

(1986) 06 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12008 of 1985

Sri Ambuja Petro Chemicals Ltd.

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 25-06-1986

Acts Referred:

Citation : (1987) 67 STC 343

Hon'ble Judges : P.A. Choudary, J

Bench : Single Bench

Advocate : S. Suryaprakasa Rao, for the Appellant; The Government Pleader, for the Respondent

Judgement

P.A. Choudary, J.—The petitioner is a public limited company manufacturing certain chemicals which are used as raw material by other industrial units. It is situated in Patancheru in Medak district and started commercial production on 18th May, 1982. It says that the total value of its assets at the relevant time, which is 30th June, 1982, was Rs. 11,55,52,750 and also claims that it employs 150 persons and pays sales tax of Rs. 40,00,000 per annum. In this writ petition, it seeks a mandamus from this Court to the State of Andhra Pradesh and other respondents to sanction interest-free sales tax loan as per the terms and conditions of G.O. Ms. No. 224, Industries Department, dated 9th March, 1976, as extended by G.O. Ms. No. 736 dated 28th December, 1981.

2. The case of the petitioner is that the abovementioned Orders of the Government issued from time to time envisage the grant of certain monetary incentives to such of those entrepreneurs who set up their industries in backward areas of the State of Andhra Pradesh. Among those incentives, we are concerned in this writ petition with the grant of sales tax loan which should be equal to the tax paid by the industry under the Andhra Pradesh General Sales Tax Act on construction materials, plant, machinery and equipment during pre-production stage and also the sales tax amount paid by the industry under the State and Central Sales Tax Acts during the period of five years from the date of going into

regular production of raw materials, components and finished goods. The above G.Os. stipulate that the total claim for all the years put together should be limited to 10 per cent of the total capital cost and also provide for the constitution of a State Level Committee to supervise the enforcement of the above incentive scheme contained in the aforementioned G.Os. The petitioner-company in its writ petition asserts that according to the above G.Os, it is entitled to get the interest-free sales tax loan in a sum of Rs. 1,15,55,275 on the tax paid on the construction materials, plant, machinery and equipment during pre-production stage and also on the sales tax amount paid by them under the State and Central Sales Tax Acts during the period of five years from the date of going into regular production of raw materials, components and finished goods. Seeking the grant of that interest-free sales tax loan, the petitioner-company applied to the authorities on 27th January, 1982 and 8th February, 1982. These applications were scrutinised by the abovementioned State Level Committee which sanctioned only Rs. 10,00,000 as interest-free sales tax loan. The claim of the petitioner-company to the grant of interest-free sales tax loan runs to Rs. 1,15,55,275 whereas the grant made by the State Level Committee is only Rs. 10,00,000. Thus arises the present dispute. The writ petition has, therefore, been filed to compel the State Government to grant the company interest-free sales tax loan of Rs. 1,15,55,275.

3. The Government in its counter disputed the value of the fixed assets of the petitioner-company. But its substantive defence is that the State Level Committee has reduced on 5th December, 1978, the maximum eligibility limits of these companies for the amount of these incentives and that according to these revised limits of eligibility no industry with fixed capital cost of one crore and above would get more than Rs. 10,00,000 interest-free sales tax loan and that in view of that decision of the State Level Committee only Rs. 10,00,000.

4. The question is whether the decision of the State Level Committee can be considered to be effective to amend the limits of the petitioner's eligibility under the abovementioned G.Os.

5. It is not disputed that the above G.Os. were not issued in the name of the State and that the State Level Committee is constituted merely as an enforcing agency to enforce these G.Os. The State Level Committee by itself has no power or authority to alter the G.Os. In fact, what the State Level Committee did on 5th December, 1978 is not to amend the G.Os. Unless these G.Os. are amended, the State Level Committee cannot be held justified in deviating from the enforcement of these G.Os. Unfortunately in this case, I was not shown any competent order passed by the Government cancelling or modifying the earlier G.Os. and reducing the maximum limits of the eligibility of the petitioner-company for the grant of interest-free sales tax loan. If there has been such an order by the Government, I would not have hesitated to enforce the amended G.Os. because basically it appears to me that the granting of these loans to these industries in the name of industrialisation of the State is not only unconstitutional but also sinful and

unjust. It clearly amounts to robbing the ordinary people of their meagre resources and transferring them to the so-called industries. It is not at all clear in economic terms that the setting up of these industries can solve the problem of unemployment. But unfortunately these are not the considerations on the basis of which I can decide this case. I am only here concerned with the question whether the earlier G.Os., viz., G.O. Ms. Nos. 224, 736, are in any way validly superseded. Mr. Suryanarayana Moorthy has not been able to show me that those G.Os. have been superseded by any subsequent valid orders of the Government. I do not consider the State Level Committee is competent to make any valid orders superseding or amending the above G.Os. In view of the above, I have no opinion except to hold that the Government is bound by the G.Os. No extenuating circumstances have been shown to me to sanction any departure by the Government from the observance of the above G.Os. Sri Suryaprakasa Rao has cited the decisions reported in *Gujarat State Financial Corporation v. Lotus Hotels Pvt. Ltd.* (1983) 3 SSC 379, *Tapti Oil Industries and Another etc. Vs. State of Maharashtra and Others*, , *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, and *Shashi Kumar and Others Vs. State of Bihar and Others*, , in support of his contention that his client is entitled for the benefit of the principles of promissory stopped. I think this can be decided on a much narrower ground. This is a case where orders have been issued by the competent authority of the State Government. Those orders are binding on the Government and enforceable by this Court. They have been ignored by a group of subordinate officers constituting "The State Level Committee. This is clearly not permissible. In view of the above, I direct the respondents to examine the case of the petitioner for grant of interest-free sales tax loan afresh on the basis of G.O. Ms. No. 224, Industries, dated 9th March, 1976 and G.O. Ms. No. 736 dated 28th December, 1981, and grant the petitioner the loan he might be found entitled to.

6. The writ petition is accordingly allowed with costs. Advocate's fee Rs. 500.

7. Writ petition allowed.