(1993) 08 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6797 of 1992

Nilagiri Ice Factory APPELLANT

Vs

District Industries Centre and Others RESPONDENT

Date of Decision : 23-08-1993

Acts Referred:

Citation : (1993) 1 ALT 318 Supp : (1995) 97 STC 584

Hon'ble Judges : V. Sivaraman Nair, J;S.V. Maruthi, J

Bench : Division Bench

Judgement

Sivaraman Nair, J.—Petitioner assails the order of the first respondent dated February 20, 1992 cancelling the Certificate of Registration No. 2699 dated September 27, 1991 issued under the Liberalised State Incentive Scheme, 1989 and the consequent temporary eligibility certificate No. 5295/A6/91 dated October 30, 1991 enabling the petitioner to claim sales tax exemption issued under G.O.Ms. No. 498 Industries and Commerce (IA) Department, dated October 16, 1989.

2. Petitioner applied to the A.P. State Financial Corporation on September 23, 1989 for project finance. The Corporation sanctioned loan in his favour by order dated November 18, 1989. On September 11, 1989 petitioner availed of the first advance for purchase of machinery. Construction of the factory commenced thereafter, and the machinery was installed still later. Commercial production commenced on April 2, 1990. On June 20, 1990 petitioner filed a formal application for incentives in accordance with G.O.Ms. No. 498 dated October 16, 1989 and the Manual of Guidelines issued by the State Government. By an order dated June 28, 1990 his application was rejected. The State Level Committee which has to determine eligibility of industrial units for Liberalised Incentive Scheme had its meeting held on February 28, 1991, decided to relax the norms contained in clause 10 of the Government order by providing that mere filing of application by an industrial unit to a financing institution for sanction of loan need not be taken as implementation step as prescribed in C.O. No. 498.

Apparently, pursuant thereto, temporary registration was granted to the petitioner by order dated September 27, 1991 and eligibility certificate was issued to claim exemption from payment of sales tax by order dated October 30, 1991. It was those proceedings granting registration and eligibility certificate which were cancelled by the Government in its order dated February 20, 1992.

3. Petitioner submits that on the facts of the above proceedings dated September 27, 1991 and October 30, 1991, he has ordered the affairs of the industrial unit and the impugned order dated February 20, 1992 which cancelled those orders, which were in his favour without notice are illegal and unsustainable. Counsel also submits that according to G.O. No. 498, the State Level Committee consists of the Secretary to Government, Industries and Commerce Department as Chairman and Director or Commissioner of Industries as Principal Secretary. He submits that the recommendation or a decision of the State Level Committee which consists of the top functionaries of the Government in the concerned department shall be taken as efficacious to alter or clarify the conditions contained in the Government order and any proceedings granting him the eligibility to claim sales tax exemption shall he unimpaired, unless they are cancelled for valid reasons after due notice to him.

4. Government Pleader (Commercial Taxes) invited our attention to clause 10 of G.O. No. 498 which provides that -

"Accordingly, only new industrial units which hold valid registrations/letters of intent and have taken steps for the first time on or after October 3, 1989 for project implementation such as applying for project finance, placing orders for any part of the machinery, commencement of construction, etc., would be eligible for these concessions provided they go into commercial production before March 31, 1995. On the question whether any industrial unit is a new industrial unit eligible for these concessions or not, decision of Government is final."

5. He also referred us to the two orders dated September 27, 1991 and October 30, 1991. The former contained specific condition that grant of registration and temporary eligibility certificate did not confer any right on the industrial unit and the decision of the Government would be final. It is of course true that the concerned Secretary wrote to the Government in terms of the minutes of the State Level Committee requesting the Government to relax the provisions contained in clause 10 so as to enable the industrial units like that of the petitioner who had only applied for project finance without sanction being granted before the crucial date, viz., October 3, 1989 also to be eligible for State Level incentives. But the Government turned down that request. In terms of clause 10 of the G.O. No. 498 that decision of the Government shall be final.

6. Counsel for the petitioner submitted that the order of the first respondent dated February 20, 1992 did not comply with the principles of natural justice. As a matter of fact, that order was issued pursuant to a circular memo dated December 7, 1991 and January 29, 1992 issued by the Commissioner of

Industries to the effect that "some of the General Managers of the Industries Centres are processing the claim applications under Liberalised State Incentive Scheme and forwarding the same to it for sanction of incentives in respect of the units which have filed loan applications with the financial institutions prior to October 3, 1989" and that "such claim applications are being returned to the respective General Managers since those units are not eligible for incentives under the Scheme as they have taken implementation step prior to October 3, 1989". In that circular memo, it was directed that "the concerned General Managers shall withdraw such temporary eligibility certificates forthwith, if issued, under intimation to the office of the Commissioner of Industries". That memo, had to be issued pursuant to the decision of the Government in its Memo. No. 230/IW/91-1, dated November 8, 1991 of the Industries and Commerce (IFR) Department rejecting the proposal of the Commissioner of Industries to relax the terms of para 10 of the order in favour of persons like the petitioners. Government reiterated that no relaxation of date would be allowed in respect of the Scheme.

7. We are of the opinion that in terms of para 10 of G.O. No. 498 dated October 16, 1989 a person like the petitioner who had filed application for project finance prior to October 3, 1989 could not have been granted the benefits of the Liberalised Incentive Scheme, 1989. Any recommendation by the State Level Committee, which itself was only a creature of the Government, cannot alter the terms of G.O. No. 498 on the question of eligibility. If at all a relaxation could have been made, the only authority competent to do so, is the State Government and not the State Level Committee, much less the first respondent, who is only a ministerial officer who has to implement the terms of the Government order. We are therefore of the opinion that there is no merit in the contention of the petitioner that the State Level Committee having decided in favour of granting registration and eligibility certificate in favour of units which had filed applications for project finance earlier than October 3, 1989 but could avail of such finance only thereafter, would also be entitled to the benefits of the scheme. We also understand clause 10 of G.O. No. 498 to mean that "the decision of the Government in relation to eligibility of any person or where such person or industrial unit is a new industrial unit in terms of the Government order shall be final". In the present case, we have seen that the order of the State Government treating industrial units which had applied for project finance earlier than October 3, 1989 not to be new units eligible to claim benefits of the scheme in terms of G.O. No. 498.

8. On the question of natural justice, we hold that the petitioner who was granted only a temporary eligibility certificate and a temporary registration with a specific caution that neither confer any right on the petitioner, which were in terms of the governing order of the State Government to achieve finality only when the Government passed orders, is not entitled to urge any violation of principles of natural justice. He was aeare of the position that the terms of the Government order did not, unless they were modified or relaxed, confer on him

the benefits of the incentive scheme. The orders dated September 27, 1991 and October 30, 1991 expressly stated so. The interest which he had in continuation of those orders were subject to the precarious condition that unless the Government ratified the same in terms of G.O. No. 498, he would have no right at all. The first respondent had issued the impugned order only in furtherance of Government orders which alone were to confer finality.

9. In view of our finding that the State Level Committee was not competent to relax or modify the terms of G.O. No. 498, we find that the only authority which could have been approached for relaxation was the State Government. We also hold that without such relaxation, the first respondent or the State Level Committee could not have passed any order in favour of the petitioner, in view of the fact that he had applied for project finance earlier than October 3, 1989. In this view, we do not find any merit in the contentions raised by the petitioner.

10. We however make it clear that it will be open to the petitioner to approach the State Government for any modification so as to enable him to obtain the benefits of the State Level Incentive Scheme. We are sure that any such application will be considered on merits and in accordance with law. The writ petition is disposed of with the above observations. No costs.

11. Petition disposed of accordingly.

