(2023) 03 GAU CK 0027

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4983 Of 2014

Necem Cements Limited APPELLANT

Vs

State Of Assam And 6 Ors RESPONDENT

Date of Decision : 14-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15

Citation : (2023) 03 GAU CK 0027

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : P Mahanta, A. Kalita, B. Gogoi

Final Decision : Dismissed

Judgement

1. The extra ordinary jurisdiction conferred by Article 226 of the Constitution of India is sought to be invoked by filing this writ petition pertaining to an order dated 20.09.2013 by which certain grievances of the petitioner were considered and closed by the Secretary to the Government of Assam, Industries & Commerce Department. The petitioner alleges that the aforesaid order has been passed in a cryptic and mechanical manner. The issue is regarding exemption under an Industrial Policy.

2. Before going to the issue involved, it would be convenient to state the facts in brief:

3. The petitioner is a Public Limited Company which was incorporated in the year 1995 and had set up a cement factory in the NC Hills District (presently, Dima Hasao). The Industry was set up by availing the benefits of the Industrial Policy of 1986 which was from 01.01.1987. Subsequently, the Industrial Policy of 1991 came into force which provided for revival of viable sick industrial units. It is the case of the petitioner company that it had suffered because of serious breakdown of law and order and was not able to submit the financial returns and

accordingly, a reference was submitted to the BIFR (Board of Industrial and Financial Reconstruction) under Section 15 of the SICA [Sick Industrial Companies (Special Provisions) Act] 1985 for declaring the petitioner company as a "Sick Company". Accordingly, the BIFR in its meeting dated 25.11.1997 had declared the petitioner company as a "Sick Unit" and IFCI was appointed as the Operating Agency. Accordingly, IFCI had prepared the Draft Rehabilitation Scheme (DRS).

4. It is the case of the petitioner that in terms of the same, the dues with the Financial Institutions were settled and the DRS incorporated incentives under the 1991 Policy. Unfortunately, the benefit of the said Policy was not extended to the petitioner company. It is a case of the petitioner that the Industries Department of the State had informed the Operating Agency vide letter dated 13.03.1998 regarding the continuation of the benefit to the petitioner company. However, later, the State Government had a stand that the 1991 benefits would not be available to the petitioner as it was declared sick by the BIFR only on 25.11.1997 by which, the 1997 Policy had already come into force.

5. On 14.06.2000, a meeting was held amongst all parties in which it was revealed that the application dated 02.01.1997 which was submitted by the petitioner was yet to be considered. Accordingly, it was resolved that a fresh application be submitted to the Director of Industries which would be processed for examination and consideration for declaring the unit as a Relief Undertaking by the Government of Assam.

6. Accordingly, on 25.01.2001 all necessary papers were submitted. However, from 01.04.2005 to 31.03.2012, the petitioner company claims to have paid Rs.100.06 Lacs including input credit. However, there was no final decision by the Government of Assam constraining the petitioner to file WP(C)/8306/2001.

7. The aforesaid writ petition was considered by a Division Bench and vide order dated 28.01.2013 had disposed of the matter by directing the State respondents to take a final decision by passing a reasoned order. In compliance to the aforesaid order dated 28.01.2013, the Government of Assam had passed an order dated 20.09.2013. It is the validity and legality of this order which is the subject matter of challenge in this writ petition.

8. I have heard Shri P. Mahanta, learned for the petitioner. I have also heard Shri A. Kalita, learned Standing Counsel, Industries & Commerce Department as well as Shri B. Gogoi, learned Standing Counsel, Taxation Department.

9. Shri Mahanta, the learned counsel for the petitioner submits that in the period after expiry of the exemption till the petitioner had become sick, the petitioner was given an impression that the Government of Assam was considering extension of the exemption from Sales Tax. In this connection, the communication dated 22.03.1994 and 10.02.1995 issued by the AIDC have been referred to. It is submitted that the Director of Industries, Assam had also issued similar letter. However, in 1996 the petitioner had received the demand from the

Sales Tax Department leading to its declaration as a sick company vide order dated 25.11.1997. He further submits that the Department has not acted in accordance with law.

10. The learned counsel for the petitioner has also emphasized upon the infrastructural difficulties mainly the lack of proper transport and has cited huge transportation charge. The law and order situation in the area has also been cited including the fact that the AGM of the company was kept in forced captivity and there were extortion demand. It is also submitted that there was no Sales Tax charged upon the consumers. Shri Mahanta, learned counsel for the petitioner also submits that there is no adverse comment on the performance of the petitioner and he has also cited that similarly situated entities have been granted the exemption from Sales Tax. It is the submission of the petitioner company that there are many dependent families of indigenous people connected with the company and therefore, interference is required from this Court.

11. On the other hand, Shri A. Kalita, learned Standing Counsel, Industries & Commerce Department has submitted that the scope of interference by this Court in this matter is a limited one. He submits that the impugned order has been passed only after a remand was made by this Court vide order dated 28.01.2013. He submits that the aforesaid order dated 28.01.2013 of the Hon'ble Division Bench would show that there was no interference on the merits and the remand was almost on a concession made on behalf of the petitioner that a final reasoned order may be passed by the Government.

12. By drawing the attention of the impugned order dated 20.09.2013 the learned Standing Counsel has submitted that the same would reveal that the relevant factors were taken into consideration including the fact of availing Sales Tax exemption, subsidy on generating set, subsidy on infrastructural facilities, subsidy on man power development and power subsidy. The Sales Tax was duly assessed and it was held that the unit had already availed benefits under the Industrial Policy, 1986, as applicable.

13. The learned Standing Counsel has also drawn the attention to the minutes of meeting held in the chamber of the Additional Secretary, industries & Commerce Department, Government of Assam dated 14.06.2000 in which it has been recorded that the company had been diverting a lot of money to other companies like M/s Rozendia Limited and M/s Langlai Tea Estate wherein the statement of the Managing Director of the petitioner company has also been referred to.

14. Shri Kalita, learned Standing Counsel further submits that so far as the Sales Tax exemption was concerned, the same was applicable on purchase of raw materials and sale of finished product for a period of five years. However, after availing the said benefit, the petitioner did not discharge his liability to pay Sales Tax. It is submitted that the petitioner had already availed all benefits and accordingly the present petition is liable to be dismissed.

15. Shri B. Gogoi, learned Standing Counsel, Taxation Department has endorsed

the submission of Shri A. Kalita, learned Standing Counsel and submits that no case for interference is there in the present writ petition.

16. The rival contention made by the learned counsel for the parties have been duly considered and the material placed before this Court have been carefully examined.

17. To appreciate the rival contention, it would be necessary to carefully examine of the order dated 28.01.2013 passed by the Hon'ble Division Bench in the earlier writ petition filed by the same petitioner, namely, WP(C)/8306/2001. For ready reference, the relevant part of the said order dated 28.01.2013 is extracted hereinbelow-

"The petitioner set up a cement factory in Dima Hasao district in the year 1989 and sought benefit of Industrial Policies, 1986 and 1991 for tax concession and revival of the viable sick industrial units. It also sought benefit of Industrial Policy, 1997. A meeting was held on 14.06.2000 in the chamber of Additional Secretary, Industries and Commerce, Government of Assam and in pursuance thereof letter dated 25.01.2001 was written by the Director of Industries to the Officer on Special Duty, Industries and Commerce Department, but the matter has not been finalized by the Department.

Learned counsel for the State points out that according to the State the petitioner is not entitled to any relief as per the Industrial Policies except the Industrial Policy, 1986, under which benefit had already been availed by the petitioner. He has particularly referred to letter dated 22.06.2000 by the Additional Secretary to the Government of Assam to the Industrial Finance Corporation of India, Kolkata.

Since learned counsel for the petitioner only submits that a final reasoned order may be passed by the Government, without expressing any opinion on merits, we direct that such a final decision may be taken in the matter within three months from the date of receipt of a copy of this order.

The petition is disposed of."

18. It appears that in the order dated 28.01.2013 by which the writ petition was disposed of, it was recorded that the petition was filed in the year 2001 seeking a direction to revive the petitioner sick unit pursuant to a minutes of meeting dated 14.06.2000 and also to quash the order dated 22.11.2001 passed by the Board of Industries and Financial Reconstruction (BIFR). The stand of the State that the petitioner was not entitled to any relief and that the benefit had already been availing by the petitioner was recorded. It appears that a concession was made by the petitioner that a final reasoned order may be passed by the Government and on such concession, the order was passed by directing that a final decision be taken within a period of three months.

19. The matter was accordingly examined by the Department in compliance with the said direction whereafter the order dated 20.09.2013 has been passed which

has been impugned. The order however reflects that the Department has taken into consideration that the petitioner had already availed policy benefits under the Industrial Policy of Assam, 1986 in the following manners / matters:

i. Sales Tax Exemption for five years

ii. Subsidy on Generating Set

iii. Subsidy on Infrastructural Facilities

iv. Subsidy on Man Power development

v. Subsidy on Power Tariff.

20. The present demand appears to be for exemption of Sales Tax beyond the period of the policy which cannot be claimed as a matter of right. This Court also finds force in the contention of the learned Standing Counsel, Industries & Commerce Department that there has been huge diversion of money of the petitioner company to other companies. A perusal of the minutes of meeting held in the chamber of the Additional Secretary, Industries & Commerce dated 14.06.2000 would show that huge amounts were diverted and the same was confirmed by the Managing Director of the petitioner. For ready reference, the relevant noting of the said meeting is extracted hereinbelow-

“It was observed that the company had been diverting a lot of money to other company like M/s Rezendia Ltd. and M/s Langlai Tea Estate. The MD, NCL confirmed that during the year 1994-95 an amount of Rs.20.00 lakhs was invested in Langlai Tea Estate and an amount of Rs.58.00 lakhs was invested in Rozendia Ltd. and it has been reflected in the balance sheet of the NCL.”

21. This Court is of the opinion that the relief claimed is based on speculation and assumption and it does not appear that there is any indefeasible right of the petitioner for such relief. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India does not act as a Court of Appeal and its functions are only confined to the decision making process. In the impugned order dated 20.09.2013, reasons are reflected which according to this Court are cogent and acceptable. This Court is of the further opinion that the factors which have been considered, namely, availing of the benefits of five different heads are relevant and germane to the issue at hand.

22. Though a case has been tried to be projected of hardships to operate and run the Industry, including infrastructural and law and order problem, the petitioner company choose to set up the Industry in that location knowing fully well about the situation. It is however required to be noted that while the petitioner has highlighted the difficulties, the easy availability of raw materials for the cement Industry namely, Limestone has not been focused. It is a matter of common knowledge that the area in question namely, Umrangsho in the district of Dima Hasao (then North Cachar Hills district) is rich in natural resources in the form of Limestone which is the prime raw material of Cement manufacturing.

23. In that view of the matter, this Court is of the considered opinion that no case for interference is made out and the same is accordingly dismissed.

24. No order as to cost.