(1993) 04 DEL CK 0012

In the Delhi High Court

Case No : C.W. No. 290 of 1982

Old Village Industries Ltd. APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 30-04-1993

Acts Referred:

Citation : AIR 1993 Delhi 321 : (1993) 51 DLT 19 : (1993) 27 DRJ 41 : (1994) 73 ELT 289 : (1993) 2 ILR Delhi 535

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Advocate : Mr. Sanjay Kaul, with Mr. Neeraj Kaul, for the Appellant; Mr. E.X. Joseph, with Mr. S.P. Jha, for the Respondent

Judgement

1. The petitioner has challenged the action of the respondents in withdrawing the Cash Compensatory Support in respect of exports effected pursuant to the policy of Government of India announced on 29th March, 1978. The petitioner is exporter engaged in exporting ready made garments to various countries. Respondent No. 1 is Union of India, Respondent No. 2 is Textile Commissioner, Ministry of Commerce and Industries. Respondent No. 2, from year to year, announces various export incentives to which exporters are entitled on the exports made by them. Respondent No. 3 is Indian Cotton Mills Federatation. It entertains and examines the applications of the exporters in the prescribed manner for cash assistance and distributes the various export incentives to which the exporters are entitled. Respondent No, 4 is Apparels Export Promotion Council, which inter alias has function of implementing the Government''s policy as regards the exports.

2. On 29th March, 1978, respondent No. 2 intimated to respondent No. 3 that the Government of India has decided to contribute to the export promotion fund of Indian Cotton Mills Federation from 1st April, 1978 to 31st March, 1979, the cash incentives at the rates mentioned in the said communication on the export of cotton textile to be made during 1978-79 i.e. 1st April, 1978 to 31st March,

1979.

3. The case of the petitioner is that relying on the promise held by Government of India that cash assistance will be available to the exporters on the export of readymade garments that would be exported by them in pursuance of the policy laid down by Government of India, it priced its goods for export taking into consideration the cash assistance which would be paid and entered into firm contract with various foreign buyers. A circular dated 6th January, 1979 was issued to discontinue the existing Cash Compensatory Export Scheme, w.e.f. 1st January, 1979. The effect of the circular was that the Cash Compensatory Support to the exporters, on the export of all the items of Cotton garments mentioned in the said circular, was to discontinue from 1st January, 1979. According to petitioner the discontinuance of the Cash Compensatory Support w.e.f. 1st January, 1979 is in violation of the promise held by respondents 1 and 2 for granting cash assistance for export of readymade garments for the period 1st April, 1978 to 31st March, 1979. The petitioner claims that it was induced to enter into firm contracts with foreign buyers on account of the policy held out by Government of India at the time when it entered into contracts with foreign buyers and which was in force on the date of entering into such contracts and the petitioner had entered into those contracts and the prices were fixed taking into consideration the Cash Compensatory Support that would be available as per the policy. The petitioner says that respondents 1 and 2 have no right to withdraw the Cash Compensatory Support and divest the petitioner from right which had vested in it on account of promise held by respondents. To the words of the petitioner the impugned circular dated 6th January, 1979 had the following consequences on its export: "The petitioner could either commit breach of the contract with the foreign buyers and not to supply the goods to the foreign buyers because of withdrawal of the Cash Compensatory Support by GOVT eminent of India which, in turn, would have resulted in invocation with their bank guarantee already given by the petitioner for the benefit of the foreign buyers and face heavy losses on account of the purchase of raw material and also on account of having entered into contracts with the suppliers of raw material, fabricators, processors and dyers, employed staff as well as to bring bad reputation to its business and to the country and suffer incalculable loss of goodwill with its foreign buyers which would have been a national loss. The other consequences of this illegal circular was that the petitioner supply the goods to its foreign buyers at the price of confirmed order and save the reputation of the country - and goodwill of the business". The petitioner has also pleaded that writ petitions have been filed by various exporters like the petitioner, and the respondents have been assuring that in view of the said writ petitions, the petitioner would be paid its dues without going to court but with no result as yet. Particulars of the two earlier writ petitions filed in the year 1980 have been given in the writ petition.

4. The petitioner has invoked the doctrine of promissory estoppel. The petitioner claims that acting on the promise held out by respondents 1 and 2 it entered into

firm contracts with foreign buyers and priced the goods to be supplied to the foreign buyers keeping in view the amount payable under Cash Compensatory Scheme and as it altered its position, the scheme could not be withdrawn in respect of contracts entered into prior to 1st January, 1979.

5. The validity of the impugned circular also came up for consideration before Bombay, Madras and Karnataka High Courts. The Bombay High Court while disposing of a batch of petitions on 13th January, 1984 (Vibqyor Textile International v. Union of India) held that the petitioners acted upon the representation of Government of India that they would get cash assistance to compensate their losses. Justice S. P. Bharucha, as his Lordship then was, held that there is no good reason, no equity, no supervening public interest that justifies the conduct of Government of India in resiling from its representation. In this decision reference was also made to the decision of Pendse, J. dated 24th Nov. 1983 in identical writ petition being Writ Petition No. 1869 of 1979, holding that in respect of contracts concluded prior to 1st January, 1979, the petitioners were entitled to the advantage of the cash assistance. It was also held that the fact that the goods were actually exported subsequent to 1st January, 1979 was riot enough to deprive the petitioners of it. The doctrine of promissory estoppel was applied. It was held that the contracts had been entered into on the assurance given under the Scheme and thus the Government was not entitled to withdraw such assurance/scheme with retrospective effect and deprive the petitioners of the advantage of the said scheme. It is also held that whatever the reasons that prompted Union of India to withdraw the scheme w.e.f. IstJanuary, 1979, it could not affect the right of the petitioners to demand cash assistance in respect of contracts concluded prior to 1st January, 1979. Petitioners were held entitled to the benefit of cash assistance under the scheme provided the Government of India was satisfied that the contracts had been entered into and concluded prior to 1st January, 1979 and were in pursuance of said scheme of cash assistance. I am in respectful agreement with the views expressed in aforesaid decisions. Similar views have also been expressed by Madras High Court in Writ Petitions 1877, 1878 of 1979 decided on 19th April, 1984 and Karnataka High Court in Garments International Pvt. Ltd. v. Union of India, AIR 1991 Kar 52. As noticed earlier the challenge in all these cases was to same circular i.e. Circular dated 6th January, 1979.

6, I may also notice that though these writ petitions have been pending in this Court for more than a decade yet respondents 1 and 2 have not filed any counter-affidavit. It is a case of no return. Similar is the position in other connected petitions. I may also notice that on applications filed by the petitioners for fixing actual date for hearing of arguments notices were served on the respondents through their counsel and by orders dated 2nd March, 1993, the petitions were directed to be listed on 26th April, 1993 but still the respondents did not file any counter-affidavit and under these circumstances request for adjournment of the case to file counter-affidavit was declined.

7. Opposing the writ petition, Mr. Joseph, learned counsel for respondents 1 and 2, submits that the petition is liable to be dismissed on the ground of delay and laches as the impugned circular is dated 6th January, 1979 and the writ petition was filed in January, 1982. The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable Explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches. It has not been shown what rights have been created in favor of respondents by lapse of time. Mr. Joseph, however, relies on the order made on Civil Writ No. 1765/80 in Crystalline Corporation v. Union of India and the orders made in C.W. No. 1019/92 - J. P. Export Pvt. Ltd, v. Union of India decided on 22nd November, 1983 in support of his contention as to delay and laches. As noticed herein before the petitioner has pleaded that other exporters like the petitioner had filed the writ petitions and the respondents have been assuring that the petitioner will be paid its dues without going to the Court. The said allegations have not been controverter by filing counter-affidavit. Further considering the nature of the disputes one does not expect the aggrieved person to immediately rush to Court. Having regard to the facts and circumstances of the case it cannot be held that the petitioner is guilty of such delay which may justify refusal of relief to it. In regard to the aforesaid orders relied upon by Mr. Joseph, it may be noticed that C.W. 1765/80 seems to have been dismissed at the admission stage without issuing notice to the respondents on the ground that the petition is belated. Similarly C.W. 901 / 82 was dismissed on the ground that it was belated relying upon the orders made in C.W. 1765/80 as preliminary objection was raised on behalf of the respondents in that regard. In the said case on preliminary objections being taken, the Court permitted the petitioner to file additional affidavit to explain the delay but as it was not explained, the writ petition was dismissed at the stage of admission. In the present case, objection has been taken for the first time during the course of hearing. There is no substance in the objection.

8. Next, relying upon the decision of the Supreme Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , Mr, Joseph contends that there is no legal relationship between the Government and the petitioner and also that there is nothing to show that the petitioner altered its position relying upon the promise made by Government of India when the Government

announced the Cash Compensatory Scheme. There is no substance in this contention as well. It is not disputed that the Government of India had to place at the disposal of respondent No. 3 the funds and on the basis of the policy announced, the cash incentive had to be disbursed by respondent No- 3. It has also not been disputed that but for the withdrawal of the Scheme petitioner would have been entitled to the cash compensatory incentive. In this view, the submission. that there is no legal relationship between the petitioner and respondents 1 and 2 is misconceived. The submission that the petitioner has not shown to have altered the position in relying upon the promises is again misconceived as the petitioner has specifically pleaded that relying upon the scheme they had priced the goods to be supplied to the foreign buyers.

9. In view of the aforesaid discussion, I hold that the withdrawal of Cash Compensatory Support by circular dated 6th January, 1979 w.c.f. 1st January, 1979 so as to effect already confirmed contracts is illegal and in violation of the doctrine of promissory estoppel. Accordingly, Circular dated 6th January, 1979 insofar as it affects the petitioner in respect of contracts entered into under the scheme prior to 1st January, 1979 is quashed. The writ petition is allowed and the rule is made absolute. Respondents 1 and 2 are directed to examine each of the contracts mentioned in the writ petition and determine within a period of six months whether the said contracts were entered into under the Scheme and whether they were entered prior to 1st January, 1979. In respect of contracts entered into under the scheme prior to 1st January, 1979, petitioner would be entitled to cash assistance under the scheme which shall be granted within the period of six months. Civil Writ Petitions 291 and 666 of 1982 are also allowed in the above terms. Panics are left to bear their own costs.

10. Petitions allowed.