

(1991) 12 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 71 of 1991

Om Flour Mills (P.) Ltd. and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-12-1991

Acts Referred:

Citation : (1991) 12 PAT CK 0006

Judgement

S.B. Sinha, J.—In this writ petition, the petitioner has sought for issuance of a writ of or in the nature of mandamus directing the respondents to give 15% State Capital Investment Subsidy to the petitioners in terms of the resolution of the State Government No. 12730, dated 5-9-1986 as also for issuance of a direction upon Bihar State Financial Corporation not to charge any interest to the extent of subsidy being sanctioned to the petitioners and not to treat the petitioners in default and also for payment of interest from 31-3-1989 when the subsidy was sanctioned to the petitioners till the actual adjustment or payment of the amount of subsidy to the petitioners.

2. The fact of the matter is not at all in dispute. Petitioner No. 1 is an Industrial Undertaking and Manufactures Aata, Maida and Sujji and in relation, thereto has been granted an industrial licence by the Government of India. The State of Bihar with a view to accelerate the growth of industries in the State adopted a resolution being industrial resolution No. 13730, dated 5-9-1986 in terms whereof it was decided that all industrial undertakings established in the State of Bihar shall be provided with various incentives. The petitioner No. 1 has been sanctioned a loan of Rs. 56 lakhs by the Bihar State Financial Corporation, Patna.

3. The petitioner has also been granted loan to the extent of Rs. 30 lakhs by the State Bank of India for setting up of the industry and running the same. According to the petitioner, the total investment made by them as of 31-3-1989 is Rs. 1,24,71,638.37 ps. The Bihar State Financial Corporation having been refinanced is entitled to charge interest @ 41% from 30-3-1988 and in case of default is also entitled to charge penal interest @ 2%.

4. The petitioner admittedly comes within the purview of category "d" of the aforementioned resolution dated 5-9-1986 and is, thus, entitled to subsidy at the rate of 15% of the fixed capital investment subject to a maximum of Rs. 15 lakhs.

Clause "d" of the aforementioned resolution reads as follows:

(d) Districts other than those falling in A, B and C categories (State Capital Subsidy) : In the following districts of the State viz. Patna, Katihar, Rohtas, Haziribagh, Dhanbad, Giridih, Ranchi; Gumla, Lohardaga and Stnghbhum and Barauni Block of Begusarai district, State capital investment subsidy at the rate of 15 per cent of the fixed capital investment will be admissible to all new industrial units coming into production on/or after the 17th November, 1980 subject to a maximum of Rs. 15 lakhs.

Note : (1) The Central Capital Subsidy including the categorisation of districts is subject to modifications as may be made by the Government of India from time to time.

(2) Where additional central subsidy is available in B and C districts on the ground of the unit being a nucleus plant, the State subsidy will be reduced to that extent.

(3) If in the opinion of the State Government, the level of industrial development in a particular subdivision is so low that accelerated assistance is necessary for its industrial growth, the State Government may grant State Capital Subsidy in such a subdivision as admissible in A category districts at present. For this purpose, the State Government will law down suitable guidelines in consultation with Planning and Finance Departments of the State Government based on objective criteria.

5. A meeting of the State Level Committee was held on 17th and 18th of February, 1989 wherein the following participated:

1. Director of Industries, Bihar
2. Managing Director, BICICO,
3. Representative of Development Bank, Patna.
4. Representative of Bihar State Financial Corporation, Patna.
5. Representative of Bihar State Credit and Investment Corporation, Patna,
6. Dy. Director of Industries (Sr. D. N. Singh), Bihar, Patna.

6. In the said meeting, the Committee sanctioned and approved the grant of State Capital Investment Subsidy to various other persons and a sum of Rs. 12,42,600 was directed to be granted to the petitioner. Its name finds place at serial No. 23 of the schedule appended to the said resolution.

7. The Bihar State Financial Corporation also issued a statement which is

contained in Annexure-4 to the writ application showing the grant of subsidy by the State of Bihar to the aforementioned extent.

8. The petitioner, thereafter, made several applications for grant of capital subsidy on 8-2-1990 which is contained in Annexure-5 to the writ application. The petitioner admittedly approached the Director of Industries for grant of the aforementioned State Capital Subsidy by letter as contained in Annexure-7 to the writ application and thereafter sent various reminders which are contained in Annexure-8 series. But the said sanctioned amount has not been paid. According to the petitioner, the system of disbursement of capital subsidy is that after the amount of capital subsidy is sanctioned, the Bihar State Financial Corporation, by whom the loan has been advanced, would adjust the amount of subsidy against the loan advanced to the industry. However, according to the petitioner, the Bihar State Financial Corporation has not made any such adjustment as is evident from Annexure-10 to the writ application.

9. Bihar State Financial Corporation had also issued a letter dated 9-8-1990 stating that there has been dues on account of interest and instalment to the extent of Rs. 7,83,400.52 ps. According to the petitioner, the Bihar State Financial Corporation has also been charging penal interest @ 2%. The petitioner contends that on the one hand the State has not disbursed the sum of Rs. 12,42,600 to the petitioner which was to be paid directly to the Bihar State Financial Corporation and on the other hand Bihar State Financial Corporation had been charging interest as also penal interest in terms of the agreement entered into by and between itself and petitioner No. 1.

10. No counter affidavit has been filed on behalf of the Bihar State Financial Corporation. However, a counter affidavit has been filed on behalf of the State which is supported by an affidavit sworn by Sri Rarnchandra Prasad Sinha, Additional Director of Industries, Ranchi wherein it has been admitted that the "petitioner was entitled to 15% capital subsidy in terms of Resolution dated 5-9-1988. It has further been admitted that the petitioner was sanctioned a sum of Rs. 12,42,600 by way of capital subsidy.

It was stated:

The minutes of the said meeting was sent to the sponsoring agency the Bihar State Financial Corporation vide Industries Department letter No. 2706, dated 7-3-1989. The State Level Committee in the aforesaid meeting also took a decision that the sanctioned subsidy money was to be distributed to the unit on the actual expenditure.

It was however stated that the subsidy could not be released by State Government due to non-availability of adequate fund in the Tribal sub-plan for large sector/medium sector unit in the year 1989-90 and also for non-sanctioning of capital subsidy scheme for large and medium section Industries during the Financial year 1990-91.

It was stated that the details of actual expenditure made had not been supplied to the State Industries by the Bihar State Financial Corporation and as such there is delay in the distribution of the subsidy.

Paragraph 6 of the said counter affidavit reads as follows:

That it is stated that the State Government is anxious to release the fund to this unit as nearly as possible after obtaining fund with a view to dispose of this case.

11. It is, therefore, clear from the counter affidavit filed on behalf of respondent No. 1 that the petitioner is in no way responsible for non-payment of the aforementioned sum of Rs. 12,42,600 by way of capital subsidy to the Bihar State Financial Corporation.

12. Mr. Debi Prasad appearing for the Bihar State Financial Corporation, however, submitted that in a situation like this, the Financial Corporation cannot waive its right to obtain interest as also penal interest as there exists separate agreement by and between it and petitioner No. 1.

13. In view of various decisions of the Supreme Court of India as also of this Court, it is not in dispute that such industrial resolutions adopted by the State of Bihar can be implemented by issuance of a writ by this Court upon invoking the doctrine of promissory estoppel.

See : Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ; Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., ; Usha Martin Industries Ltd. and Anr. v. The Additional Superintendent of Commercial Taxes Jamshedpur Circle reported in 55 Sales Tax Cases 380 which has been affirmed by the Supreme Court in State of Bihar and Anr. v. Usha Martin Industries Ltd. reported in 65 Sales Tax Cases 430 and a Division Bench decision of this Court in C.W.J.C. No. 4675 and 5462 of 1987 disposed of on 6th May, 1988 (Usha Martin Industries Ltd. v. Bihar State Credit and Investment Corporation Ltd.) Yet recently, a learned Single Judge of this Court in C.W.J.C. 2689 of 1988 (R) Shri Durga Cement Co. Ltd. and Anr. v. The State of Bihar and Ors.) observed as follows:

The question as to whether Annexure-9 dated 14th February, 1984 absolves the State of its obligation to fulfil the promise held out in Annexures 1 and 6 came up for consideration before this Court in C.W.J.C. Nos. 4675 and 5462 of 1987 (R). This Court held that the aforesaid resolution of the Government did not absolve the State of its obligation to render such assistance as was promised under Annexures-1 and 6, as the Court was satisfied that no facts existed which made it inequitable for this Court to enforce the promises solemnly made in Annexures-1 and 6. This Court, therefore, allowed these writ applications. It appears that the State of Bihar took the matter before the Supreme Court of India but the Supreme Court by its order dated 29-9-1988 rejected the SLP preferred against that judgment. It may be that the dismissal of a SLP against a judgment of a High Court does not amount to holding that the judgment is

correct. In the instant case, however, the judgment of this Court in the writ applications referred to above having been rendered -by a Division Bench of this Court is binding upon me. I find that this Court in C.W.J.C. No. 2960 of 1989 (R) also by an order dated 16-8-1989 allowed that writ application at the admission stage itself in view of the Division Bench judgment of this Court to which reference has been made earlier.

14. A Division Bench of this Court in Usha Martin Industries Ltd. and Anr. v. Bihar State Credit and Investment Corporation Ltd. and Ors. (C.W.J.C. Nos. 4675 and 5462 of 1987) disposed of on 6th May, 1988 held that when an incentive scheme is made by the Government and pursuant to the promise held out in such scheme, a person alters his position to his disadvantage, the Government is bound by the said promise. It was however held further since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts which have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out the promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies."

It was further held "it would not enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot claim to be exempt from the liability to carry out the promise on some indefinite and undisclosed ground of necessity or expediency nor can the Government claim to be the sole Judge of its liability and repudiate it. On an ex parte appraisal of the circumstances. If the Government wants to resist the liability, it will have to disclose to the Court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those events are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability, the Government would have to show what precisely is the changed policy and also its reasons and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands."

15. In this case, as noticed hereinbefore, the only contention raised is that the State Government itself has shown its anxiety to release the fund to that unit as early as possible after obtaining the fund with a view to dispose of the case.

It is not, therefore, a case where the State submits before the Court that it will be inequitable to enforce the promise held out by it. It merely has pleaded that at the present juncture, the fund is not available. The State, however, has not stated that because of paucity of fund, it is not possible to disburse any amount whatsoever to any Industry pursuant to its aforementioned resolution.

It is high time that the State should reconsider its policy, decision and should not hold out empty promises to the Industries to give various incentives although it does not have enough financial resources at its disposal for carrying out the said promises. Once such promise is made by the State Government, it is bound to fulfil it.

16. It is well known that such incentive schemes are prepared upon taking into consideration the financial resources available at the hands of the States. It is, therefore, futile for the State to contend that it does not have enough fund to fulfil its promise.

17. Further in this case, from Annexure-3 it appears that in the meeting held on 17th and 18th February, 1989 various authorities including the Director of Industries, Managing Director, BICICO, representative of the Development Bank and representative of the Bihar State Financial Corporation, Patna, were present.

18. The said meeting was held in 1989. It has not been stated that as to how and under what circumstances the decision taken in the said meeting should not be implemented in case of the petitioner for such a long time.

19. The statements made by the petitioner in paragraph 26 of the writ application wherein, it was alleged that "the system of disbursement of capital subsidy is that after the amount of capital subsidy sanctioned, the Bihar State Financial Corporation by whom the loan has been advanced used to adjust the amount of subsidy against the loan advanced to the industries" have not been controverted. In this situation, the petitioner, on the one hand cannot be denied the payment of capital subsidy and on the other hand would be forced by the Bihar State Financial Corporation to pay interest to it in terms of the agreement entered into by and between them and the Bihar State Financial Corporation. This Court while exercising its writ jurisdiction not only acts as a court of law, but also acts as a court of equity.

20. It is also well known that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can give such suitable directions which it considers expedient in the interest of justice.

21. In this situation, this Court has no other option but to direct the State to release the amount of capital subsidy to the extent of Rs. 12,42,600. It is further directed that as the petitioner is not in default with regard to payment of capital

subsidy which was to be adjusted by the Bihar State Financial Corporation, Fraser Road, Patna, the State and the Bihar State Financial Corporation shall enter into such arrangement so as not to make the petitioner liable to pay the interest to the Bihar State Financial Corporation for the default on the part of the State to release sanctioned amount of capital subsidy to the petitioner.

We, in the facts and circumstances of the case, are also of the view that the Bihar State Financial Corporation would not be entitled to claim penal interest as against the petitioner as it is also a party in the matter of grant of sanction of the incentive. However, it is made clear that the petitioner is not absolved from its liability to pay any interest to the Bihar State Financial Corporation in relation to any amount other than the adjustment of the amount of capital subsidy in terms of the aforementioned resolution dated 5-9-1986.

22. The State Level Committee is directed to finalise the matter with the authorised representative of the Bihar State Financial Corporation as to how and in what manner the amount payable by the State of Bihar to the Bihar State Financial Corporation on account of the petitioner will be adjusted together with interest payable on such amount.

In the event, it is held that it would not be possible for the Bihar State Financial Corporation to waive the entire or any part thereof, it is made clear that to that extent the amount of interest shall be payable by "the State of Bihar. The matter must be finalised by the concerned respondents within two months from the date of receipt of a copy of this order and the decision of the State Level Committee shall be communicated to the petitioner.

23. If upon accounting it is found by the Respondent that the petitioner is liable to pay any further amount including interest thereupon apart from the amount of capital subsidy and the interest thereupon, it will be open to the Bihar State Financial Corporation to take such action as against the petitioner as is permissible under the terms and conditions of the agreement and/or the provisions of the State Financial Corporation Act, 1951.

24. This application is disposed of with the aforementioned observations and directions. The parties are directed to bear their own costs of this application.

R.N. Sahay, J.

25. I agree