

(2024) 04 CAL CK 0020

In the Calcutta High Court

Case No : MAT No. 1965 Of 2022, IA No. CAN 1 Of 2022, WPA No. 26743 Of 2023

State Of West Bengal & Anr.

APPELLANT

Vs

Birla Corporation Ltd. & Ors.

RESPONDENT

Date of Decision : 09-04-2024

Acts Referred:

Citation : (2024) 04 CAL CK 0020

Hon'ble Judges : T. S. Sivagnanam, CJ;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : T. M. Siddiqui, Suddhadeb Adak, Tanoy Chakraborty, Saptak Sanyal, Abhrajit Mitra, Debanjan Mondal, Sanjiv Kr. Trivedi, Satadeep Bhattacharyya, Iram Hassan, Ayan Banerjee

Final Decision : Dismissed

Judgement

Hiranmay Bhattacharyya, J

1. The order dated 22.09.2022 passed by a learned Single Judge in WPA 25596 of 2017 is under challenge in this intra court mandamus appeal at the instance of the State of West Bengal. By the said order the State of West Bengal was directed to disburse the amounts already sanctioned in favour of Birla Corporation Limited in terms of the letters issued by the West Bengal Industrial Development Corporation (for short "WBIDC") within the time limits specified in the said order. There was also a direction upon the WBIDC and the Ministry of Finance and Industries as well as the Secretary, Finance Department, State of West Bengal to dispose of the representation of Birla Corporation Ltd. dated 14.11.2016 within the time limit specified thereunder.

2. Pursuant to the said direction the Principal Secretary, Department of Industry Commerce and Enterprise passed an order on 24.08.2023 which is under challenge in WPA 26743 of 2023 at the instance of Birla Corporation Limited.

3. Birla Corporation Limited (for short BCL) had set up a cement manufacturing

unit at Durgapur being persuaded with the special package offered under the West Bengal Incentive Scheme, 2000 (for short "WBIS, 2000") which provided "Industrial Promotion Assistance" (for short "IPA") by way of a duty refund over a period of ten years without any financial cap whatsoever. BCL claims to be eligible to receive the incentive under the WBIS, 2000 as a Mega Project. The said unit of BCL was registered under the WBIS, 2000 and a registration certificate dated 29.04.2005 was issued. An eligibility certificate stating that the unit is entitled to receive incentive under the WBIS, 2000 as a mega project was issued by the Department of Commerce and Industry, Government of West Bengal in favour of BCL on August 30, 2005 with effect from 25.08.2005. The unit claims to have commenced its commercial production with effect from 24.12.2005. BCL claims to have received the last payment on 17.10.2014 and thereafter, no further payment was received by BCL. BCL claims that a principal sum of Rs. 5566.28 lakhs is receivable on account of IPA from WBIDC in terms of the WBIS, 2000 for the financial years 2010-2011, 2011-2012 and 2012-2013. Over and above the said amount, a further sum of Rs. 8549.25 is receivable by BCL on account of IPA in terms of the WBIS, 2000 in the financial years 2013-2014, 2014-2015 and 2015-2016.

4. BCL filed a writ petition being WPA 25596 of 2017 praying for a direction upon the respondents to forthwith disburse the sum of Rs. 14115.53 lakhs in favour of BCL as outstanding incentive under the WBIS, 2000 along with further interest at the rate of 12% per annum with effect from 01.04.2012 till payment thereof. The said writ petition was disposed of by an order dated 22.09.2022 which has been assailed by the State of West Bengal in MAT 1965 of 2022. Pursuant to the order dated 22.09.2022 passed in WPA 25596 of 2017, the Principal Secretary passed the order dated 24.08.2023 rejecting the prayer of BCL contained in the representation. It was observed that BCL was not entitled for incentive in excess of the Fixed Capital Investment (FCI) limit at any point of time. It was further observed that BCL is no longer eligible for any further benefits under the Scheme and all amounts for which they were eligible have already been disbursed in their favour.

5. Challenging the said order BCL has filed WPA 26743 of 2023. The writ petition being WPA 26743 of 2023 which was directed to be tagged along with MAT 1965 of 2022 and the appeal and the writ petition were heard analogously by this Court and are decided by this common order.

6. Mr. Mitra learned Senior Counsel appearing for BCL submitted that the unit set up by BCL, Durgapur falls within the category "Mega Projects". By referring to the WBIS, 2000, more particularly para 18 thereof, he contended that the State Government by a letter dated 19.02.2004 has approved a package as the unit proposed to extend its existing capacity from 0.6 M.T. per annum to 106 MT per annum for the purpose of manufacturing cement. By referring to paragraph (i) of the package he contended that the Government promised to release IPA without any financial cap. He further contended that since the unit commenced

commercial production with effect from 24.12.2005 , the IPA will be available for a period of only ten years. By referring to para 9 of the WBIS, 2000 which deals with interest subsidy, Mr. Mitra contended that the financial cap is applicable only in respect of interest subsidy and since BCL as per the package was not extended the benefits of interest subsidy as per the package vide letter dated 19.02.2004, the financial cap could not have been applied in case of IPA. By referring to the certificate of registration dated 29.04.2005 and the eligibility certificate dated 30.08.2005, Mr. Mitra contended that BCL was entitled to IPA without any financial cap by way of adjustment against sale tax liability. Mr. Mitra contended that the order of the Principal Secretary dated 24.08.2023 suffers from infirmity as the same is based on the West Bengal Incentive Scheme, 2004 and the observation of the Finance Department dated 28.12.2018. In support of the contention that the principles of 2004 Scheme and the cap stipulated therein could not have been invoked to defeat the entitlement of BCL to the balance amount of incentive under the special package, Mr. Mitra placed reliance upon an order dated 31.08.2023 passed by a learned Single Judge in WPA 9546 of 2019 in the case of M/s. Ambuja Cement vs. State of West Bengal and ors.

7. Mr. Siddiqui, learned Additional Government Pleader appearing in support of the appeal seriously disputed the contentions raised by Mr. Mitra. He contended that the State has preferred an appeal being MAT 2458 of 2023 challenging the order dated 31.08.2023 passed in WPA 9546 of 2019. He contended that the amount of incentive cannot exceed the fixed capital investment limit. He further submitted that since the IPA was in lieu of interest subsidy, the expression "without any financial cap" would signify that there is no cap for IPA for a particular year. He supported the order passed by the Principal Secretary on 24.08.2023.

8. Heard the learned advocates for the parties and perused the materials placed.

9. The State of West Bengal introduced the WBIS, 2000 which came into effect on and from 01.01.2000 and remained valid for a period of 5 years ending on 31.12.2004. Para 3(xiii) of the said scheme defines "Mega Unit" to mean an eligible unit of special characteristics set up on or after 01.01.2000 with investment exceeding Rs. 25 crores (w.e.f 01.07.2001). An eligible industrial unit under the said scheme is entitled to various subsidies including Interest Subsidy.

10. Para 18 of the WBIS, 2000 deals with Mega Projects. It states that notwithstanding anything contained anywhere in the Scheme, the State Government may consider granting special package of incentives under WBIS, 2000 to a mega project having due regard to the characteristics of the project case by case basis in the following areas namely size of investment, special nature of industry, employment potentiality, downstream effect of industry, ancillarisation effect of the industry and export potentiality.

11. Government of West Bengal, Commerce and Industries Department vide letter being No 684/JS/DC dated 19.02.2004 approved a special package for the

BCL located at Durgapur, Bardhaman, as the unit has proposed to extend its existing capacity from 0.6 MT per annum to 1.6 MT per annum with an investment of Rs. 100 crore for the purpose of manufacturing cement.

12. The said package provided for IPA and all other subsidies as laid down under the WBIS, 2000 except Interest Subsidy.

13. As per the said package, IPA was 75% of the sales tax paid in the year previous to the year during which IPA would be released without any financial cap by way of adjustment against sales tax liability of that year. The sales tax paid will not include tax paid on purchase of raw material. IPA will be available for a period of 10 years if the commercial production commences between 01.07.2005 to 31.12.2005.

14. The mode of calculation of IPA was specially laid down in the approval letter dated 19.02.2004. The unit was entitled to make applications in prescribed forms on commencement of commercial production and on investment of Rs. 25 crores to the Managing Director WBIDC Ltd. praying for release of incentives. On receipt of the application, Managing Director, WBIDC would intimate the Commissioner, Commercial Taxes certifying that the unit has been duly registered with Director of Industries, W.B under WBIS, 2000 and Eligibility Certificate has been issued by the WBIDC under the said Scheme. The unit has to apply before the Commissioner, Commercial Taxes requesting him to certify the total amount of tax paid during the year on sales and purchase in respect of which the application has been made. Upon receipt of such application the Commissioner, Commercial Taxes, W.B, after verification, would issue a certificate to the MD, WBIDC certifying the tax paid by the unit on its sales during the year in question. The MD, WBIDC Ltd. on receipt of the aforesaid intimation will issue cheques for an amount of 75% of the Tax paid by the Unit on its sales in the previous year as IPA. The system would continue for the number of years for which the IPA will be available or till the financial cap is reached whichever ends earlier. It was also specified therein that the benefits will be available for a period of 10 years if the commercial production commences between 1.7.2005 to 31.12.2005 failing which the unit will not be entitled to IPA and will be treated as an ordinary unit as per WBIS, 2000.

15. It is also evident from the said approval letter that it was issued with the concurrence of the Finance Department.

16. After going through the special package of incentives, this Court finds that IPA was to calculated and released in the following manner.

(i) IPA would be 75% of the sales tax paid in the year previous to the year during which IPA would be released.

(ii) IPA would be released without any financial cap.

(iii) IPA would be by way of adjustment against sales tax liability of that year.

(iv) IPA would be available for the period specified in the package.

17. It is the specific stand of the state that total incentive shall not exceed 100% of the Fixed Capital Investment. In other words state seeks to impose a cap on the total IPA allowable in respect of a unit based on Fixed Capital Investment.

18. The special package is silent as to any overall financial cap on IPA based on Fixed Capital Investment. If the aforesaid stand of the State is to be accepted then it would amount to adding a restrictive clause in the special package which is impermissible.

19. Clause 8 under the heading Mode of Calculation of IPA in the approval letter dated 19th February, 2004 states that the system will continue for the number of years for which the IPA will be available or till the financial cap is reached whichever ends earlier. However, Clause (i) under the heading "Package" states that IPA would be released without any financial cap.

20. This Court, therefore, holds that the special package approved for BCL does not stipulate any overall financial cap based on Fixed Capital Investment in so far as IPA is concerned.

21. BCL claims to have commenced its commercial production with effect from 24.12.2005. Eligibility Certificate for Incentives for Mega Project under the WBIS, 2000 appears to have been issued on 30.08.2005 by WBIDS in favour of BCL. Clause (I) of the said letter dated 30.08.2005 specifically states that there will not be any financial cap for IPA and it will be adjusted against sales tax liability of the year. Record reveals that the Executive Director WBIDC vide letters dated January 4, 2012 and April 23, 2014 informed BCL that the Corporation has admitted the amounts to be disbursed on account of IPA for the Financial Years 2010-11, 2011-12 and 2012-13 being the 6th, 7th and 8th year respectively. BCL claims that a principal sum of money of Rs. 8549.25 lakhs is also receivable by BCL on account of IPA in terms of WBIS, 2000 for the financial years 2013-14, 2014-15 and a part of 2015-16.

22. Pursuant to the order dated 22.09.2022 passed in WPA 25596 of 2017, Principal Secretary, Government of W.B conducted a hearing and passed an order dated 24.08.2023 thereby rejecting the claim of BCL on the ground that all amounts for which they were eligible have been disbursed in their favour.

23. The finding returned by the Principal Secretary in its order dated 24.08.2023 is based on the observation of the Finance Department dated 28.12.2018. This Court finds that such observation of the Finance Department was in the context of specification of overall financial limit in para 20(e)(iii) of WBIS, 2004 that the total incentive shall not exceed 100% of the Fixed Capital Investment in any case.

24. The Principal Secretary after quoting a portion of the observation of the Finance Department in its order dated 24.08.2023 observed that BCL was not entitled for incentive in excess of Fixed Capital Investment limit at any point of time.

25. BCL has not claimed any benefits under WBIS, 2004. The issue that arises for consideration is whether IPA as per the approved package for Mega Project in favour of BCL can be disbursed without any financial cap. Such issue has to be answered by considering the special package approved in favour of BCL vide letter dated 19.02.2004 only and not by the terms of WBIS, 2004.

26. Para 18 of WBIS, 2000 deals with Mega Projects and starts with a non obstante clause as stated hereinbefore. Therefore, the conditions stipulated in the special package approved for BCL would have primacy over all other terms of the WBIS, 2000.

27. This Court after considering the package and the mode of calculation of incentives has already held that IPA in favour of BCL would be without any financial cap.

28. The finding of the Principal Secretary is based on irrelevant materials as the observation of the Finance Department relates to the WBIS, 2004 which do not have any manner of application to the case on hand. The Principal Secretary failed to appreciate that there is no overall financial cap specified in the Special Package approved in favour of BCL based on Fixed Capital Investment.

29. For all the reasons as aforesaid, this Court is of the considered view that the order of the Principal Secretary dated 24.08.2023 suffers from infirmity and, therefore, the same is liable to be set aside and quashed.

30. The order of the learned Single Judge in M/s Ambuja Cements (supra) has not yet attained finality as the State of W.B. has preferred an appeal against such order and the same is pending before this Court. This Court, therefore, refrains from making any comment on the said decision at this stage.

31. This Court finds that the amount to be disbursed on account of IPA for the Financial Years 2010-11, 2011-12 and 2012-13 has been admitted by the Executive Director, WBIDC by letter dated January 4, 2012 and April 23, 2014 respectively. The learned Single Judge after noting that despite the letters of sanction given in January 2012 and April 2014, WBIDC as well as the State have not taken any steps for disbursement disposed of the writ petition by directing the State to disburse the amounts already sanctioned to BCL in terms of the letter issued by WBIDC within the time limit specified therein. This Court finds no reasons to interfere with such direction contained in the impugned order. Since, the time limit fixed in the impugned order for disbursing the amounts already sanctioned in favour of BCL in terms of the letters issued by the WBIDC has expired in the meantime and appeal against such order was pending before this Court, this Court is of the considered view that the time limit fixed in the impugned order for disbursing such amount is to be extended.

32. In so far as the claim for IPA made by BCL for the financial years 2013-14, 2014-15 and a part of 2015-16 is concerned, the concerned authority should be directed to verify the claim of BCL in the light of the observations contained

hereinbefore and if it is found that BCL is entitled to any amount on account of IPA as per the Special Package, to disburse such amount within a specified time frame.

33. For all the reasons as aforesaid MAT 1965 of 2022 stands dismissed. The time limit fixed by the learned Single Judge in the order dated 22nd September, 2022 for disbursing the amounts already sanctioned in favour of BCL (writ petitioner) in terms of the letter issued by the WBIDC is extended for a period of 4 weeks from the date of receipt of the server copy of this order. The order impugned dated 22nd September, 2022 is modified only to the extent as indicated hereinbefore. Accordingly the connected application stands disposed of.

34. The order of the Principal Secretary dated 24.08.2023 is set aside and quashed for the reasons as stated hereinbefore. The respondents in WPA 26743 of 2023 are directed to verify the claim made by BCL on account of IPA for the Financial Years 2013-14, 2014-15 and part of 2015-16 in the light of the observations contained in the body of this judgment and after such verification, if BCL is entitled to any amount on account of IPA, the respondents shall disburse such amount in favour of BCL as expeditiously as possible but positively within a period of 4 weeks from the date of receipt of the server copy of this order. In the event, the respondent authorities are of the opinion that the aforesaid claim of BCL cannot be allowed, a reasoned order to that effect shall be passed and communicated after giving an opportunity of hearing to the authorised representative of BCL within a period of four weeks from the receipt of the server copy of this order.

35. With the above observations and directions, the writ petition stands disposed of.

36. There shall be, however, no order as to costs.

37. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.