
(2023) 05 GAU CK 0034
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 224 Of 2021

Shiksha Valley School

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 17-05-2023

Acts Referred:

Citation : (2023) 05 GAU CK 0034

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : N Saikia

Final Decision : Disposed Of

Judgement

1. Heard Mrs. N. Saikia, learned counsel appearing for the writ petitioner. I have also heard Mr. A. Kalita, learned Standing Counsel, Industries & Commerce Department, Assam appearing on behalf of the respondent Nos.1 and 4. Also heard Mr. B. Chakraborty and Mr. P. K. Medhi, learned Central Government Counsel (CGC) appearing on behalf of the respondent Nos.2 and 3.

2. The writ petitioner herein viz., Shiksha Valley School, claims to be an unit of Vidyasagar Foundation Trust, having its registered office at Dibrugarh, Assam. As per the pleadings in the writ petition, the Vidyasagar Foundation has been set up as a voluntary society so as to carry forward the ideals of Iswar Chandra Vidyasagar in spreading the light of education and promoting social values aimed at overall development of the society. The petitioner also claims that the school run by it falls under the "service sector" enterprises and therefore, it has been registered under the Goods & Services Tax Act vide registration No.18AACTV0318GIZM and is also duly registered under the MSME Act bearing Udyog Adhar No.AS10F0000259 dated 01.08.2018.

3. By the notification dated 12.04.2018 issued by the Ministry of Commerce and Industry, the Government of India had announced the Industrial Development Scheme for the North East India viz., "North East Industrial Development

Scheme (NEIDS), 2017" offering certain incentives for the industrial units for the North Eastern Region. The scheme was made effective from 01.04.2017 and was to remain in force upto 31.03.2022. Clause 4 of the Scheme lays down the eligibility conditions. Clause 4.1 reads as follows :-

"4.1 Unless otherwise specified, all new industrial units in manufacturing sector and services sector including Bio-technology and Hydel Power Generation Units upto 10 MW located in NER, will be eligible for incentives under the scheme."

4. Clause 4.2 of the Scheme provides the negative list of industries, in Annexure-I appended thereto. Clause 4.3 lays down that all eligible industrial units will be entitled to benefits under one or more component of the scheme even if such units are getting benefits under other schemes of the Government of India. Clause 4.4 provides that the total benefits from all component of the scheme, put together, shall be limited to the total investment in plant and machinery subject to a maximum limit of Rs.200 Crore per unit.

5. Clause 5(d) of the Scheme defines an industrial unit which is reproduced herein below for ready reference :-

"Industrial Unit means any industrial undertaking or eligible service sector unit, other than that run departmentally by Government, which is a registered business enterprise under Goods & Services Tax."

6. Clause 5(f) defines "Eligible Service Sector Unit" as here under :-

"Eligible Service Sector Unit" is an enterprise in the services sector that requires significant capital expenditure and has significant employment generation potential."

7. Since NEIDS, 2017 is a scheme meant for promoting industrial activity in the North Eastern Region and considering the fact that the petitioner's unit is a school which, according to the writ petitioner, falls in the category of "service sector", hence, the petitioner had submitted an application dated 01.08.2018 for registration of its unit under the Scheme (NEIDS, 2017) by furnishing all necessary particulars in respect of the significant capital expenditure made in its unit as well as the potential employment generation opportunity there-under. On receipt of such application, the unit of the petitioner was physically verified by the General Manager, District Industries & Commerce Center, Dibrugarh whereafter, the application was recommended for registration as a unit belonging to the eligible sector. The matter was accordingly, placed before the 2nd meeting of the Empowered Committee held under the chairmanship of Secretary, Department of Industrial Policy & Promotion. However, by the resolution adopted in the meeting held on 30.01.2019 the application submitted by the petitioner was rejected by the Empowered Committee with the following remarks "the school is an entity which is not permissible for commercial purpose". The Committee also observed that "school cannot be an industrial unit".

8. According to the petitioner, the aforesaid decision of the Empowered

Committee was not based on correct interpretation of the clauses of the scheme and therefore, on 09.07.2019 the petitioner had submitted an application before the Under Secretary to the Government of India, Ministry of Commerce & Industries, Department for Promotion of Industries & Internal Trade with a prayer for reconsideration of the application submitted by the petitioner for registration under the NEIDS, 2017. On 02.09.2020, the petitioner had submitted another application before the Under Secretary to the Government of India, Ministry of Commerce & Industries, Department for Promotion of Industries & Internal Trade by forwarding copies of the same to the General Manager, District Industries & Commerce Center, Dibrugarh as well as the Commissioner of Industries & Commerce, Assam but the said applications have failed to evoke any response from the authorities till today. Aggrieved thereby, the petitioner has approached this Court by filing the instant writ petition.

9. In the counter-affidavit filed by the respondent Nos.2 and 3 it has been stated that the objective of the scheme is to promote industrialization in the North Eastern Region. However, as per the various definitions provided in the scheme the petitioner does not come within the definition of industrial unit and therefore, was not entitled to any benefit under the scheme.

10. Mrs. Saikia, learned counsel for the petitioner has argued that it is the settled proposition that an educational unit falls under the definition of "service sector". Considering the fact that the scheme of 2017 has provisions for extending benefit to the eligible service sector unit which requires significant capital expenditure and has significant employment generation potential, Mrs. Saikia submits that the Empowered Committee had erroneously rejected the application submitted by the petitioner seeking registration of its unit by ignoring the materials produced by the petitioner in support of its claim. According to Mrs. Saikia, the petitioner unit has already made significant capital expenditure to the tune of more than Rs.21.40 Crores and has generated employment for more than 165 persons, thus having the potential of generating more employment in the future and therefore, the petitioner's unit did meet the eligibility condition of service sector unit as per the definitions contained in the Notification dated 12.04.2018. Therefore, submits Mrs. Saikia, a writ of mandamus be issued directing the respondents to allow the application submitted by the petitioner. In support of her above argument the learned counsel for the writ petitioner has relied upon the decision of the Supreme Court rendered in the case of Under Secretary, Ministry of Industries and others vs. Marchon Textile Inds.(P) Ltd. and another reported in (2005) 10 SCC 554 to submit that having regard to the beneficial object of the scheme the clauses contained therein ought to be construed liberally and a practical and pragmatic approach ought to be adopted so as to achieve the objective of the scheme. By referring to the decision of the Supreme Court rendered in the case of Bangalore Water Supply and Sewerage Board vs. A. Rajappa and others reported in AIR 1978 SC 548 Mrs. Saikia has further argued that education, apart from being a mission, is also an industry which comes within the meaning of service sector.

11. Mr. B. Chakraborty, learned Central Government Counsel, on the other hand, submits that the petitioner's application was not considered since a general educational institutional unit such as the one belonging to the petitioner would not come within the definition of "service sector" under the Scheme of 2017. The learned CGC has further argued that only vocational training institutions such as Institute for hotel management, catering and food crafts, entrepreneurship development, nursing and para-medical, civil aviation related training, fashion, design and industrial training etc. would only be entitled to the benefits under the scheme as service sector units. In support of his above arguments, Mr. Chakraborty has relied upon the policy document issued under the North East Industrial and Investment Promotion Policy (NEIIPP), 2007. He has further submitted that the NEIDS, 2017 is no longer in existence and therefore, no relief can be granted to the writ petitioner at this point of time.

12. Mr. A. Kalita, learned Standing Counsel, Industries & Commerce Department, Assam has submitted that the Industries Department in Assam had forwarded the application submitted by the writ petitioner for registration to the appropriate authority. Since the NEIDS, 2017 is a Centrally sponsored scheme, hence, it was for the Empowered Committee to consider the same and take a decision in the matter and the State of Assam would not have any role to play in this regard.

13. I have considered the submissions advanced by the learned counsel for the parties and have carefully gone through the materials available on record.

14. As has been noted herein above, NEIDS, 2017 was a centrally sponsored scheme which was aimed at providing a boost to industrialization in the North Eastern Region of the country. The scheme was the outcome of the decision of the Union Cabinet taken in its meeting held on 21.03.2018. From a careful reading of the scheme document, it appears that the same was meant to provide incentive to those industrial units which had commenced production with effect from a particular date or had taken steps as mentioned in the document, for enhancing production activities. However, a conjoint reading of clauses 5(d) and (f) of the Notification dated 12.04.2018 goes to show that the beneficiaries under the scheme includes eligible service sector also. In other words, benefit under the scheme was not confined merely to Industrial Unit undertaking manufacturing activities or commercial productions but was also extended to those eligible service sector units, which are registered business enterprises under Goods & Services Tax Act. The writ petitioner herein is admittedly running a school at Dibrugarh which is registered under the Goods & Services Tax Act.

15. As has been mentioned above, the application for registration made by the petitioner had been rejected by the Empowered Committee in its 2nd meeting held on 30.01.2019 on the ground that the school, not being a commercial entity, the same cannot be treated as an industrial unit. The question that would, therefore, arise for a decision of this court in the present proceeding is as to whether, the ground for rejecting the application of the petitioner is valid in the eyes of law?

16. From a careful reading of the scheme document, I find that the negative list contained in Annexure-1 exclude the industries that would be out-side the purview of the scheme but educational institution is not included in the negative list. A reading of the response to the Frequently Asked Questions (FAQ) related to NEIDS, 2017, a printout of which has been produced by the petitioner as Annexure-4 to the writ petition, also goes to show that new industrial units and new service sector units would be eligible for benefit under the scheme subject to the negative list.

17. Clause 5(f) of the scheme clearly indicates that any enterprise in the service sector that would require significant capital expenditure and has significant employment generation potential would be one of the units eligible for benefit under the scheme. Therefore, from a plain reading of Clause 5(f) of the scheme, it is apparent that even an enterprise under the "service sector", which meets the requirement of significant capital expenditure with potential of significant employment generation, will be eligible for the benefits under the scheme.

18. The fact that education sector comes within the general definition of "service sector" is not only a well-known fact but also finds appropriate mention in the action plan for champion sectors in service as approved by the Cabinet on 20.02.2018 annexed as Annexure-5 to the writ petition. In paragraph 6 of the writ petition it has been categorically pleaded that in the Cabinet Meeting held on 28.02.2018 Educational Services have been included in the 12 identified champion service sectors. In the counter-affidavit filed by the respondent Nos.2 and 3 the said assertion has, however, not been specifically denied. It has only been stated that the DPIIT is not an administrative line Ministry concerned with the subject matter of Education. The aforesaid stand of the official respondents, in the opinion of this court, does not effectively counter the stand projected in this writ petition that educational institutions are covered under the definition of "service sector".

19. Once the respondents have introduced a beneficial Scheme by clearly laying down the eligibility criteria for registration, all applications for registration would have to be considered strictly in terms of the guidelines laid down in the Scheme document and by no other means. There is nothing in the Scheme document to exclude schools from the purview of NEIDS, 2017. The mandate of the Empowered Committee was to only examine the credentials of each applicant and ascertain if the application for registration meets the eligibility requirement under the Scheme document and if so, permit registration of the unit. But instead of doing so, it appears that, the Empowered Committee took upon itself the task of verifying as to whether the purpose for which the School was being run was valid or not, which function, in the opinion of this court, was beyond the jurisdiction and competence of the 2nd Empowered Committee. In any event, if a school is required to have compulsory registration under the Goods & Service Tax Act and MSME Act, as is the case in hand, it is not understood as to the basis on which the opinion was expressed by the Empowered Committee that "a school is

an entity which is not permitted for commercial purpose". Therefore, the decision of the Empowered Committee, leading to the rejection of the petitioners application for registration, is found to be wholly arbitrary and irrational and hence, liable to be interfered with by this court.

20. It is no doubt correct that in the documents annexed to the additional affidavit dated 27.02.2023 filed by the respondent Nos.2 & 3, under the NEIIPP, 2007 service sector has been defined so as to exclude all other categories of educational institutions except the vocational training institutions referred to therein. But there is nothing on record to show that the criteria adopted for selection of educational institutions under NEIIPP, 2007 had been made applicable in case of NEIDS 2017 as well. NEIIPP, 2007 and NEIDS 2017 are two different Schemes and therefore, in the absence of any material placed before this Court, it cannot be readily presumed that the criteria employed under some other scheme would be automatically applicable in NEIDS, 2017 as well, more so since the negative list at Annexure-1 does not specifically exclude educational institutions from the purview of NEIDS 2017. Under the circumstances, this court is of the opinion that a wider meaning to the definition of eligible "service sector" unit as contained in Clause 5(f) of the scheme is called for in this case.

21. In the case of Marchon Textile Inds.(P) Ltd. and another (supra) the Supreme Court has held that scheme floated by the State releasing grant of subsidy for industrial units to be set up in certain backward areas have a benevolent and public purpose to achieve and that is to promote growth of industry and therefore, such schemes to be construed with practical and pragmatic approach so as to achieve and not to frustrate the purpose of the scheme.

22. Coming to the last issue pertaining to expiry of the Scheme, it is to be noted here-in that the application for registration was admittedly made by the petitioner during the currency of the Scheme "NEIDS 2017". However, the application was rejected on grounds which have been found to be arbitrary and illegal by this court. No doubt, there has been some delay in filing the writ petition but the delay has been properly explained in paragraph 11 of the writ petition which is pertaining to the law & order situation arising in Assam due to CAB/CAA related agitation followed by outbreak of the Covid-19 pandemic. However, the petitioner had approached this court by filing the present writ petition as soon as the situation had normalized and also during the validity of the Scheme (NEIDS, 2017). Therefore, merely because the Scheme has expired during the pendency of this writ petition, that by itself would not extinguish the claim of the petitioner, more so since the benefit under the Scheme is to be provided by the Department of Industrial Policy & Promotion, which is an entity under the Ministry of Commerce & Industry, Government of India.

23. For the reasons stated herein above, the resolution dated 30.01.2019 of the Empowered Committee qua the writ petitioner is hereby set-aside.

24. The respondent Nos.2 & 3 are directed to consider the application for

registration made by the petitioner afresh and pass a reasoned order there-in, in the light of the observations made herein above. The aforesaid exercise be carried out and completed, as expeditiously as possible, but not later than three (3) months from the date of receipt of a certified copy of this order. The outcome of the process be communicated to the petitioner in writing.

With the above observation, the writ petition stands disposed of. Parties to bear their own cost.