a selffinanced project, which are acquired by an Eligible Unit within the relevant period indicated in Annexure III from the date of completion of Final Effective Steps shall be considered for incentives.

(b) Any acquisition of new fixed Assets outside the project scheme accepted by the Implementing Agency can be considered for the incentives below, provided such acquisition is not less than 25% of the Gross Fixed Capital Investment at the end of the previous financial year. A separate Eligibility Certificate will be issued for availing of such benefits with eligibility period as admissible to a new unit in the relevant area and for the relevant category of unit as per the Scheme. However, for the purpose of such benefits, the entitlement will be limited only to 75% of the Special Capital Incentive (para 5.1) and of the Octroi Refund (para 5.3) admissible to a New Unit in the relevant area and for the relevant category of unit as per the Scheme. The above entitlement of SCI would, however, be applicable only if the investment of the Unit remains within the ceiling prescribed for SSI status even after acquisition of additional fixed assets. A unit cannot claim benefits for acquisition of new Fixed Assets under this clause more than twice.

Example : For example, the Existing Unit starts acquiring new fixed assets acceptable to implementing Agency at any time from 1st April, 2001 to 31st March, 2002, which are not a part of the earlier project accepted by the Implementing Agency considered for incentives under the earlier Scheme. The Existing Unit has gross fixed capital investment (not depreciated value) of Rs.100/as on 31st March, 2001. The Existing Unit will be entitled to additional for admissible incentives only if investment in the proposed new fixed assets is more than Rs.25/(i.e. more than 25%). The eligible investment for admissibility of various incentives will be worked out at the rate of 75% of the actual investment incurred in new fixed assets thus acquired by the Existing Unit.

Clause 5.1 Special Capital Incentives (SCI) for SSI units

(1) A new SSI Unit, or other New Unit specified at para 11 whose investment is within the ceiling prescribed for SSI, set up on or after the 1st April, 2001 will be entitled to Special Capital Incentives at the rates indicated below

AREA (Group)

Quantum as % of Fixed Capital Investment

Ceiling (Rs.Lakhs)

C

20

10

D

30

20

D+

35

25

No Industry District

40

35

(2)

(3)"

7. It is apparent on a combined reading of Clauses 3.7 and 5.1 of the Scheme of 2001 that a small scale industrial unit is entitled to incentive on two occasions, when the small scale industrial unit is established and when the small scale industrial unit expands itself. It appears from Clauses 3.7 and 5.1 that the entitlement of a small scale industrial unit on its establishment would be at the maximum of Rs.25,00,000/and on its expansion, at 75% of the initial maximum of Rs.25,00,000/. It is clear from the aforesaid clauses of the Scheme that a small scale industrial unit would be entitled to the incentive benefit of the scheme twice, firstly to the extent of Rs.25,00,000/and on the second occasion to the extent of 75% of the initial maximum of Rs.25,00,000/. Admittedly, the petitioners had invested such amount for the expansion, that could have yielded an amount of Rs.18,75,000/, and that all the conditions for seeking the incentive benefit were fulfilled. The District Industries Centre had rightly granted the incentive to the petitioners as per Clause 3.7 of the scheme on their expansion, however, by wrongly placing reliance on a corrigendum that was issued after the additional amount of incentive was sanctioned, the incentive that was sanctioned on expansion was withdrawn. The corrigendum, dated 11.05.2007 would not empower the respondents to withdraw the order sanctioning the incentive in favour of the petitioners, firstly because the said corrigendum is issued on 11.05.2007, after the amount was sanctioned in favour of the petitioners and

secondly by the said corrigendum the respondents could not have amended the scheme to the detriment of the petitioners, even if it was issued before the sanction of the amount to the petitioners, after the petitioners had, by relying on the promise made by the State Government and the District Industries Centre in the scheme of 2001, altered its position to invest huge amounts for the expansion of their units. By acting upon the promise of the State Government, the petitioners had changed their position and invested huge amounts to the extent of Rs.76,00,000/and Rs.58,36,000/for the expansion of their units, when the respondents went back upon their assurance and informed the petitioners that they were cumulatively entitled to the incentive of Rs.25,00,000/. The doctrine of promissory estoppel is an equitable principle evolved with a view to avoid injustice. It is well settled that if a party, by its words or conduct makes a clear and unequivocal promise to the other party knowing fully well that the other party would act upon the same and the other party acts upon the same, the party making the promise would not be entitled to go back upon the promise and the promise would be binding upon the party making it. In view of Clause 3.7 of the scheme, which is clear and unambiguous, the District Industries Centre could not have withdrawn the order sanctioning the amount of Rs.18,75,000/to the petitioners on the expansion of their units.

8. Hence, for the reasons aforesaid, the writ petitions are allowed. The respondents are directed to release the sum of Rs.18,75,000/in favour of the petitioner in Writ Petition No.5429 of 2007 and a sum of Rs.3,43,000/in favour of the petitioner in Writ Petition No.3332 of 2007 within eight weeks.

9. Rule is made absolute in the aforesaid terms with no order as to costs.