(2002) 08 JH CK 0074

In the Jharkhand High Court

Case No : LPA No. 97 of 2000 (R)

Raj Ceramic Pvt. Ltd. APPELLANT

Vs

Bihar State Electricity Board and Others RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Citation : (2003) 1 JCR 248

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : M.S. Mittal, for the Appellant; V.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Lakshman Uraon, J.—M/s. Raj Ceramics Pvt. Ltd., Hardag, Ranchi, petitioner-appellant, has preferred this appeal, being aggrieved by the order dated 16.3.2000 passed by the learned single Judge in CWJC No. 2945/1998 (R) whereby and whereunder, the learned single Judge dismissed the writ application of the petitioner-appellant on the ground that it is squarely covered by the judgment passed in CWJC No. 1559/1999 (R).

2. The petitioner-appellant filed a writ petition bearing CWJC No. 2945/1998 (R) praying therein for issuance of an appropriate writ or a writ in the nature of mandamus directing the respondent. Electricity Board, to exempt the petitioner from payment of annual minimum guarantee charges for the period of five years from the date of its coming into commercial production after expansion of its unit from 15.3.1994 in pursuance to 1993 industrial policy and also by the resolution taken by Energy Department, State of Bihar on 2.9.1996 (P) for issuance of appropriate writ directing the respondents to refund/adjust the amount of AMG charges already realised from the petitioner with effect from 15.3.1994 and also prayed for quashing the annual minimum guarantee bills for 1994-95, 1995-96, 1996-97 and 1997-98 since the petitioner is not liable to pay AMG char,-ges in view of Industrial Policy 1993 and also under the resolution taken by the Energy

Department, State of Bihar. Subsequently the petitioner- appellant had also filed an amendment petition with a prayer for issuance of writ or a writ in the nature of certiorari for quashing the order passed by the GM-cum-Chief Engineer, respondent No. 2, who dismissed the claim of the petitioner for exempting from payment of AMG charges for the period of 5 years with effect from 15.4.1994 and also prayed for quashing that part of the bill for the month of January 2000 in which the effect of the aforementioned order has been given and the respondents are asking to realize a sum of Rs. 2,10,246/- on account of AMG charges for the aforesaid period.

3. The appellant-petitioner has a small scale factory at Hardag, Ranchi, which was initially having a low tension connection and subsequently he entered into a fresh agreement with the respondents-Board in 1993 for supply of high tension electric energy having connected load of 80 KVA. Under the industrial policy, 1993, various facilities were given to the industries including the facility with regard to the power by way of granting exemption from payment of AMG charges for the new industrial unit having a connection load up to 500 KVA. Further the case of the petitioner-appellant is that in pursuance to that industrial policy the respondents-Board, took a resolution on 3.9.1996 that those industries which came into production from 1.4.1993 to 31.8.2000 would be exempted from payment of AMG charges for the period of five years from the date of its having electric connection.The petitioner''s unit came into production between 1.4.1993 to 31.8.2000 and therefore he is entitled to get incentive under the expansion and diversification. The petitioner-appellant has further stated that he received AMG bills for the period from 1994 to 1998 and against those bills entire payment has been made expect for the period 1995-96 and 1996-97 against which the petitioner paid 50% and 25% respectively pursuant to the order of this Court. The petitioner appellant filed a representation before respondent No. 2 for grant of exemption but the same remained pending and was not disposed of. During the pendency of the writ application the said representation was disposed of on 28.1.2000. Hence the petitioner filed an amendment petition making an additional prayer for quashing the impugned order dated 28.1.2000. The learned Single Judge after hearing the learned counsel for both the parties came to the findings that the case of this petitioner is squarely covered by a decision given in a similar case of M.K. Refractories v. BSEB and Ors., [CWJC No. 1559/99(R)] in which this Court in similar circumstances held that the consumers having connected load up to 500 KVA are not entitled to the benefit under the policy and accordingly the writ application of this petitioner-appellant was dismissed.

4. The learned counsel for the petitioner-appellant has submitted that Clause 6 of the Industrial Policy, 1993, provides subsidy on power consumption by exempting from payment of minimum guarantee charges for the units having connected load up to 500 KVA from the date of production under expansion and diversification for the subsequent five years. The appellant-petitioner fulfilled all the conditions and invested more than 50% of its original and capacity has gone up to 50% of its original production capacity. The appellant received AMG

charges bill for the period 1994-95 to 1998-99. The petitioner-appellant paid the entire bill amount for the year 94-95 and for 1995-96 and 1996-97 the appellant has made part payment pursuant to the order of the High Court, amounting to 50% and 25% of the original bill. He is also ready and willing to pay all other current charges save and except the AMG bill which the appellant is not entitled to pay. It was further submitted that although the appellants'' industry completed its expansion in the month of March 94 but the certificate of the Director, Industry Department was issued on 26.5.1998. Before filing of the claim the appellant had paid AMG bills for the earlier period and he also filed his claims under Clause 13 for the relevant period. The learned counsel for the appellant has also submitted that according to the law laid down by this Court in CWJC No. 1559/1999(R) in the case of M.K. Refractories v. BSEB, decided on 6.8.1999 that the units falling between 80 HP and 99 HP may be entitled to the claim under Low Tension Insulation Scheme I (LTIS) and they would be required to pay monthly minimum guarantee charges and as such no remission can be granted to the petitioner from the payment of AMG charges. It was submitted that it was a case of LTIS and not a case of HTIS industry and the appellant falls under High Tension Insulation Scheme (HTIS) and therefore the referred judgment is not applicable in the case of this appellant. It was also placed that Annexure-5 which is the letter No. 652 dated 11.10.1996 by which the Board had accepted the proposal and benefit as enumerated in industrial policy, 1993, and it can not be stated that the Board has not incorporated the scheme in its tariff and has placed reliance in a case of Suprabhat Steel reported in 1999 (1) BLJR 1 (SC) in which if was held that if any circular is issued subsequently which is repugnant to the benefits given in the industrial policy then that circular to that extent has to be struck down. In view of this matter respondent No. 2, would not go beyond what is prescribed in the industrial policy.

5. The learned counsel for the respondents inter alia has stated that the petitioner filed a representation claiming remission under the industrial policy which has been disposed of by a reasoned order. The petitioner''s unit does not fall under the incentive scheme of the industrial policy. 1993 or 1995. The respondent-Board has been charging AMG charges from the petitioners from 1994 and the petitioner has been paying the same without any benefit claimed under the industrial policy. On the other hand, the petitioner has claimed the relief under Clause 13 of the agreement and the Board decided the claim in the year 1994-95 and accordingly the bill of the petitioner was revised. In view of this fact the petitioner-appellant is not entitled to any benefit under the industrial policy, 1993 or 1994.

6. The petitioner''s industry is an old unit which was provided with electric connection having connected load of 80 KVA although the industrial policy came into force in the 1993-95 but the petitioner-company never claimed any benefit under the said policy.

The petitioner-appellant paid the AMG charges raised by the respondent-Board since 1994. For the first time the petitioner obtained a certificate from the industry department on 26.5.1998 to the effect that the petitioner''s unit went on expansion and on that basis claimed exemption from payment of AMG charges. Before 1994 the petitioner never raised any such objection with regard to the bills issued by the Board for payment of AMG charges rather all the AMG charges as claimed were paid. The petitioner-appellant has not claimed any exemption under the industrial policy of 1993 and 1995 but he claimed for remission under Clause 13 of the agreement. The claim of exemption from payment of AMG charges has been considered by the Chief Engineer-cum-GM and it was rejected by a reasoned order. The appellant has submitted that in terms of the judgment of the Supreme Court in the case of K.D. Industries v. BSEB, reported in 2001 (1) BLJR 678 : 2001 (2) JCR 318 (SC) to refund the entire amount of minimum guarantee charges earlier realised by him.

7. Admittedly, the appellant-petitioner, M/s. Raj Ceramics Pvt. Ltd. never raised any objection from 1994 to 1998 regarding exemption of payment of the AMG charges under the industrial policy. It shows that he was not given any remission or benefit under the industrial policy as he has already paid the AMG charges against the bills raised by the Board without any objection although the had filed representations claiming remissions and not any benefit under the industrial policy which remained pending since 1998. Thus, I find that the petitioner-appellant can not claim remission of the electric charges paid by him and also minimum AMG charges paid by him with effect from 15.3.1994 pursuant to Industrial Policy, 1993. I do not find any ground to divert with the finding of the learned single Judge. Accordingly, this letters patent appeal is dismissed and the order passed by the learned single Judge is hereby affirmed. However, in the facts and circumstances of this case, there is no order of any cost.

S.J. Mukhopadhaya, J.

8. I agree.

