

(2001) 08 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 468 of 1991

Supertex Industries Ltd. and Another	APPELLANT
Vs	
Union of India (UOI) and Another	RESPONDENT

Date of Decision : 02-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Monopolies and Restrictive Trade Practices Act, 1969 — Section 2, 2A

Citation : AIR 2002 Bom 18

Hon'ble Judges : V.G. Palshikar, J;S.J. Vazifdar, J

Bench : Division Bench

Advocate : Gaurav Joshi, S.V. Rege and Aplurva Parekh, instructed by Crawford Bayley and Co. and Petitioner No. 2 in person, for the Appellant; R.M. Agarwal, for the Respondent

Judgement

V.G. Palshikar, J.—By this petition, the petitioner-company which is duly registered under the Companies Act, 1956 has impugned the action of the respondents in not granting to the company the subsidy under the Central Investment Subsidy Scheme promulgated by the Government of India in 1971. The prayers may be noted verbatim :

(a) That this Hon"ble Court be pleased to declare that the circular dated 20th July, 1989 and circular dated 9th June, 1988 (Exhibits "H-I" and "M" hereto) is null and void and unconstitutional;

(b) That this Hon"ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order under Article 226 of the Constitution of India, calling for the papers and records pertaining to the petitioners case and after going into the same and examining the legality thereof to quash and/or set aside the circular dated 20th July, 1989 and circular dated 9th June, 1988 and the orders dated 18th May, 1990 and 20th July, 1990 (Exhibits H-I," "M," "O" and "R" hereto);

(c) That this Hon"ble Court be pleased to Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India, directing the respondents, their servants, subordinates officers and agents to forthwith withdraw and/or cancel the circular dated 20th July, 1989 and circular dated 9th June, 1988 (Exhibit "H-I" and "M" hereto) and the orders dated 18th May, 1990 and 27th July, 1990 (Exhibits "O" and "R" respectively hereto) and to grant to the petitioners the subsidy of Rs. 23,35,000/- under the 1971 Scheme together with interest thereon at the rate of 18% per annum from the due date till the date of payment and/or realisation thereof;

(d) That pending the hearing and final disposal of the petition, the respondents, their servants agents, subordinates and officers, be ordered and directed by an order of this Hon"ble Court to pay to the petitioners the sum of Rs. 23,35,000/- under the 1971 Scheme on such terms and conditions as this Hon"ble Court deem just and proper:"

2. According to the petitioner, the Central Investments Subsidy Scheme, 1971 was formulated to give benefit to such entrepreneurs who are willing to set up an industrial unit in backward areas of the country so that the industrial growth of that area is stimulated. It was In effect an incentive scheme. It provided substantial incentive to entrepreneurs willing to commence industrial activity in backward areas. The incentive was in the shape of Central Investment Subsidy.

3. Under the scheme, the subsidy was offered to ah industry after its commencement on certain conditions mentioned in the scheme. It is the case of the petitioner that it was because of the promises put forward in the scheme by the Government of India in 1971 and during the operation of the scheme that the petitioner took up the venture of setting up the industry in the backward area of Dadpa and Nagar Haveli. The manufacturing activity undertaken by the petitioner-company is not relevant for the purposes of this petition. The consideration of grant of subsidy was taken up by the Government of India when the industry was situated in any of the Union territories through the State Level Committee and decision on the question of grant was taken by the Government of India itself.

4. The petitioner completed all the formalities necessary for the sanction of this subsidy to it and made necessary application claiming grant of subsidy. The applications of the petitioner was duly processed by the State Level Committee, but as the "industry set up by the petitioner was in Union territory, the application for grant of subsidy was forwarded by the State Level Committee to the Government of India for appropriate orders regarding sanction. It is pertinent to note, however, that the State Level Committee was of the opinion that it should be sanctioned. Before the Government of India factually proceeded with the matter, certain charges were made in the scheme and it was stipulated that industries which are owned and controlled by same set of individuals or company may not be entitled to the grant of subsidy. The Government of India had issued

four circulars in this relation and it is after the application of these four circulars that the question of grant of central subsidy is to be decided by the competent authority. It is not in dispute in the present petition that the competent authority to decide the matter of subsidy claim of the petitioner is Joint Secretary to the Government of India.

5. Certain correspondence followed between the petitioner and the respondents whereunder certain information was demanded from the petitioner in relation to the names of partners, their holding, the exact shareholding by each partner etc. According to the petitioner. It completed these formalities also and claimed immediate release of the grant. However, nothing in the matter was done and the petitioner-company was informed that its request for grant of central subsidy is in effect turned down. Feeling aggrieved by the rejection which, according to the petitioner, was arbitrary, unsustainable in law, the above writ petition has been filed.

6. It is pertinent to note that the petitioner was one such company to whom such central subsidy was denied. There were scores of companies similarly situated as the petitioner and scores of writ petitions were therefore filed in this Court claiming almost identical reliefs. The matter was chequered career in this Court and in the Supreme Court of India. However, we need not trace the history of this litigation. Suffice it to say that ultimately the Supreme Court of India issued certain positive directions in this regard. It held that merely because an application was not filed before a particular date, the company making the application should not be disentitled for claiming the subsidy. It was held by the Supreme Court of India that all applications which were substantially complete by 30th September, 1988 were liable to be considered on merits of each case. All those matters were therefore remitted back to the High Court. In High Court a question arose of deciding all these matters and by a reasoned order, all the petitions pending in this Court were decided. However, at that time it was stipulated between the parties in this petition that questions regarding application of the subsidy scheme to the petitioner in the present case are liable to be considered separately and independently as, according to the respondents, the petitioner-company belongs to a group of companies and, is therefore, not entitled to grant of any subsidy as per the circulars filed by both the petitioner and the respondents. By an order of this Court, this petition was therefore separated and is listed for hearing. We have heard the learned counsel for the petitioners as also the learned counsel for the respondents-Union of India and others.

7. Mr. Joshi, learned counsel appearing for the petitioner-company submitted in nutshell that the rejection of its application for grant of central subsidy was improper, illegal and arbitrary and, therefore, violative of Article 14 of the Constitution of India being arbitrary and discriminatory to other identically situated-industries having been granted the subsidy. According to the learned counsel, the application for grant of central subsidy as made by the petitioner

was complete in all respects. It was made within the time stipulated by the Scheme. In any event it was within the time as stipulated by the Supreme Court of India and, therefore, the petitioner-company was entitled to equal protection of the scheme or equality before law by grant of subsidy to it also. According to the learned counsel, the petitioner-company was liable to be treated equally. It is the submission of the learned counsel that the Government of India having framed a scheme and decided a policy to grant subsidy to industries giving industrial growth, potential to backward areas, a class of such particular industries covered by the Scheme was created and thereafter each industry fulfilling the requirements of the scheme was liable to be treated equally and granted subsidy as promised by the Scheme of 1971. In pith and substance, what has been granted by the Government of India in the Central Investment Subsidy Scheme is a State largesse or bounty, the nature of which gets converted into a right conferred on particular kind of Industries fulfilling the requirements of the 1971 Scheme as stipulated in the conditions of the scheme mentioned therein and, therefore, the Government cannot act arbitrarily and pick up some industries for grant of such subsidy and deny the same to others for reasons which have no relation with the object of the scheme. He, therefore, claimed that the respondents be directed to grant the subsidy to the petitioner-company.

8. Mr. Agarwal, learned counsel appearing for the Union of India and others opposed the petition on all grounds. He pointed to the Court that how the petition was different from the other petitions decided by this Court earlier. Relying heavily on the four circulars issued by the Government of India in regard to the group companies, he contended that one of the directors of the petitioner-company Mr. Khemani was also a director of another company and, therefore, the petitioner-company belonged to group of companies and is not consequently entitled to grant of subsidy. It was also the contention of Mr. Agarwal that in any event the question as to whether the petitioner-company is entitled to grant of such subsidy or not is a disputed question of fact. Factual enquiry into the application of those four circulars to the case of the petitioner will have to be made and only then it should be adjudicated upon as to whether the subsidy is liable to be given to the petitioner. Relying on certain cases decided by the Supreme Court of India, it was submitted by Mr. Agarwal that this Court, in writ jurisdiction, should not normally issue a mandamus directing doing of a particular thing when the allegation is that there is failure on the part of the respondents to do that particular thing which the law enjoins it to do. He, therefore, opposed adjudication of the question of grant of subsidy by this Court directly.

9. It was also submitted by Mr. Joshi, learned counsel for the petitioner, canvassing for adjudication of the entire dispute by this Court that the petitioner has lost the advantage of subsidy for last 12 years. Severe financial stress has been caused to the company and it would further suffer if the matter is again remitted to the Joint Secretary to the Government of India for adjudication.

According to the learned counsel, even if certain facts are required to be investigated into, the facts already on record disclose that the dispute of fact is not such as would require intensive investigation by this Court and, therefore, taking into consideration the delay of 12 years caused in the matter of awarding of the subsidy, the matter should be decided by this Court once and for all here only. As another limb of his argument, it was pointed out by Mr. Joshi that the petitioner having started and run the industry for last 12 years and on the promises by the respondents that subsidy will be received by it some day, the petitioner has incurred certain obligations because of the chequered career of the litigation since 1990 to date the subsidy is not forthcoming. It is likely to be postponed further. In the circumstances, principles of law of equity demand that the respondents be directed to pay interest to the petitioner on the amount of subsidy from the date the same ought to have been paid in 1990 to the date of actual payment. Mr. Agarwal opposed the prayer for grant of interest and wanted to rely on a large number of cases for his contention that no interest can be paid in the present case. Thereafter, during the course of arguments. Mr. Joshi, learned counsel for the petitioner, stated that the petitioner would give up his claim for any interest, if the matter is adjudicated upon finally by this Court. He stated that he was willing to do only to avoid a lengthy litigation which was bound to be involved if the matter was remanded.

10. We have considered the rival submissions and given appropriate weight. It will be seen that the application of the petitioner-company was rejected on the ground that it belongs to a group of companies and, therefore, is not entitled to grant of subsidy. Therefore, it does not fulfill the requirements mentioned in the four different circulars which govern the grant. The petitioner-company has been held to be a group of companies only because one Director Mr. Khemani is a Director in two companies, the ultimate product manufactured by both of them being very similar. However, from the fact disclosed by the affidavits on record, it will be seen that the holding of Mr. Khemani in the petitioner-company is very minimal, less than one per cent., and it cannot be said that he has any control over the petitioner-company. On this ground alone the company cannot be treated as a group of companies. Mr. Joshi correctly pointed out, relying on one of the circulars issued by the Government of India, that in order to ascertain what is meant by group company the definition of group company contained in the Monopolies and Restrictive Trade Practices Act. 1969 (MRTP Act) is liable to be taken into consideration. So considered, as held by the Supreme Court, a company can be called a group of two or more individuals or associations of individuals and associations or firms etc. It must have control directly or indirectly over any body corporate, firm or trust. What is meant by "associated persons" is also defined by the Act and it means any company of which such director, whether independently or together with his relatives, constitutes one-fourth of its Board of Director. According to Mr. Joshi, therefore, holding Mr. Khemani being only 10 shares he did not constitute one-fourth of the Board of Directors and was therefore, not an associated person and it did not make Mr.

Khemani, a person of the petitioner-company a group as defined by the Act. Prima facie, there appears to be much substance in this submission made by Mr. Joshi. However, taking into consideration the objections raised by Mr. Agarwal to the adjudication of the petitioner's entitlement to subsidy by this Court directly, we do not think it proper to pronounce our opinion on this aspect. It is true, as pointed by Mr. Agarwal, that it is for the Government of India to consider the factual position in the light of the, four circulars issued by the State and to decide as to whether in the circumstances so disclosed, the petitioner-company is or is not entitled to grant of investment subsidy. We are inclined to accept this argument for yet another reason and that is availing of possible remedy against the decision of Government of India. To elaborate, If the competent authority decides in favour of the petitioner and grants subsidy and if the Government is not satisfied with the decision. It can be challenged appropriately. Similarly, a refusal if it ensues can be challenged by the petitioner appropriately. If the submission of the petitioner is accepted, we short circuit the process and decide the matter ourselves possibly the petitioner or the State loose one remedy. It is also better that we keep ourselves with the tradition of not entertaining disputed facts or adjudicating upon disputed facts unless it is directly necessary, for all these reasons, we refrain ourselves from making any adjudication on the petitioner's right to grant of subsidy under the Scheme and the circulars at this stage. We decide the petition with the following directions :--

(i) The application of the petitioner for grant of central investment subsidy under the Subsidy Scheme of 1971 is complete in all respects and is liable to be entertained on merits. The appropriate authority under the Scheme (probably the Joint Secretary to the Government of India) is hereby directed to decide the said application of the petitioner for grant of central subsidy within a period of eight weeks from the date of receipt of this order.

(ii) The competent authority while so deciding the application shall grant to the petitioner reasonable and adequate opportunity to prove its claim for grant of subsidy. The petitioner shall unresistingly supply to the competent authority the information needed for arriving at just and proper conclusion on the application for such grant of subsidy.

(iii) The petitioner shall be at liberty to canvass before the competent authority grant of interest on the amount of subsidy on any grounds including equitable grounds taking into consideration the loss of time which according to the petitioner was avoidable.

(iv) The competent authority shall decide the application objectively and expeditiously within the stipulated time frame. The competent authority if it comes to the conclusion that subsidy is liable to be paid, it shall disburse the same to the petitioner-company within two weeks.

(v) In the event the competent authority comes to a conclusion that scheme does not permit grant to the petitioner, it shall make a reasoned order to that

effect and the petitioner shall have right to challenge that order appropriately. It is for this reason that none of the contentions raised by either of the parties are adjudicated upon by us except for making passing reference to the same.

11. In the result, the rule is made absolute in terms mentioned in the foregoing paragraphs. There will be no order as to costs.

Parties may be provided with an ordinary copy of this judgment duly authenticated by the Private Secretary as true.