(2002) 06 JH CK 0009

In the Jharkhand High Court

Case No : LPA No. 9 of 1992 (R)

State of Bihar and Others APPELLANT

Vs

Sri Bajrang Udyog and Another RESPONDENT

Date of Decision : 13-06-2002

Acts Referred:

Citation : (2002) 06 JH CK 0009

Hon'ble Judges : M.Y. Eqbal, J;Hari Shankar Prasad, J

Bench : Division Bench

Advocate : R.N. Sahay and Rajesh Lala, for the Appellant; S.L. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal under Clause 10 of the Letters Patent is directed against the judgment dated 8.1.1992 passed in CWJC No. 1395/91 (R), whereby the learned Single Judge allowed the writ petition and quashed the decision of the respondents as communicated vide letter dated 1.3.1991 whereby they have refused to grant State capital Subsidy to the industrial unit of the respondent petitioner.

2. The case of the petitioner-respondent inter alia was that the unit was registered as Small Sale Industry in 1988 and was granted a licence to run the industry of Modern Rice Mills at Chakulia. The petitioner constructed its factory sheds and buildings for starting the said industry. The work of constructions commenced on 25.2.1988 and was completed on or about 20.5.1988. The petitioner then taken electrical connection by entering into an agreement with the respondent Board on 5.6.1989 and started production in the factory with effect from 5.7.1989. Petitioner respondent''s further (sic) was that the State of Bihar adopted industrial resolution dated 5.9.1986 in terms whereof it was decided that all industrial undertakings established in the State of Bihar shall be provided with various incentives, according to the said resolution, petitioner was entitled to capital subsidy at the rate of 15% of the fixed capital investment.

Petitioner accordingly applied for grant of the said subsidy before the General Manager, District Industries Centre, Singhbhum which was recommended by the General Manager. However, respondent no. 5, the Deputy Director of Industries, Government of Bihar by the impugned letter intimated that in view of resolution adopted by the State Level Committee, no subsidy is payable to Rice Mills. The petitioner then made a representation before the Director of Industries which was ultimately rejected by him.

3. Learned Single Judge taking into consideration the fact that the petitioner''s Unit commenced production in 1989 while subsequent resolution of the State Level Committee dated 21.1.1990 which came into force from 1st January, 1990, whereby the payment of capital subsidy in respect of rice Mills was withdrawn, is not applicable, held that the petitioner is entitled to capital subsidy in terms of the resolution dated 5.9.1986.

4. Mr. R.N. Shay, learned counsel appearing for the appellant State of Bihar assailed the impugned judgment as being contrary to law and the facts available on record. Learned counsel submitted that the learned Single Judge has committed error of record in holding that no counter-affidavit has been filed by the State when as a matter of fact counter-affidavit was filed by the State on 10.12.1991 and supplementary counter-affidavit was filed on 16.12.1991 and thereafter the matter was heard at length and the impugned judgment was delivered on 8.1.1992. Mr. Sahay then submitted that the subsequent resolution dated 21.1.1990 whereby the grant of capital subsidy to Rice Mills Industry was withdrew, came into effect from 1.1.1990 and the petitioner in his application for capital subsidy admitted that the unit is expected to go for production from July. 1990.

5. On the other hand, Mr. S.L. Agarwal, learned counsel appearing for the writ petitioner submitted that petitioner had acted at the promise of the respondent and set up an industry on the assurance given by the State in the resolution to grant capital subsidy. Learned counsel submitted that crucial date was from 1.9.1986 to 31.12.1989 and no cut off date was fixed in the resolution for starting production in order to get benefit of capital subsidy.

6. Admittedly, the petitioner''s unit has licence and also obtained registration as a Small Scale Industry issued by Director of Industries by his letter dated 25.2.1988 which is evident from Annexure 2 to the writ application. The said provisional registration was also made permanent. It was also not disputed by the appellant State that petitioner constructed its factory shed and building for starting the said industry. The work of construction was commenced on 25.2.1988 and was completed on or about 25.5.1988. It has also come in the record that petitioner obtained electrical connection by entering into an agreement with the Bihar State Electricity Board on 5.6.1989. The licence was also granted to the petitioner on 5.7.1989. The case of the petitioner is that production in its factory commenced from 5.7.1989 which was mentioned in the permanent registration certificate granted by the Director of Industries, a copy of

the said certificate was annexed as Annexure 11 to the writ application. Petitioner thereafter on the basis of resolution dated 5.9.1986 applied for capital subsidy and the application was duly recommended by the General Manager, District Industries Centre, Singhbhum. However, the claim for capital subsidy was rejected by the respondents on the sole ground that grant of capital subsidy in terms of resolution dated 5.9.1986 was subsequently withdrawn by resolution of the State Level Committee dated 21.1.1990 which came into force from 1.1.1990. The contention of Mr. R.N. Sahay, learned counsel for the appellant State is that since it was mentioned in the application that petitioner commenced production in July, 1990, therefore it was not entitled to capital subsidy in terms of the aforesaid resolution because the capital subsidy to Rice Mill was withdrawn with effect from 1.1.1990. We are unable to accept the contention made by the learned counsel for the sole reason that no condition was put in the resolution dated 5.9.1986 to the effect that the industrial unit must commence production on or before a particular date in order to avail the benefit of capital subsidy.

7. As noticed above, the claim of the petitioner was rejected not on the ground that it started production in July 1990 but on the ground that the grant of capital subsidy was withdrawn by resolution of State Level Committee dated 21.1.1990 which came into force from 1.1.1990. The petitioner altered its position on the basis of the promise made by the State in terms of the aforementioned resolution, 1986. Learned Single Judge therefore rightly held that since the petitioner altered its position on the basis of the promise made by the State in the aforesaid resolution, it is entitled to the grant of capital subsidy, besides above, it further appears that the application of the petitioner for grant of capital subsidy was duly processed and was recommended by the General Manager to the Additional Director of Industries for taking necessary decision for the grant of capital subsidy. It is further worth to mention here that in the event capital subsidy or any incentive is paid by the State under the industrial resolution that is nothing but a kind of relief to the persons who set up industries. Ultimately the capital subsidy allowed by the State is recoverable and the petitioner has to repay capital subsidy after a certain period. Taking into consideration all these facts, we are of the view that the impugned judgment passed by the learned Single Judge needs no interference.

8. For the aforesaid reasons, we do not find any merit in this appeal, which is accordingly dismissed.

H.S. Prasad, J.

9. I agree.

