(2002) 02 AP CK 0189

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17931 of 2001

Sunita Industries — APPELLANT

Vs

State of A.P. and Others — RESPONDENT

Date of Decision : 04-02-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2002) 3 ALT 377 : (2003) 131 STC 408

Hon'ble Judges : Motilal B. Naik, J;M. Narayana Reddy, J

Bench : Division Bench

Advocate : Pratap Narayan Sanghi, for the Appellant; Government Pleader for Industries, for the Respondent

Final Decision : Allowed

Judgement

Motilal B. Naik, J.—The Government of Andhra Pradesh issued G.O. Ms. No. 498, Industries and Commerce (I.A.) Department, dated October 16, 1989 to encourage setting up of new industries in certain backward areas of the State of Andhra Pradesh by offering certain special incentives to those who come forward for setting up industries in backward areas, particularly, in agency areas.

2. The petitioner, a resident of Adilabad town was induced to establish a small-scale industry on the basis of certain incentives offered by the State Government pursuant to the G.O. with the hope that the subsidy of 20 per cent capital investment not exceeding Rs. 20 lakhs would be extended to her apart from granting of five years sales tax holiday subject to the maximum ceiling of Rs. 35 lakhs of sales tax during the entire holiday period of five years.

3. According to the petitioner, the State Level Committee is competent to grant final eligibility certificate if the capital investment is more than Rs. 7.5 lakhs and the District Level Committee is entitled to grant final eligibility certificate if the capital investment is less than Rs. 7.5 lakhs, as provided under foot note 2 of Clause 3(b) of the said G.O.

4. The petitioner, with an intent to start an industry of cottonseed oil in Adilabad town, submitted applications to various authorities and the Adilabad Municipality by its letter dated July 12, 1990 issued no objection certificate for establishment of small-scale industry. The Factories Department by its letter dated August 10, 1990 approved the application, the Electricity Department granted service connection with effect from March 9, 1991. After obtaining these certificates, the petitioner seems to have made an application to the State Government for grant of the benefits under G.O. Ms. No. 498 dated October 16, 1989 along with the estimated costs of the building and machinery. According to the petitioner, the first respondent, vide proceedings No. 746/B1/2554/90 dated July 19, 1990 tentatively confirmed Rs. 9 lakhs towards establishment of industry (Rs. 2,50,000 towards building and Rs. 6,50,000 towards machinery). The first respondent also extended the subsidy (rebate) of 25 per cent on electricity consumption vide proceedings dated April 22, 1992. The State Government by its order dated December 27, 1991 granted registration of the petitioner-industry as a small-scale industry.

5. While so, the State Government brought amendment to G.O. Ms. No. 498 dated October 16, 1989 vide G.O. Ms. No. 146 dated April 25, 1991 whereunder the industries involved in production of cotton seed oil was deleted from the list of beneficiaries, but however, exemption was drawn by the State Government to consider such of those industries which have already been commissioned or in the process of commissioning pursuant to G.O. Ms. No. 498 dated October 16, 1989.

6. The petitioner claims that she started the process of installation of industry on July 12, 1990 itself in terms of G.O. Ms. No. 498 dated October 16, 1989 and her claim to get the benefit under the said G.O. was not taken away by the subsequent G.O. Ms. No. 146 dated April 25, 1991. The petitioner being a woman entrepreneur and also on account of various reasons including financial constraints, she could not install all the machinery in the industry at a time. Part of the machinery was installed on April 13, 1991. Thereafter, according to the petitioner, she continued to install various other parts of the machinery in piecemeal manner and by December 24, 1992, she completely installed all the equipments which arc necessary and compulsory for starting the industry with its complete capacity.

7. The petitioner claims that she has spent a total sum of Rs. 7,30,034.42 towards machinery and spent another sum of Rs. 5,50,000 on the civil construction of building on the leased property. Thus, in all, the petitioner claims to have spent an amount of Rs. 12,80,034.42 towards fixed capital investment. The petitioner submits that after establishing the complete industry, she also furnished the complete statement of account duly audited by a chartered accountant along with the details to the fourth respondent who after examining the complete records, by letter dated September 4, 1993 recommended the case of the petitioner for grant of incentives and also exemption on sales tax.

8. The petitioner states that during the course of consideration of her application, certain queries were raised by the second respondent, the petitioner clarified the same and requested for issuance of a final eligibility certificate. Since there was delay in grant of final eligibility certificate, the petitioner was constrained to file a writ petition No. 17409 of 1994 on the file of this Court against the inaction of the respondents in this regard and this Court called for a report for the delay caused by the respondent. The respondents in their report indicated about the dispute with regard to purchase of expellcrs from Swam Engineers, Ludhiana, as the petitioner placed order with Gobind Expellers Company. Though the petitioner clarified that Gobind Expellers Company and Swarn Engineers, Ludhiana, are sister concerns, but the respondents issued final eligibility certificate only for an amount of Rs. 2,86,240 on February 24, 1995 without considering the relevant material placed by the petitioner. Thereafter, the petitioner filed W.P. No. 25748 of 1995 on the file of this Court which was allowed on July 19, 1998 by setting aside the final eligibility certificate and remanded the matter for fresh consideration. Immediately after the disposal of the said writ petition, the petitioner claims to have submitted a detailed representation on August 4, 1998 for grant of exemption to the extent of fixed capital investment of Rs. 12,80,034.42 along with all relevant documents supporting her claim.

9. Despite the petitioner furnishing all the documents and certificates as required by the respondents, the respondents have not issued the final eligibility certificate to the petitioner. Therefore, the petitioner once again filed W.P. No. 5398 of 2000 before this Court and when the said writ petition came up for consideration before a division Bench of this Court, when the division Bench expressed serious concern in the open court about the attitude of the respondents, the learned Government Pleader appearing on behalf of the Industries Department seems to have made a mention before the division Bench that since the petitioner had furnished all the relevant documents, the same is under active consideration before the Committee. The matter was therefore, closed by the division Bench giving liberty to the petitioner to seek recourse to such proceedings in the event of the respondents failing to pass appropriate orders.

10. The petitioner complains that despite furnishing all the documents and certificates including the chartered accountant''s certificate, as sought for by the respondents, by impugned proceedings dated April 19, 2000, the claim of the petitioner has been rejected by the respondents on the same ground that the petitioner did not furnish the chartered accountant''s certificate. The petitioner, therefore, filed this writ petition seeking a writ of certiorari by calling for the records relating to and connected with the proceedings No. 30/3/8/ 07702/0772-FD dated April 19, 2000 and quash the same as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India and to declare that the petitioner is entitled for exemption of fixed capital investment made up to December 31, 1992 and consequently a direction is sought to the respondents to issue a final eligibility certificate for a sum of Rs. 12,80,034.42 and grant exemption of sales

tax on the said amount.

11. On behalf of the respondents Nos. 1, 2 and 4 the fourth respondent-A. Jayalakshmi, working as Deputy Director working in the office of the second respondent, has filed a counter. In the counter, it is admitted that the Government of Andhra Pradesh has issued G.O. Ms. No. 498, Industries and Commerce (I.A.) Department, dated October 16, 1989 inviting entrepreneurs to establish industries in certain scheduled areas on the basis of incentives offered therein. It is, however, stated that the incentives offered to oil mills crushing cotton seeds in G.O. Ms. No. 498 have been withdrawn under G.O. Ms. No. 146 dated April 25, 1991. The respondents have listed out various reasons for not granting final eligibility certificate to the petitioner. At para 6 of the counter, it is stated that despite specific requests made by the respondents, the petitioner failed to produce correct information with documentary evidence about the suppliers and proof of payment for the expellers purchased from M/s. Swarn Engineers, Ludhiana, prior to the date of commencement of the production. Though the petitioner was requested to furnish certificate of chartered accountant to the effect that both M/s. Swarn Engineers, Ludhiana, and M/s. Gobind Expellers are legally under the same management maintaining common accounts, the petitioner failed to furnish the said material. According to the respondents, as the petitioner failed to furnish the relevant material for issuance of final eligibility certificate within one month as per the direction of this Court in W.P. No. 25748 of 1995, the case of the petitioner was rejected.

12. The petitioner has also filed a reply affidavit pointing out various steps taken by the petitioner by complying with the requirements of the respondents and the manner in which the respondents have dealt with the case of the petitioner from time to time despite directions issued by this Court. The petitioner has specifically stated that all the information was furnished by her to the respondents pursuant to the direction issued by this Court in W.P. No. 25748 of 1995 dated August 4, 1998, annexing copies of all the documents which were sought by the respondents in their earlier communication. It is also claimed that the representation in this regard was not only personally handed over by the petitioner but also sent to the respondents by registered post acknowledgment due. The petitioner complains that for extraneous reasons and without applying mind, the respondents have passed the impugned order rejecting the claim of the petitioner for grant of final eligibility certificate on the ground of non-furnishing of relevant material which according to the petitioner is improper and erroneous.

13. We have heard Sri Pratap Narayan Sanghi, learned counsel for the petitioner and the learned Government Pleader for Industries, appearing on behalf of the respondents.

14. As seen by us from the pleadings of the petitioner in the writ affidavit and the reply affidavit and the counter filed on behalf of the respondents in the light of the G.O. Ms. No. 498 dated October 16, 1989 and G.O. Ms. No. 146 dated

April 25, 1991 it would appear to us that the petitioner is entitled for final eligibility certificate on the amount spent by her towards fixed capital investment.

15. Initially the respondents granted final eligibility certificate to the petitioner for an amount of Rs. 2,86,240 on February 24, 1995. On a Writ Petition No. 25748 of 1995 filed by the petitioner before this Court assailing the inaction on the part of the respondents, this Court allowed the same on July 19, 1998 while setting aside the final eligibility certificate and remanded the matter for fresh consideration while permitting the petitioner to furnish all relevant certificates. Thereupon, the petitioner seems to have submitted a detailed representation on August 4, 1998 for grant of exemption to the extent of fixed capital investment of Rs. 12,80,034.42, in person, and also through registered post acknowledgment due. However, the respondents rejected the claim of the petitioner as if the petitioner has not furnished the relevant particulars as is reflected in paras 6 and 7 of the counter.

16. In this scenario, petitioner complains to the court that series of representations made by her and directions issued by this Court from time to time to the respondents have no effect on the respondents and in a routine manner, the respondents are deliberately avoiding to extend the benefits to the petitioner on some reason or the other and are filing routine counters before this Court repeating the same story as if the petitioner has not filed the required documents.

17. As discussed by us, the writ petitioner''s effort right from 1991 onwards seeking to get benefit under G.O. Ms. No. 498 dated October 16, 1989, have not met with success, though initially the respondents granted the final eligibility certificate for an amount of Rs. 2,86,240 on February 24, 1995. As seen by us, the material details required by the respondents have been though furnished by the petitioner as is indicated in the reply affidavit, annexing all the required documents in support of her claim, the respondents have failed to grant the final eligibility certificate to the petitioner on some flimsy grounds without even discussing about the contents of the documents filed by the petitioner as if no material is placed before them.

18. The petitioner has pleaded before us that pursuant to the direction in Writ Petition No. 25748 of 1995 dated July 19, 1998 issued by a division Bench of this Court requiring her to furnish all the details before the appropriate authority while directing the appropriate authority to examine the claim of the petitioner afresh, she submitted a detailed representation furnishing all the material particulars on August 4, 1998 including the copy of the letter issued by Govind Expeller Company ; a certificate issued by a chartered engineer ; and a certificate issued by the chartered accountant with regard to the purchase of expellers from M/s. Swarn Engineers, Ludhiana, in support of her claim for grant of final eligibility certificate, in person as well as by registered post acknowledgment due. However, the respondents have not even mentioned about such representation in the impugned order and in a routine manner, rejected the

claim of the petitioner.

19. The petitioner has reiterated her stand by contending that she submitted a detailed representation personally to the respondents and also sent to them by registered post acknowledgement due. In the reply affidavit also, the petitioner asserted this factor. No rejoinder is filed on behalf of the respondents to the reply affidavit filed by the petitioner denying the stand of the petitioner. Therefore, there is no reason for us to disbelieve the version of the petitioner that she had furnished all the relevant documents sought for by the respondents in support of her claim for grant of final eligibility certificate.

20. During the course of hearing the writ petition, we have also summoned the deponent of the counter-affidavit filed on behalf of the respondents, namely, A. Jayalakshmi, Deputy Director working in the Office of the Commissioner of Industries, Hyderabad, to verify the correctness of the statement made before the court. However, she was not able to answer our queries properly except showing us some provisions which, in our view, have no bearing at all to the facts of the case. We, are therefore, not satisfied with the explanation offered by the deponent in this regard.

21. A reading of the subsequent G.O. Ms. No. 146 dated April 25, 1991 would indicate though the industries involved in the production of cotton seed oil were deleted from the list of beneficiaries as provided in G.O. Ms. No. 498 dated October 16, 1989, however, nothing is indicated in the said G.O. Ms. No. 146 withdrawing the incentives granted to the industries which were established pursuant to G.O. Ms. No. 498.

22. In the background of the material placed before us by the writ petitioner, would it not be a case for us to issue direction to the respondents to grant final eligibility certificate for a sum of Rs. 12,80,034.42 or is it a case only to direct the respondents again to consider the claim of the petitioner for grant of final eligibility certificate though such directions were already issued by this Court and yet the respondents have not even bothered to verify the claims. The intention of the respondents is clearly reflected from the facts of the case. When the respondents are determined to deny the benefit, we are of the view, this court has two options to be adopted in this case, one is either to reject this writ petition as if no case is made out by the petitioner or to direct the respondents to grant final eligibility certificate for the total capital investment of Rs. 12,80,034.42.

23. The settled law as far as the power of the courts under Article 226 of the Constitution of India is concerned, courts exercising such powers are entitled to give such directions as are deemed fit and proper in the facts and circumstances of each case. Repeatedly, if the respondents fail to" act upon the directions of the court and deny the relief of the party who approached the court, we are of the view, the court is entitled to issue a positive direction in a given case if the court is satisfied that no useful purpose would be served by directing the respondents

again to consider the case of the party.

24. In a given case like this, if a positive direction is issued by the court directing the respondents to grant final eligibility certificate to the petitioner, the court cannot be accused of exercising excessive jurisdiction. We also take note of the fact that the petitioner is the most harassed person as is evident from the fact that in the three rounds of earlier litigation petitioner could not get the relief and the present attempt before us is the fourth round of litigation. We are, therefore, of the view, this is a fit case where an appropriate direction has to be issued by us.

25. Though technical objections have been raised on behalf of the respondents about non-furnishing the chartered accountant''s certificate and other details, as reflected in the representation dated August 4, 1998 filed by the petitioner, the petitioner has furnished all the required relevant documents to the respondents in support of her claim for grant of final eligibility certificate. However, the respondent have failed to take into account the said representation and the documents furnished thereto by the petitioner. The respondents have also not denied this assertion of the petitioner by filing a rejoinder to the reply affidavit filed by the petitioner nor have taken a plea that no such representation is filed by the petitioner. We are, therefore, of the view that the petitioner has filed all the required documents sought for by the respondents but the respondents have failed to act upon them as is evident from the facts of the case. Having regard to the facts and circumstances of the case, we are inclined to hold that the petitioner is entitled for a positive direction from this court.

26. For the above reasons, we quash the impugned proceedings No. 30/3/8/07702/0772-FD dated April 19, 2000 issued by the second respondent. Consequently, we direct the respondents to issue a final eligibility certificate in favour of the petitioner for a sum of Rs. 12,80,034.42 and grant exemption of sales tax on the said amount.

27. The writ petition is allowed in the above terms. No costs.

28. That rule nisi has been made absolute as above.

29. Witness the honourable Dr. A.R. Lakshmanan, the Chief Justice on this Monday the fourth day of February, 2002.

