(2020) 01 JH CK 0015

In the Jharkhand High Court

Case No : Writ Petition(C) No. 2250 of 2014

M/s Salsar Wires Manufacturing (P) Ltd APPELLANT

Vs

State of Jharkhand And Ors RESPONDENT

Date of Decision : 13-01-2020

Acts Referred:

Factories Act, 1948 — Section 6(1)(d)
Bihar Factories Rules, 1950 — Section 4, 5, 6, 7, 8, 9, 10

Citation : (2020) 01 JH CK 0015

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Sumeet Gadodia, Sumeet Prakash

Final Decision : Dismissed

Judgement

1. Mr. Sumeet Gadodia, the learned counsel appears for the petitioner and Mr. Sumeet Prakash, the learned AC to SC-IV appears on behalf of the respondent-State.

2. The petitioner has preferred this writ petition for a direction to grant all benefits under the Jharkhand Industrial Policy, 2001, especially interest subsidy for the years 2010-11, 2011-12 and 2012-13 for which the petitioner has filed the writ petition. It is further prayed for quashing the letter dated 10.08.2013 contained in Annexure-16 by which General Manager, District Industries Centre, Hazaribagh wrote to the petitioner that decision has been taken to re-fix the date of commencement of commercial production. Prayer is also made for quashing letter no.1599 dated 31.12.2013 contained in Annexure-18 issued by the General Manager, District Industries Centre, Hazaribagh directing the petitioner to produce various documents for the purpose of re-fixing the date of commencement of commercial production.

3. Mr. Sumeet Gadodia, the learned counsel appearing for the petitioner submits that after creation of the State of Jharkhand an Industrial Policy has been framed

and formulated to achieve the expected industrial growth and the districts of the State have been categorized into three categories as per the Jharkhand Industrial Policy, 2001. He submits that the effective date in terms of Clause-1 of the definition was 15.11.2000. The State Government vide notification dated 20.03.2006 changed the category of certain areas but the District of Hazaribagh remained in Category-B. Petitioner's unit is situated in the district of Hazaribagh, but somewhere in 2007 a separate district of Ramgarh was carved out and the petitioner's unit fall under the Category-B. Mr. Gadodia, the learned counsel submits that Clause 29.5 of the Jharkhand Industrial Policy deals with Interest Subsidy. He submits that the technical officer of the District Industrial Centre, Hazaribagh visited the factory premises of the petitioner and the said team examined the various records, such as,

(i) EM No.20/024/12/00173 dated 13.08.2010, (ii) Commercial Tax Department Registration certificate No.20251906575 dated 11.02.2010,

(iii) Central Excise & ST Certificate dated 20.10.2009, (iv) CST certificate dated 18.02.2010, (v) Factory Licence No.71058 HZB dated 13.02.2010 and (vi) NOC obtained from the Jharkhand State Pollution Control Board, applied for, (vii) The unit has obtained 450 KVA fixed from Electricity Supply JSEB, Hazaribagh, (viii) The unit has been registered under the Companies Act, 1956 with the Registrar of Companies, West Bengal, (ix) Letter of loan sanctioned from Punjab National Bank, Ramgarh and (x) List of plant and machinery, copy of sale deed, electricity bill and copy of project report. He further submits that in view of the Annexure-4 which is the document issued under the signature of General Manager, District Industries Centre, Hazaribagh dated 21.08.2010 evidencing that the petitioner's unit has gone into commercial production on 03.03.2010. He submits that Government of Jharkhand also issued Factory Licence to the petitioner under Rule 4 to 10 of the Bihar Factories Rules, 1950 and Section 6(1)(d) of the Factories Act, 1948 for the calendar year 2010-11, 2011-12 and 2012-13. He submits that the Registration Certificate issued by the Commercial Taxes Department, Government of Jharkhand is in favour of the petitioner with effect from 11.02.2010 which is apparent from the Annexure-6 to the writ petition. The Certificate of Registration issued under the provisions of CST (Registration and Turnover) Rules on 20.02.2010 making the same effective from 18.02.2010 has been brought on record by way of Annexure-7 to the writ petition. The Project Report/Feasibility Report was also prepared which is apparent from Annexure-8 to the writ petition for setting up the unit was Rs.3.44 Crores. Mr. Gadodia, the learned counsel submits that the General Manager, District Industries Centre also issued a certificate regarding date of commercial production in which it was stated that on the basis of the examination of papers and inspection report by the team, it is concluded that the Unit has gone into commercial production on 03.03.2010. In view of the Industrial Policy, the petitioner has applied for capital investment subsidy through the General Manager, District Industries Centre on 21.08.2010, the said document is contained in Annexure-9 to the writ petition. By way of referring Annexure-10 to the writ petition, Mr. Gadodia, submits that the petitioner unit was inspected on 23.08.2010 and thereafter the General Manager, District Industries Centre, Hazaribagh vide his Memo No.878 dated 04.09.2010 recommended for grant of Capital Investment Subsidy for a sum of Rs.25 Lacs. Annexure-11 to the writ petition suggests that a meeting was held on 25.11.2010 of the State Level Committee and in the said meeting decision regarding eight industrial units were considered wherein the petitioner unit's name appear at sl.no.4 and it was decided that the petitioner is entitled for Capital Investment Subsidy of Rs.25 Lacs. Mr. Gadodia submits that a sum of Rs.25 Lacs was even disbursed to the petitioner by way of Capital Investment Subsidy under the provisions of Jharkhand Industrial Policy, 2001, this fact is stated in paragraph no.26 of the writ petition. The petitioner made an application for grant in interest subsidy for the financial year 2010-11 and 2011-12 dated 28.09.2012 and 27.09.2013 respectively along with the requisite documents. He further submits that the petitioner has made an application for grant of NOC before the Jharkhand State Pollution Control Board which was received by the said department on 29.10.2009. He submits that the Jharkhand State Pollution Control Board provided NOC (Consent to Establish) on 17.08.2010 and thereafter the petitioner immediately submitted its application for 'consent to operate' on 25.09.2010 which is crystal clear from the Annexure-14 to the writ petition. He further submits that in view of the Annexure-15 the petitioner received Consent to Operate from Jharkhand State Pollution Control Board for the period 25.09.2010 to 30.09.2011. He submits that all of a sudden by Annexure-16 the District Industries Centre, Hazaribagh, wanted redetermination of the date of commencement of commercial production in view of certain letters issued by the Secretary, Industry Department and pursuant to that letter dated 10.08.2013 was issued by the said District Industries Centre, Hazaribagh directing the petitioner to submit certain documents. The petitioner replied to the aforesaid letter on 13.08.2013 and requested that in the light of various documents it be continued to be as an entrepreneur under the Jharkhand Industrial Policy, 2001 and its date of commercial production to continue, as it was granted vide Memo No.827 dated 21.08.2010 to be 03.03.2010. The another letter dated 30.12.2013 was issued by the General Manager, District Industries Centre, Hazaribagh wherein the petitioner was asked to furnish certain documents for redetermination of the date of commercial production.

4. In the aforesaid submission, Mr. Gadodia, the learned counsel submits that the commercial production date has already been fixed as 03.03.2010 and pursuant thereto the Government of Jharkhand has also issued one-time payment of capital subsidy of Rs.25 Lacs under the Jharkhand Industrial Policy, 2001. He submits that there is no occasion to issue such letters by the District Industries Centre when the production date has already been determined by the Department concerned. He further submits that this issue has already been set at rest by the Division Bench of this Court in L.P.A. No.347 of 2015 which was decided on 01.05.2019 and L.P.A. No.207 of 2015 which was decided by the judgment dated 11.04.2019. He refers to paragraph nos.13, 14, 15, 16 and 17 of

the judgment in L.P.A.No.347 of 2015:

13. In view of the aforesaid aspects of the matter once the capital subsidy is already granted on the basis of the commercial production commenced by the respondent on 12th October, 2010, there is no reasons not to grant interest subsidy to the respondent under Clause 29.5 of the Industrial Policy, 2001 because for interest subsidy the date of the commercial production will be the same i.e., 12th October, 10 2010. It ought to be kept in mind that whenever the State is floating an Industrial Policy, their primary goal is to attract the industries so that there will be manufacturing process within the State of Jharkhand and in both the eventualities i.e., Intra State Sale and/or Inter State Sale, the State is benefited by the payment of tax. The Industrial Policy is being floated so that industries may come within the State of Jharkhand and un-skilled workers of the State of Jharkhand will become semi-skilled, semi-skilled workers of the State of Jharkhand will become skilled workers. The skilled workers of the State of Jharkhand will be, after some passage of time, the sole proprietor and later on they will start their own Private Limited later on Public Limited and ultimately Expert Oriented Unit. This is an expected industrial growth, due to Industrial Policy.

14. Moreover, subsidiary business will also be started within the State of Jharkhand. Whenever such type of Industrial Policy is floated by the State, it is to be interpreted liberally. The benefits are to be given to the industries. The clauses of the industrial policy is for grant of the benefit and not for the rejection, by hook or crook.

15. It has been held by Hon'ble the Supreme Court of India in the case of State of Jharkhand & Others Versus Tata Cummins Ltd. & Another reported in (2006) 4 SCC 57 in Paragraph Nos.16 and 17 which reads as under:-

"16. Before analysing the above policy read with the notifications, it is important to bear in mind the connotation of the word "tax". A tax is a payment for raising general revenue. It is a burden. It is based on the principle of ability or capacity to pay. It is a manifestation of the taxing power of the State. An exemption from payment of tax under an enactment is an exemption from the tax liability. Therefore, every such exemption notification has to be read strictly. However, when an assessee is promised with a tax exemption for setting up an industry in the backward area as a term of the industrial policy, we have to read the implementing notifications in the context of the industrial policy. In such a case, the exemption notifications have to be read liberally keeping in mind the objects envisaged by the industrial policy and not in a strict sense as in the case of exemptions from tax liability under the taxing statute.

17. Applying the above tests to the facts of the present case, the object behind enactment of the Industrial Policy, 1995 was to confer incentives on industries set up in the 11 State. As part of the incentives, the industrial policy envisaged allotment of land/building in growth centres to companies for setting up

industrial units on lease for 99 years with an option for renewal. As a part of the incentives, it was also envisaged under clause 16 that sales tax benefit/ exemption shall be granted to attract investments in order to sustain industrial development in the State. It is in this background, that we have to consider clause 16.1 and clause 16.2 of the Industrial Policy, 1995. The two notifications are merely instruments giving effect to the policy envisaged under the Industrial Policy, 1995."

(emphasis supplied)

16. It has also been held by Hon'ble the Supreme Court of India in the case of Lloyd Electric & Engineering Limited Versus State of Himachal Pradesh & Others reported in (2016) 1 SCC 560 in Paragraph Nos.14 and 15 which reads as under:-

"14. The State Government cannot speak in two voices. Once the Cabinet takes a policy decision to extend its 2004 Industrial Policy in the matter of CST concession to the eligible units beyond 31-3-2009, up to 31-3-2013, and the Notification dated 29-5-2009, accordingly, having been issued by the Department concerned viz. Department of Industries, thereafter, the Excise and Taxation Department cannot take a different stand. What is given by the right hand cannot be taken by the left hand. The Government shall speak only in one voice. It has only one policy. The departments are to implement the government policy and not their own policy. Once the Council of Ministers has taken a decision to extend the 2004 Industrial Policy and extend tax concession beyond 31-3- 2009, merely because the Excise and Taxation Department took some time to issue the notification, it cannot be held that the eligible units are not entitled to the concession till the Department issued the notification.

15. It has to be noted that the Finance Department of the State Government had concurred with the proposal of the Department of Industries to extend the tax concession beyond 31-3-2009 till 31-3-2013 and the Council of Ministers had accordingly taken a decision also. No doubt, the statutory notification issued by the Excise and Taxation Department under Section 8(5)(b) of the Act on 18-6-2009 has stated that the eligible units will be entitled to the concession with immediate effect. Merely because such an expression has been used, it cannot be held that the State Government can levy the tax against its own policy. The State Government is bound by the policy decision taken by the Council of Ministers and duly notified by the Department concerned viz. Department of Industries."

(emphasis supplied)

17. In view of the aforesaid decisions and also looking to the fact that commercial production has already been started by the respondent on 12th October, 2010, the respondent is entitled to the interest subsidy under Clause 29.5 of the Industrial Policy, 2001. These aspects of the matter have been properly appreciated by the learned Single Judge while deciding writ petition filed by the respondent being W.P.(C) No. 5436 of 2013 vide judgment and order

dated 21st November, 2014. Thus, no error has been committed by the learned Single Judge while deciding the said writ petition. We are also in full agreement with the reasons given by the learned Single Judge.

5. On the other hand, the learned counsel appearing for the respondent-State by way of referring paragraph nos. 8 to 16 of the counter affidavit submits that there is discrepancy with regard to the date of commercial production of the unit of the petitioner and that is why the authority concerned has rightly issued the said letters.

6. In view of the decision rendered by Division Bench of this Court in L.P.A. No.347 of 2015 and L.P.A. No.207 of 2015, it appears that the issue in question has already been set at rest. Once the capital subsidy has already been granted on the basis of commercial production commencement by the respondents on 03.03.2010, there is no reason not to grant interest subsidy by the respondents under Clause 29.5 of the Jharkhand Industrial Policy, 2001 as per the interest subsidy the date of commercial production will be the same, i.e., 03.03.2010. It was required to be kept in mind by the respondent-State the floating Jharkhand Industrial Policy, 2001 that it needs to be carried out in strict terms of the Policy. It is only due to that Policy, the petitioner started its unit in the State of Jharkhand and that is in the benefit of the State.

7. In that view of the matter, the writ petition being W.P.(C) No.2250 of 2014 stands allowed.

8. The respondent-State is directed to process the interest subsidy for the financial year 2010-11, 2011-12 and 2012-13 to sanction the same within eight weeks. As there was no need for issuing letter dated 10.08.2013 and 30.12.2013 for re-determination of the commercial production as the capital subsidy has already been provided taking into account the commercial production as on 03.03.2010.

9. In that view of the matter, letters dated 10.08.2013 and 30.12.2013 as contained in Annexures-16 and 18 respectively are quashed.

10. The respondent-State is directed to process the benefit for the financial year 2010-11, 2011-12 and 2012-13 as early as possible but not later than eight weeks from the date of receipt/production of a copy of this order.

