(1996) 10 P&H CK 0129

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 18308 of 1995

Ram Deep Alloy Steels (P) Ltd. APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 29-10-1996

Acts Referred:
Constitution of India, 1950 — Article 226
Punjab Industrial Policy and Incentive Code, 1996 — Rule 4.4(12), 4.4(6)

Citation : (1997) 116 PLR 605 : (1997) 2 RCR(Civil) 463

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : J.S. Wasu, for the Appellant; N.S. Boparai, DAG, for the Respondent

Judgement

R.L. Anand, J.—M/s. Ram Deep Alloy Steels Pvt. Ltd. through its Managing Director has filed the present Civil Writ Petition under Articles 226/227 of the Constitution of India against the State of Punjab (respondent No. 1), Director of Industries, Punjab (respondent No. 2) and the General Manager, District Industries Centre, S.A.S. Nagar (Mohali) (respondent No. 3) and has prayed for the issuance of a writ of certiorari for the quashment of the impugned demand notice dated 4.8.1995 (Annexure P-5) and the subsequent letter dated 7.9.1995 (Annexure P-6), alleging that these documents are patently illegal on the face of it and flagrantly violative of the rules. The petitioner Company has further prayed for the issuance of a writ in the nature of mandamus directing the respondents to reschedule the repayment of interest-free loan given to it by the respondents as the 7th and 8th instalments of the said loan were disbursed after a flagrant delay of four years each from the date of application for no fault of the petitioner-Company.

2. The case set up by the petitioner is that it is a private limited company and was registered with the Director of Industries, Punjab, as a small scale unit for the manufacture of special and alloy steel ingots. With a view to promote the growth of industries in the State of Punjab, the Government of Punjab issued in

industrial policy statement in the year 1978, which interalia provided for the grant of various incentives for new industries set up in the State after 1st April, 1978. In order to implement the scheme of incentives set out in the said industrial policy statement, the Government framed certain rules known as Punjab Industrial Incentives Code (hereinafter referred to as ''the Code'') under the Industrial Policy Statement, 1978. Rule 4 of the Code provides for the grant of interest free loan for the new industries set up in the State of Punjab after 1st April, 1978. As per Rule 4.4 (6) of the Code, total amount of the loan advanced to a unit would be repayable in three annual equal instalments which would fall due on the 1st April, following the 11th, 12th and 13th anniversaries of the disbursement of the 1st instalment of the loan; and Rule 4.4(12) lays down that in case of any dispute the decision of the Director shall be final and binding. In pursuance of Rule 4 of the Code the petitioner-Company applied for the grant of interest-free loan from the respondents and on the application dated 15.6.1982 filed by the petitioner Company, the first instalment of the loan for the year 1981-82 amounting to Rs. 1,82,970/- was sanctioned on 2.7.1984 and was disbursed to the petitioner-Company on 9.8.1984. Similarly, for the year 1982-83 the petitioner-Company applied for the 2nd instalment on 21.6.1983 and loan for a sum of Rs. 3,04,200/- was sanctioned on 19.6.1985 and was disbursed on 24.7.1985. For the year 1983-84 the petitioner-Company applied for the 3rd instalment of the loan on 19.6.1984 which was sanctioned on 2.5.1986 and was disbursed to the petitioner on 18.7.1986. For the year 1984-85 the petitioner-Company applied for the 4th instalment on 12.6.1985, which was a sanctioned on 25.3.1987 and disbursed on 16.9.1987. Similarly for the year 1985-86 the petitioner applied for the grant of 5th instalment on 6.6.1986. It was sanctioned on 1,3.1988 and disbursed on 5.1.1988. For the year 1986-87 the petitioner applied for the grant of sixth instalment on 25.6.1987, which was a sanctioned on 4.10.1988 and was disbursed to the petitioner on 25.4.1989. However, in the year 1987-88 the petitioner-Company applied for the grant of 7th instalment of the interest-free loan amounting to Rs. 7,00,000/- on 25.6.1988. This instalment was sanctioned after a period of 2-1/2 years, i.e. on 7.12.1990 and was disbursed to the petitioner-Company on 3.11.1992. In other words this instalment was disbursed after a period of 4-1/2 years and the release of this instalment had frustrated the very intend and purpose of Rule 4 of the Code. Similarly, the 8th and the last instalment amounting to Rs. 7,00,000/- was delayed. It was applied on 27.9.1989. The instalment was sanctioned on 18.6.1993 but was disbursed to the petitioner on 6.12.1993. In this manner a delay of 4 years took place in between the application and on the release of the amount and again it frustrated the object of Rule 4 of the Code.

3. The grouse of the petitioner in the present writ petition is two fold: firstly the respondents are not adhering to the repayment schedule as per Rule 4.4(6) of the Code, which categorically lays down the loan would be repayable in three annual equal instalments, which would fall due on the Ist April following the

11th, 12th and 13th anniversaries of the disbursement of the Ist instalment of the loan; and the second grouse of the petitioner is that the 7th and 8th instalments had been delayed by the respondents detrimental to the interests of the petitioner-Company. Therefore, relief should be granted to the petitioner-Company with regard to the repayment and re-scheduling of the loan should be done, keeping in view the delay occurred in the release of the last two instalments, which were released on 3.11.1992 and 6.12.1993. It has been alleged by the petitioner that in violation of Rule 4.4.(6) of the Code, the respondent-authorities had issued notice (Annexure P-5) and had calculated the period from the date of the actual disbursement of the first instalment, i.e., 9.8.1984, and it called upon the petitioner to repay the first instalment of Rs. 13,04,624/- on 9.8.1995, the second instalment of Rs. 13,04,623/- on 9.8.1996, and the third instalment of Rs. 13,04,623/- on 9.8.1997. The reminder Annexure P-6 is also erroneous and illegal and thus both Annexures P-5 and P-6 dated 4.8.1995 and 7.9.1995 are liable to be struck down. Besides that prayer has been made in the writ petition for the issuance of a writ of mandamus directing the respondents to reschedule the repayment of the interest-free loan given to the petitioner-Company, keeping in view the release of 7th and 8th installments of the loan.

4. Written statement on behalf of respondents Nos. 1 to 3 has been filed. The respondents have justified the issuance of the orders (Annexures P-5 and P-6) in the light of the loan documents executed between the parties and interpretation has been sought to be given to the relevant rules by submitting that the first instalment in the 11th year would fall due on 9.8.1996 as incorporated in Annexure P-5, and the second instalment would fall due on 9.8.1996 and the third instalment would due on 9.8.1977. Annexure P-6, which is a reminder, has also been justified. A rejoinder was also filed on behalf of the respondents denying the averment of the replication which was filed by the petitioner. An additional plea was taken that the present writ petition was liable to be dismissed on account of the availability of equally efficacious remedy to the petitioner, in view of the arbitration clause.

5. The two points which emerge for adjudication in the present writ petition would be whether Annexures P-5 and P-6 are in conformity with Rule 4.4(6) of the Code, and secondly whether this Court should give mandatory directions to the respondents in rescheduling the loan and the ancillary point for determination is whether the present writ petition is liable to be dismissed on the plea taken by the respondents; that in view of the arbitration clause, the present writ petition is not maintainable.

6. In order to the decide and adjudicate upon the first point, the interpretation is supposed to be given to Rule 4.4(6) of the Code, which clearly lays down that the total amount of the loan advanced to a unit would be repayable in the three annual equal instalments, which would fall due on the Ist April following the 11th, 12th and 13th anniversaries of the disbursement of the Ist instalment of

the loan and it is a common case of the parties that the first instalment was released on 9.8.1984. The correct interpretation of Rule 4.4(6) would be that the first instalment would fall due on 1.4.1996 and not on 9.8.1995. The respondent-authorities are just adding 11 years to the date of the release of the first instalment, i.e., when the amount of Rs. 1,82,970/was disbursed. This interpretation is patently illegal and erroneous in view of the binding rule of the Code. In this manner the first instalment would fall due on 1.4.1996, second on 1.4.1997 and the third on 1.4.1998 and not on 9.8.1995, 9.8.1996 and 9.8.1997. Annexures P-5 and P-6, by which the demand was made, were patently illegal and erroneous and are hereby quashed.

7. The second appoint for adjudication must be decided against the petitioner irrespective of the fact that a contention was raised by the learned counsel Shri J.S. Wasu, who submitted that fault, if any, can be safely attributed to the respondent authorities when they did not disburse the 7th and 8th instalments within a reasonable time. The earlier instalments NOs. 1 to 6 were released within or about a period of two years from the date of the application. The inordinate and culpable delay on the part of the respondents in the release of 7th and 8th instalments had upset the entire schedule of the petitioner-company. Mr. Wasu submitted that it will be appropriate and equitable if a new repayments schedule is fixed and the 2nd and 3rd instalments are made repayable on 1.4.1997 and 1.4.1998, respectively, as the first instalment had already been paid by the petitioner under the orders of the Division Bench. I need not agree with the submission raised by the learned counsel for the petitioner in view of the categorical stand taken by the respondents, who had cogently explained about the delay by attributing it to callous attitude on the part of the petitioner-Company. It is well settled that the disputed questions of fact cannot be entertained in the present writ petition. Whether there was a culpable delay or there was a callous attitude on the part of the petitioner-company, is necessarily a question of fact and cannot be answered in the present proceedings and even otherwise as per the stand taken by the learned counsel for the parties, no case for rescheduling is made out as prayed for by the petitioner-Company.

8. The ancillary point for determination is as to whether the dispute between the parties was liable to be adjudicated upon by the Director and whether the present writ petition is liable to be dismissed due to the alleged availability of an alternative remedy available to the petitioner-company. In the opinion of this Court, this point should be decided against the respondent-authorities due to the vagueness of the Clause 4.4(12) of the Code, upon which reliance has been placed by the learned counsel for the respondents. Rule 4.4(12) of the Code lays down that in case of any dispute the decision of the Director shall be final and binding. What types of disputes are to be settled has not been specified. On such vague clause, no relief can be granted to the respondents-authorities.

9. Mr. J.S. Wasu, learned counsel for the petitioner-Company, has placed reliance on a judgment of this Court delivered in CWP No. 11989 of 1989 Rajaram Corn

Products Pvt. Ltd. v. State of Punjab and Ors., in support of his arguments on the second point for determination, regarding the rescheduling of the loan. I am not in agreement with the endeavour made by Mr. J.S. Wasu as every case has to go by its own facts and as I explained above, the learned counsel for the petitioner could not convince me in a successful manner that the delay which occurred in the release of the 7th and 8th instalments of the loan was directly attributable to the respondent-authorities.

10. In the light of the above, I partly allow this writ petition by quashing the Annexures P-5 and P-6 and declare that the first instalment of the loan will be payable by the petitioner-company on 1.4.1996; the second instalment would be payable on 1.4.1997 and the amount of the third instalment would be payable on 1.4.1998. The second relief prayed for by the petitioner-Company is hereby declined and in the that regard the writ petition is hereby dismissed. The parties are left to bear their own costs.

