
(2002) 02 OHC CK 0033

In the Orissa High Court

Case No : O.J.C. No's. 3365 of 1994, 5790 of 1995 and 6528, 8909 and 13468 of 1998

Samaleswari Roller Flour Mill (P) Ltd., J.S. Food Products (P) Ltd., Bajrang Wheat Products Pvt. Ltd. and Another, Maa Mangala Flour Mill (P) Ltd. and Another and Gupteswar Flour Mills Pvt. Ltd. and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 93 CLT 385 : (2002) 128 STC 512

Hon'ble Judges : P.K. Balasubramanyan, C.J.;A.S. Naidu, J

Bench : Division Bench

Advocate : A. Agarwal, B. Agarwal, S. Lal, N. Patra, A.K. Patra, J. Nayak and B.N. Sadangi, for the Appellant; Additional Government Advocate, B.K. Nayak, J.K. Khuntia and S.S. Patra, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—Since a common question arises for decision in these cases, they were heard together and they are being disposed of by this common judgment. OJC No. 5790 of 1995 was treated as the leading case on consent of counsel,

2. The petitioners have established a Roller Flour Mill in the State of Orissa. According to the petitioners, they are eligible for the benefits conferred under the Industrial Policy Resolution, 1989 and the Industrial Policy Resolution, 1996. The Petitioner in OJC No. 5790 of 1995 applied to the District Industries Centre, Bhubaneswar seeking issuance of a certificate of eligibility for the benefits conferred by the Industrial Policy Resolution, 1989. By Annexure-4 communication dated 6.4.1995, the Project Manager of the District Industries Centre, Bhubaneswar informed the petitioner that as per the clarification received, Roller Flour Mills, even if set up under Medium Scale Sector, are not

eligible to avail the incentives as per Industrial Policy Resolution, 1989. This is what is challenged. Similarly, refusal to issue eligibility certificates or to accept the claims for benefit under the Industrial Policy Resolution, 1989 are challenged in the other writ petitions.

3. It is common case that to the respective Industrial Policy Resolutions, annexures are included defining what is meant by an industrial unit and also specifically indicating the units that are not eligible for incentives as industrial units. The relevant entry in the list of units not eligible for incentives is "Flour Mills". The stand adopted by the District Industries Centre and the Government Counsel on behalf of the State is that the exclusion entry, "Flour Mills" includes "Roller Flour Mills" and hence, the writ petitioners were not eligible for the benefits conferred by those Policy Resolutions.

4. On behalf of the petitioners, it is submitted that the Himachal Pradesh Government have clarified that Roller Flour Mills did not come within the entry "Flour Mills" in the Industrial Policy Resolution and a notification was issued by that Government clarifying that position. It is also pointed out that in the Industrial Policy Resolution, 2001, the Orissa Government has adopted the position adopted in Himachal Pradesh and the entry excluding flour mills has been clarified as "Flour Mills excluding Roller Flour Mills" thereby indicating that Roller Flour Mills are eligible for the benefits conferred by Industrial Policy Resolution, 2001. The petitioners also rely on a reply given by the concerned secretary to one of the writ petitioners suggesting that the Roller Flour Mills can be included in the list of Industrial Units eligible for the benefits under the Industrial Policy Resolution. But these aspects or developments cannot enable the petitioners to claim that going by the relevant entries in the Industrial Policy Resolution, 1989 and the Industrial Policy Resolution, 1996, the petitioners who have established Roller Flour Mills, are eligible for benefits. Only by establishing that a "Roller Flour Mill" is not included in the term "Flour Mills" referred to in the exclusion clause in the Industrial Policy Resolution, can the petitioners establish that they are entitled to relief.

5. Learned counsel for the petitioners relied on the decision in *Mangulu Sahu, Ramahari Sahu v. The Sales Tax Officer, Ganjam* 32 STC 494 to point out that the meaning of the expression "Flour Mills" should be understood as used in common parlance and it should not be given any technical meaning. It was also submitted, with reference to the decision of the Supreme Court in *Commissioner of Income Tax, Amritsar Vs. Straw Board Manufacturing Co. Ltd.*, that an exemption clause should be construed in such a manner that the benefit of the policy is made available wherever it is possible and the attempt should not be to deny the benefit.

6. Learned Addl. Government Advocate on the other hand relied on the decision in *Sales Tax Officer and another v. Shree Durga Oil Mills and another* 108 STC 274, to point out that the exclusion cannot be so construed as to take out of its purview, something that is obviously, within its purview and so understood

"Roller Flour Mill" cannot be understood as anything other than a Flour Mill that stands excluded from eligibility for benefit under the two Industrial Policy Resolutions.

7. Flour Mills would obviously include modern Flour Mills as well as old fashioned Flour Mills. The differences between a Roller Flour Mill and an ordinary Flour Mill from the point of view of investment and capacity, cannot enable the writ petitioners to contend that a Roller Flour Mill is not a Flour Mill. The investment for establishment of a Flour Mill may be only about a lakh of rupees and the investment for establishment of a Roller Flour Mill may be about rupees fifty lakhs or so. May be, an ordinary Flour Mill may be able only to convert wheat into flour straightway, whereas a Roller Flour Mill may be able to convert the wheat into eight different products at different stages so as to enable them to be marketed as different products made out of wheat. But these differences or sophistications cannot enable the Court, going by the common parlance theory or by the dictionary meaning theory or by any other theory to hold that a Roller Flour Mill does not come within the purview of the expression "Flour Mills" used in the exclusion clause in the annexures to the Industrial Policy Resolutions.

8. It is argued on behalf of the writ petitioners that what is relevant is the capital investment made for establishment of the industries and the industry in question may qualify as Agro Food Processing Unit, going by the policy. But the fact that it may be an Agro Food Processing Unit or that an investment of more than rupees one crore is involved in establishing such an industry, cannot by itself enable the Court to get over the fact that a Roller Flour Mill will clearly be included in the expression "Flour Mills" used in the exclusion clause. We have also to note that the District Industries Centre to which the application was made, had understood the concerned entry of exclusion in a manner which cannot be said to be either illegal or irrational or arbitrary. In fact, on our part, we are also of the view that a Roller Flour Mill comes within the expression "Flour Mills" covered by exclusion clause in the two Industrial Policy Resolutions. When the expression used clearly takes in all types of flour mills, whether big or small, whether modern or traditional, it will not be possible or proper for a Court to travel outside the clear meaning and to hold that a Roller Flour Mill would not come within the expression "Flour Mills" and would be eligible for the benefits conferred by the concerned Industrial Policy Resolutions.

9. Since we are satisfied that the stand adopted by the District Industries Centre is justified, the refusal to issue the eligibility certificate sought for by the petitioners cannot be interfered with. Nor can the petitioners be given a declaration that they are eligible for benefits under the Industrial Policy Resolutions 1989 and 1996. In view of the above, the writ petitions have only to be dismissed. Hence, we dismiss these writ petitions. We direct the parties to suffer their respective costs.

A.S. Naidu, J.

10. I agree.