

(2017) 07 CAL CK 0024
In the Calcutta High Court
Case No : 298 of 2016

Rashmi Metaliks Limited & Anr.

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 11-07-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2017) 07 CAL CK 0024

Hon'ble Judges : Nishita Mhatre, Tapabrata Chakraborty

Bench : DIVISION BENCH

Advocate : Aninda Kr. Mitra, ?Samit Talukdar, ?Arif Ali, ?Prabhat Kr. Srivastawa, Barka Kumari, Abhratosh Majumder, Billwadal Bhattacharyya

Final Decision : Dismissed

Judgement

1. It is well settled that the power of judicial review is not intended for the Court to assume a supervisory role or don the robes of the omnipresent or to sit in appeal over the decisions of administrative bodies. The Writ Court ought not to transpose itself as an appellate authority when a particular authority has performed its obligation to abide by the specific directions given by this Court and rendered a decision in the matter supported with cogent reasons. The discretionary jurisdiction of this Court under Article 226 of the Constitution of India ought not to be invoked in such cases, unless of course, the decision so rendered by the concerned authority is palpably wrong or is arbitrary or perverse or smacks of mala fide motive or has been rendered without adhering to the specific directions given by the Court. A decision which is within the exclusive domain of an administrative authority is not liable to be interfered with in a petition under Article 226 of the Constitution of India. It is only when findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant and inadmissible material or if the same outrageously defies logic and suffers from the vice of irrationality, the powers of judicial review can be exercised.

2. At the same time it needs to be appreciated that the word "consider", is of great significance. Its dictionary meaning of the same is, "to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that, there must be active application of mind. In other words, the term "consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by an authority, should reflect intense application of mind with reference to the material available on record. The order of the authority itself, should reveal such application of mind.

3. Applying such legal proposition to the facts of this case it needs to be ascertained in the present appeal as to whether the order dated 17th November, 2016 passed by the learned Single Judge in WP 956 of 2014 is sustainable in law.

4. The lis has spiraled up to this Court from an order dated 17th July, 2014 passed by the respondent no.6 pursuant to an order dated 16th April, 2013 passed in WP 323 of 2013. The said order dated 17th July, 2014 was challenged by the appellants in WP 956 of 2014 in which the order impugned in the present appeal has been passed. By the order dated 16th April, 2013 passed in the earlier writ petition, the learned Single Judge directed the Secretary, Commerce and Industries Department to consider the appellants' application for registration dated 1st December, 2005 in accordance with law as well as in the light of the recommendations made by the Director of industries vide memorandum dated 3rd October, 2012. In WP 956 of 2014, the appellants argued that they have been illegally denied the benefits of the West Bengal Incentive Scheme, 2004 (hereinafter referred to as the said Scheme) and that while passing the order dated 17th July, 2014 the respondent no.6 did not properly consider the recommendation issued by the respondent no.2 and also did not consider the fact that the appellants' prayer for amendment of registration certificate was considered and allowed by the authorities but even thereafter the benefits under the said Scheme were not extended to the added projects.

5. Drawing the attention of this Court to clauses 3(VII), 3(XIII), 4, 5 & 6 of the said Scheme and clause 6 of the composite application for registration under the said Scheme for 1 Million TPA Integrated Steel Complex as a Mega Project dated 1st December, 2005, Mr. Mitra, learned senior counsel appearing for the appellants submits that the registration is pertaining to the unit as defined under clauses 3(VII) & 3(XIII) of the said Scheme and once such registration is granted the unit becomes entitled to the benefits under the said Scheme in respect of all the items to be produced by the said unit as and when the production of the individual items is commenced by the registered unit. Neither did the respondent no.6 while issuing the impugned order dated 17th July, 2014 nor the learned Single Judge while passing the order impugned in the present appeal take into consideration such issue and erroneously proceeded to reject the appellants' claim construing such registration to be attributable to the individual items incorporated in the initial registration certificate.

6. He further argues that the unit was initially registered on 10th January, 2007.

Amendment of such registration certificate, as sought for by the appellants was considered and allowed for incorporation of other items, namely, billet and finished steel but the respondents illegally withheld the benefits pertaining to the items included in the registration certificate upon amendment.

7. Mr. Mitra further submits that the respondent no.6 while issuing the order dated 17th July, 2014 did not appropriately consider the recommendation issued in favour of appellants by the respondent no.2 vide memorandum dated 3rd October, 2012. In the said memorandum the respondent no.2 did arrive at a finding that the appellants were entitled to the incentives under the said Scheme in respect of all the items to be produced by the said unit. In the said memorandum it was also observed that the application to avail the incentives was also submitted by the appellants within the cut-off date, i.e., 31st March, 2008. In spite of proper application for NOC, the State Pollution Control Board did not furnish the same within the said cut-off date and as for such laches on the part of the said Board, the appellants cannot be made to suffer, the respondent no.2 requested the Joint Secretary, Commerce and Industries Department to sympathetically consider the appellants' claim.

8. Per contra, Mr. Majumder, learned Additional Advocate General appearing for the State respondents submits that there was no perversity in the order dated 17th July, 2014 passed by the respondent no.6 inasmuch as the appellants' representation was duly considered in terms of the directions issued by the learned Single Judge in the earlier writ petition being WP 323 of 2013. The said respondent no.6 duly stated the reasons due to which the recommendation made in favour of the appellants by the respondent no.2 could not be accepted.

9. He further argues that the registration and consequential coverage under the said Scheme is attributable to the items included in the registration certificate. Subsequent amendment of registration certificate and incorporation of fresh items of production does not entitle the appellants to incentives under the said Scheme pertaining to the new items.

10. Heard the learned advocates appearing for the respective parties and considered the materials on record. The appellants applied for registration under the said Scheme by a composite application on 1st December, 2005. Upon consideration of such application registration was granted. Thereafter the appellants applied for amendment of registration which was granted on 14th March, 2008. In the midst thereof and upon consideration of the appellants' composite application dated 1st December, 2005, the special package of incentives was granted vide memorandum dated 14th September, 2007.

11. The argument of Mr. Mitra to the effect that once registration was granted to the unit under the said Scheme, the unit as a whole became entitled to the incentives irrespective of the date of commencement of production of the respective items by the registered unit, is not acceptable to this Court inasmuch as an incentive scheme cannot be construed to be of an indefinite tenure and in

fact the cut-off date towards application of the said Scheme was stipulated to be 31st March, 2008. Furthermore, such argument was not advanced before the learned Single Judge and such contention does not stand fortified through appropriate pleadings.

12. The recommendation issued by the respondent no.2 in favour of the appellants vide memorandum dated 3rd October, 2012 was rightly discounted by the learned Single Judge in the backdrop of the overwhelming evidence to the effect that the incentives claimed by the appellants under the provisions of the said Scheme on the basis of the initial registration certificate dated 10th January, 2007 was duly considered and granted vide memorandum dated 14th September, 2007 issued by the Special Secretary, Department of Commerce and Industries. In the said memorandum the respondent no.2 did not arrive at any finding as regards the appellants' entitlement towards incentives towards production of new items. The appellants did not invest for production of the new items in respect of which a package of incentives was sought for under the said Scheme after the cut-off date stipulated in the said Scheme.

13. The learned Single Judge, upon dealing with all the factual issues, arrived at specific findings and we do not find any error in the same. The order stands supported with cogent reasons and we also did not find any error in the decision making process. The impugned order also does not suffer from any jurisdictional error or any substantial failure of justice or any manifest injustice warranting interference of this Court.

14. The appeal is, accordingly, dismissed.

15. There shall, however, be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.