(2013) 08 P&H CK 0826

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 42 of 1992 (O and M)

Shorewala Roller Flour Mills Pvt. Ltd. APPELLANT

Vs

The State of Haryana RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citation : (2014) 1 PLR 181

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Rameshwar Singh Malik, J.

C.M. No. 12397 of 2013

1. Applicant seeks to place on record the industrial policy dated 13.6.1998 as Annexure P-8 and letter dated 1.8.1989 as Annexure P-9 and also seeks exemption from filing the certified copies thereof.

Application is allowed, as prayed for.

CM stands disposed of.

Main case

The instant writ petition is directed against the order dated 29.10.1991 (Annexure P-7) passed by respondent No. 3, thereby declining the request of the petitioner for grant of capital investment subsidy. The facts of the case, which are necessary for disposal of the present writ petition, can be put into narrow compass. The proposal of the petitioner-for setting up a Roller Flour Mill at Batta, District Jind, was allegedly accepted by the respondent-department and the requisite licence was issued. District Jind was centrally declared industrially backward area. Haryana Financial Corporation (''HFC for short)-respondent No. 2 financed the project of the petitioner. It is further pleaded case of the petitioner that the State Government as well as the Central Government used to issue different schemes, giving incentives to the entrepreneurs for setting up industrial units in the industrially backward area., Petitioner set up its industrial unit in the centrally declared industrial backward area under the hope that it will get capital investment subsidy.

2. Respondent-State issued one such-scheme in December 1989 as Annexure P-1. Initially, petitioner applied for registration for claiming central investment subsidy, but the scheme issued by the central government was discontinued in the month of September 1988. However, thereafter respondent-State issued its above-said industrial policy (Annexure P-1). Petitioner applied under the above-said scheme (Annexure P-1) claiming State Investment Subsidy. As per Annexure P-1, State government was to pay 10% of the subsidy and the Central Government used to pay 15% of the capital investment. Since the scheme, issued by the Central government was discontinued in September 1988, the issue involved herein is limited to 10% which was supposed to be paid by the State Government.

3. In response to the application of the petitioner submitted on 1.8.1988 for registration for claiming State investment subsidy, communication dated 21.6.1989 (Annexure P-2) was issued to the petitioner, alongwith certificate of eligibility for claiming State Investment Subsidy under the new Industrial Policy-1988, i.e. Annexure P-1. Petitioner approached HFC vide letter dated 4.6.1991 (Annexure P-3) for release of subsidy, which was replied vide communication dated 27.6.1991 (Annexure P-4). When needful was not being done, petitioner approached this Court by way of CWP No. 11886 of 1991, which came to be disposed of vide order dated 1.8.1991 (Annexure P-6), directing respondent No. 3 to take a final decision in the matter within three months. Consequently, the impugned order dated 29.10.1991 (Annexure P-7) came to be passed by respondent No. 3 denying the claim of the petitioner for grant of capital investment subsidy. Hence, this writ petition.

4. Notice of motion was issued and pursuant thereto, written statement on behalf of respondents Nos. 1 and 3 was filed. The case was admitted for regular hearing, vide order dated 11.5.1992. That is how, this Court is seized of the matter.

5. Learned counsel for the petitioner submits that petitioner is not claiming anything qua 15% of capital investment subsidy, which was to be granted by the Central Government because the scheme issued by the Central Government came to be discontinued in the month of September 1988. Case of the petitioner is only for claiming 10% capital investment subsidy, which was to be paid by the State Government under its Industrial Policy-1988. She further submits that while passing the impugned order, claim of the petitioner was not considered in the right perspective. The petitioner was fulfilling all the terms and conditions of the Industrial Policy-1988 issued by the respondent-State for grant of 10% capital investment subsidy, which was to be paid by the respondent-State.

Genuine claim of the petitioner has been denied on the ground that the Government of India announced that Investment Subsidy Scheme will, in future be restricted to small scale unit, subject to extending the operation of centrally investment subsidy scheme by Government of India. The case of the petitioner has not been denied that the petitioner was not a small scale unit or because that it was a large scale unit. Even if the scheme issued by the Government of India was to be restricted to small scale units, the same was not applicable to the petitioner because the petitioner was claiming only 10% subsidy on the capital investment, which was to be paid by the respondent-State. Finally, she-prays for setting aside the impugned order by allowing the present writ petition with a direction to the respondent authorities to consider the claim of the petitioner and decide the same, at an early date, by passing an appropriate order.

6. Per contra, learned counsel for the State submits that since the scheme of central investment subsidy issued by the Government of India came to be discontinued in September 1988, petitioner was not entitled for the relief being claimed. The scheme was discontinued for all and there was no element of discrimination involved therein. Since the Central Government Scheme was discontinued, petitioner could not be registered for claiming central investment subsidy. He prays for dismissal of the writ petition.

7. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, the writ petition deserves to be partly allowed. To say so, reasons are more than one, which are being recorded hereinafter.

8. It has gone undisputed on record that petitioner applied and was registered for claiming State investment subsidy under the Industrial Policy-1988, vide Annexure P-1 and a certificate of eligibility was also issued to the petitioner, which is available at page 17 of the paper-book. However, the claim of the petitioner has been denied only because the scheme issued by the Central Government for the Central Capital Investment Subsidy came to be discontinued in the month of September 1988.

9. It has nowhere been recorded in the impugned order that why the claim of the petitioner could not be considered for 10% capital investment subsidy, which was to be paid by the respondent-State in view of its Industrial Policy-1988 issued in December 1989 vide Annexure P-1. Having said that, this Court feels no hesitation to conclude that the respondent authorities failed, to appreciate the above-said material aspect of the matter, while passing the impugned order and the same cannot be sustained as it is.

10. While filing its written statement, respondent-State has taken the following relevant averments in para 7 thereof and the same read as under:--

......The Government of India had discontinued the Central investment subsidy scheme after 30.9.1988. However, as per new industrial policy notified by the State Government on 12.7.1988, the units coming into production after 1.4.1988, were eligible for grant of 25% subsidy on fixed assets i.e. land building and machinery subject to maximum of Rs. 25 lacs in centrally as well as State declared backward areas. In the areas, where central investment subsidy was applicable, the balance subsidy over and above the amount of subsidy admissible under central investment subsidy scheme was to be provided by the State Govt. The High Powered Committee constituted by the State Govt. in its meeting held on 10.9.1990 considered the matter regarding grant of subsidy and decided that since the Govt. of India has already announced that investment subsidy scheme will in future be restricted to small scale units, the State Govt. should await a final decision from Govt. of India and till such decision, no subsidy should be given in centrally declared backward areas. However, the Govt. of India has not extended the central investment subsidy scheme beyond 30.9.1998.

11. Once the stand taken by the respondent-State was that for the areas, where central investment subsidy was applicable, balance subsidy over and above the amount of subsidy admissible under Central Investment Subsidy Scheme was to be provided by the State Government, it is not understandable as to why the case of the petitioner was not considered on these lines. In this view of the matter, it is unhesitatingly held that claim of the petitioner was not considered properly, while passing the impugned order.

12. Further, it is not recorded in the impugned order that the claim of the petitioner was declined, treating it to be a large scale unit and because the investment subsidy scheme was to be restricted to small scale units after September 1988 when the Central Capital Investment Scheme was discontinued. Neither learned counsel for the petitioner nor learned counsel for the State could place any relevant material on record that the petitioner was not a small scale unit. They were also not aware whether the petitioner was a large scale unit. It has not been clarified in the impugned order, as well.

13. No other argument was raised.

14. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that in the peculiar fact situation of the present case, the instant writ petition deserves to be partly allowed.

15. Consequently, the impugned order dated 29.10.1991 (Annexure P-7) passed by respondent No. 3 is ordered to be set aside. Respondent No. 3 is directed to reconsider the matter. If, after due consideration of the claim of the petitioner, it is found that petitioner was a small scale unit and was entitled for the balance subsidy over and above the amount of subsidy admissible under the Central Investment Subsidy Scheme, which was to be provided by the State Government, petitioner shall be granted appropriate relief by releasing the requisite amount of capital investment subsidy, which was to be paid by the

State Government. Respondent No. 3 is further directed to decide the matter at an early date by passing an appropriate order, in accordance with law but in any case within a period of three months from the date of receipt of a certified copy of this order. Resultantly, with the observations made and directions issued here-in-above, the present writ petition stands partly allowed, however, with no order as to costs.

