
(2002) 12 JH CK 0005
In the Jharkhand High Court
Case No : Civil Review No. 77 of 2002

Raj Ceramics

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 17-12-2002

Acts Referred:

Citation : (2003) 2 JCR 113

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

Bench : Division Bench

Advocate : M.S. Mittal, N.K. Pasari and A.K. Yadav, for the Appellant; Rajesh Shankar, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This review application has been preferred by the petitioner, M/s. Raj Ceramics, Ranchi against the judgment dated 23rd August, 2002 passed in L.P.A. No. 97 of 2000 (R), whereby and whereunder, the Division Bench while affirmed the judgment passed by the learned Single Judge, rejected the letters patent appeal.

2. The petitioner, a High Tension Insulation Service Consumer (H.T.I.S. for short) preferred writ petition, CWJC No. 2945 of 1998 (R) for direction on the State Electricity Board to exempt it from payment of Annual Minimum Guarantee (A.M.G. for short) charges for a period of five years w.e.f. 15th March, 1994. Further prayer was made to refund/adjust the amount of the A.M.G. charges already paid by petitioner since 15th March, 1994 and to quash the A.M.G. bills for the period 1994-95. 1995-96 and 1997-98. Subsequently, by an amendment petition, it also prayed to quash an order dated 28th January, 2000 and a portion of the bill for the month of January, 2000.

The writ petition was dismissed by learned Single Judge vide judgment dated 16th March, 2000 on the ground of delay, the petitioner having not raised any claim of exemption from payment of A.M.G. charges during the period 1994 to

1998 and paid the A.M.G. charges without any objection.

Reliance was also placed on a decision of the Court in *M.K. Refractories v. BSEB and Ors.*, (CWJC No. 1559 of 1999 (R)).

The aforesaid judgment of learned Single Judge was upheld by the Division Bench, vide judgment dated 23rd August, 2002 in L.P.A. No. 97 of 2000 (R), out of which the present review application arises.

3. In this case the counsel for the petitioner failed to show any error of record to doubt the legality of the judgment. In fact no case for review has been made out. Learned counsel for the petitioner, in fact, reiterated the submissions as were made before the Division Bench, as if he was arguing an appeal before the same Division Bench, which is not permissible.

It was submitted that the judgment of *M/s. M.K. Refractories* (CWJC No; 1559/99), disposed of on 6th August, 1999, relied by the learned Single Judge practically stands covered by Supreme Court's decision in *Industries v. BSEB*, in Civil Appeal No. 2247 of 2001, disposed of on 21st March, 2001. See 2001 (2) JCR 318 (SC)

It was also submitted that the appellate Court failed to notice the Supreme Court's decision aforesaid in *M/s. K.D. Industries* (supra).

Lastly it was submitted that the petitioner-Industry being entitled for benefit of exemption on its expansion it can claim the benefit only on receipt of certificate of exemption which was issued by Respondents in the month of May, 1998.

It was also submitted that in the impugned judgment, it has been wrongly shown as the petitioner a L.T.I.S. consumer, though it is a H.T.I.S. consumer.

4. I may mention that there are certain typographical error occurred in the judgment dated 23rd August, 2002. For example, the H.T.I.S. is the abbreviation of High Tension Insulation Service, whereas L.T.I.S. is the abbreviation of Low Tension Insulation Service. In the judgment, it has been wrongly typed as High Tension insulation Scheme and Low Tension Insulation Scheme, which are to be read accordingly However, it makes no difference so far as conclusion and finding are concerned. The petitioner cannot derive any benefit of typographical error for the purpose of review of the judgment, in question.

5. So far as the judgment of the Supreme Court in the case of *M/s. K.D. Industries* (supra) is concerned, it was delivered on 21st March, 2001, i.e., after one year from the judgment of the learned Single Judge. Therefore, there was no occasion for the learned Single Judge to consider the aforesaid judgment of the Supreme Court in the case of *M/s. K.D. Industries* (supra). Therefore, the petitioner cannot derive any benefit of the said judgment of the Supreme Court.

6. The Division Bench, vide Judgment dated 23rd August 2002 have not dismissed the L.P.A. No. 97 of 2002 (R), (See *Raj Ceramics v. B.S.E.B.*, 2003 (1) JCR 248 on the ground that the case of the petitioner is not covered by the

Supreme Court's decision in M/s. K.D. Industries (supra), nor discussed on the ground that it is not covered under the 1993 Industrial Policy, rather taking into consideration that the petitioner never raised any claim for exemption from paying A.M.G. charges for more than four years between 1994 to 1998, on the other hand, the petitioner paid the A.M.G. charges and also claimed for remission under Clause (13) of H.T. agreement, the appeal was rejected.

7. It is not in dispute that those who pay the A.M.G. charges are only entitled to claim remission under Clause (13) of the H.T. agreement. Those who claim for exemption from payment of A.M.G. charges under Industrial Policy 1993, are not supposed to ask for exemption under Clause (13) of the H.T. agreement.

The stand now taken by the counsel for the petitioner that the exemption under 1993 Industrial Policy can be claimed only on receipt of certificate relating to date of production, is an after thought. Neither such submission was made before the learned Single Judge nor the Division Bench, nor any such pleading was made in the writ petition. Even in the present review application no such pleading has been made, nor any document produced to suggest that claim for exemption of A.M.G. charges can be made only on receipt of a certificate of production.

8. In the Industrial Policy 1993, provisions have been made to claim for exemption from payment of A.M.G. charges on fulfillment of certain conditions. If any Industry fulfills such conditions, is entitled for exemption from payment of A.M.G. charges.

If any industry do not claim for such exemption from payment of A.M.G. charges for years together and, on the other hand, pays the A.M.G. charges for years together and asks for remission under Clause 13 of H.T. Agreement, it cannot claim benefit of exemption after long delay.

9. In the aforesaid background and there being no merit, the Civil Review application is dismissed.

Lakshman Uraon, J.

10. I agree.