(1996) 04 P&H CK 0108

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 167 of 1995

Surya Jyoti Devices India Private Limited — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 19-04-1996

Acts Referred:
Constitution of India, 1950 — Article 266
Punjab Municipal Act, 1911 — Section 62A(2)

Citation : (1996) 114 PLR 281 : (1996) 3 RCR(Civil) 88

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : Rajiv Bhalla, for the Appellant; D.S. Dillon, D.A.G., for the Respondent Nos. 1, 2 and 3, Viney Mittal and Arvind Bansal, for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—The petitioner is an Industrial Unit in village Chanalon. It appears that the unit came into production since, 1988. Village Chanalon was included in the municipal area of Kurali by a notification issued by the Government of Punjab sometime in October, 1994. Thereafter, the Executive Officer of the Municipal Committee, Kurali, addressed a letter dated October 25, 1994, to the petitioner that its factory situated within the municipal area and, therefore, any goods coming to the factory will not be exempted from octroi charges, and in case any goods entered the factory without payment of octroi appropriate legal action would be taken. This necessitated the petitioner to approach this Court to issue a writ of Mandamus directing the Municipal Committee not to levy any octroi on the petitioner as the petitioner was exempted from paying the octroi in view of the industrial incentives granted to the petitioner by the government.

2. According to the petitioner, the Government of Punjab framed rules for the grant of incentives under the Industrial Policy Statement, 1978. These rules were

notified by the Government on March 21, 1979. Under Rule 7(1) of the said Rules, the factory that comes within the industrial policy is exempted from payment of octroi/Terminal tax for a specified period depending on the situation of the factory in the area groups which are classified as I, II, III and IV. According to the petitioner, its factory was registered for availing the incentive with the District Industries Centre on November 22, 1988. It is also the further case of the petitioner that the District Industries Centre, Mohali, issued a certificate that the petitioner was registered with the department and the date of production of the unit was May 2, 1988, and in the certificate issued by the District Industries Centre, Mohali, dated November 2, 1994, the petitioner-unit is entitled for exemption of octroi under Rule 7 of the Industrial Policy Statement, 1978. Therefore, according to the petitioner, it is exempted from payment of octroi and, therefore, the octroi cannot be levied on the petitioner.

3. The learned counsel for the Municipal Committee submitted that 1978 Industrial Policy was substituted by another Industrial Policy which was issued vide notification dated March 30, 1988. Under the new notification issued on March 30, 1988, no exemption from payment of octroi was granted to any of the industries. But under Rule 1(b) of the Rules, the option was given to the industries either to adopt the Industrial Policy of 1978 or Industrial Policy of 1987 which was notified on March 30, 1988, and that the said option was to be exercised within a period of ninety days. According to the learned counsel for the Municipal Committee, the petitioner has not exercised this option and, therefore, the petitioner is not entitled to any exemption from payment of octroi under 1978 Industrial Policy.

4. There is no dispute that the Municipal Committee is empowered to levy octroi. u/s 61(2) of the Punjab Municipal Act, 1911, with the previous sanction of the State Government, the Municipal Committee can impose any other tax which the State Legislature has power to impose in the State under the Constitution. Admittedly, the State Legislature has got the power to impose octroi on the goods coming into the municipal area u/s 62-A of the Punjab Municipal Act, 1911. The State Government may require the Municipal Committee to impose any tax mentioned in Section 61 not already imposed, at such rate and within such period as may be specified in the notification and the Committee shall thereupon act accordingly. Sub-section (2) of Section 62-A of the Punjab Municipal Act, 1911, empowers the Government to modify the rate of any tax already imposed and the Committee shall modify the tax as required within such period. There is no dispute that the Government has empowered the Municipal Committees to impose octroi on the goods that come into the municipal area. The power to impose octroi is, therefore, not disputed. There is also no dispute that the State Government has not exercised its powers under Sub-section 2 of Section 62-A of the Punjab Municipal Act, 1911, either partially or completely exempting from payment of octroi. Thus, the power conferred by the Legislature under Sub-section 2 of Section 62-A of the Punjab Municipal Act, 1911, has not been exercised by the State Government. The Industrial Policy is not framed

under any statutory powers granted to the State Government. The Industrial Policy as enunciated in the Rules published either in 1979 or in 1988 are formulated only in the exercise of the executive powers of the State Government. It is settled law that the State Government by making executive instructions cannot take away or nullify the powers once exercised under the Statute. When the State Government empowered the Municipal Committee to impose octroi and Municipal Committees accordingly imposed the octroi by virtue of the provisions of the Municipal Act, the State Government cannot by issuing non-statutory instructions deprive the Municipal Committees from collecting the octroi from the industrial units set-up within the limits of the Municipal Committee. Any such exemption can only be granted under Sub-section 2 of Section 62-A of the Punjab Municipal Act, 1911. Admittedly, the State Government has not exercised its powers under Sub-section 2 of Section 62-A of the Punjab Municipal Act, 1911. I am therefore, of the opinion that the State Government in exercise of its executive functions cannot take away the powers of the Municipal Committee to impose the octroi unless the State Government exercises its powers under Sub-section 2 of Section 62-A of the Punjab Municipal Act, 1911, and admittedly, the State Government has not invoked its powers under Sub-section 2 of Section 62-A of the Punjab Municipal Act, 1911. The learned counsel for the petitioner relied upon Section 236 of the Punjab Municipal Act, 1911, which reads as follows :-

"(1) The State Government and Deputy Commissioners, acting under the orders of the State Government, shall be bound to require that the proceedings of the Committees shall be in conformity with law and with the rules in force under any enactment for the time being, applicable to Punjab generally or the area over which the Committee have authority.

(2) The State Government may exercise all powers necessary for the performance of this duty, and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons which would in its opinion justify an order by the Deputy Commissioner u/s 232.

(3) The Deputy Commissioner may within (his) jurisdiction for the same purpose exercise such powers as may be conferred upon (him) by rule made in this behalf by the State Government,"

The above section only requires the State Government to see that the proceedings of the Committee are in conformity with law and with the rules in force under any enactment for the time being. It is not shown that the Industrial Policy granting incentives to the industries has been framed under any law or under any rules in force under any enactment. Therefore, in my view, Section 236 of the Punjab Municipal Act, 1911, has no application.

5. Apart from that, even assuming for a moment that the State Government has got the power to exempt octroi and direct the Municipal Committees not to collect and levy octroi on the industrial set-up in view of the Industrial Policy

enunciated by the State Government either in 1978 or in 1988, on the facts of the case, I am of the opinion that the petitioner is not entitled to claim exemption under 1979 Rules. Admittedly, the Industrial Policy Statement, 1978, was substituted by another Industrial Policy of 1987 and the State Government notified the rules for the grant of incentives under the Industrial Policy Statement of 1987 on March 30, 1988. Sub-rule (b) of Rule 1 of the said Rules reads as under :-

"These Rules shall be applicable to those units which came into production on or after the date of notification of these rules. However, (a) if such units which came into production on or after the date of notification of these Rules are covered under the earlier incentive Scheme (1978) also they shall have the choice to opt for either of the scheme. (b) such units which have taken effective steps or gone into production between 1st April, 1987, and the date of notification shall have the choice to opt for either of the Schemes. This choice shall have to be exercised by the unit within a period of 90 days from the date of notification of these rules and submitted to the concerned District Officer. The option once exercised by them shall be deemed to be final and shall not be allowed to change at any stage under any circumstances thereafter. The units which have once availed incentives under the other policy provided that the effective steps would mean taking of any of the following steps :-

(i) 60% or more of the capital issued for the industrial units has been paid up.

(ii) That more than half of the factory building for the project has been constructed.

(iii) that a firm order has been placed for more than half of the plant and machinery required for the industrial unit."

6. Thus, the rules published in 1988 are primarily applicable to those units which came into production on or after the date of notification of these rules. Admittedly, the unit of the petitioner came into production only after March 30, 1988. Therefore, the rules published in 1988 are applicable to the case of the petitioner. However, the same rules have given option to the industrialists who are also covered and are entitled to incentives under 1979 Rules, to opt for either 1979 Rules or 1988 Rules. Under Sub-clause (b) of Rule 1 of the Rules, option has to be exercised within ninety days and under Sub-clause (c) of Rule 1 of the Rules, if no option is exercised within the stipulated period of ninety days they will be deemed to have opted for the new Rules. Nothing has been placed before me to show that the petitioner exercised its option as required under Sub-clause (b) of Rule 1 of the Rules. The learned counsel for the petitioner argued that the registration certificate dated December 30, 1988, (Annexure P-1) and the certificate issued by the General Manager, District Industries Centre, Mohali, clearly shows that the petitioner opted for the Rules of 1979. In the certificate issued by the General Manager, District Industries Centre, Mohali, dated December 30, 1988, there was no reference of any letter of the petitioner opting

to come under the Industrial Policy Statement, 1978. It is in a prescribed performa. The relevant columns in the performa had been kept blank from this certificate it does not appear that the petitioner had given any letter of option opting to come under the Policy of 1978. Therefore, the petitioner cannot take advantage of the certificate dated December 30, 1988, to show that it gave his option within ninety days as stipulated in 1988 Rules. The learned counsel further relied upon the certificate issued by the General Manager, District Industrial Centre, Mohali, dated November 2, 1994. That also does not show that any letter exercising the option as required under the Industrial Policy Statement of 1978, has been sent as required under Sub-rule (b) of Rule 1. Therefore, neither Annexure P-1 not Annexure P-6 can be pressed into service for the purpose of showing that the petitioners\\ exercised its option within the stipulated period of ninety days to come under the Industrial Policy Statement of 1978 published on March 21, 1979. Further, the option was also given to those industries which were covered by both the columns. It is not shown to me that the petitioner was covered by both the columns.

7. It is also pertinent to note that to exercise the option to come under 1978 Policy the petitioner must have taken effective steps to gone into production between April 1, 1987, and the notification dated March 30, 1988. What is meant by "effective steps" is also indicated in Sub-rule (b) of Rule 1 of the Rules published on March 30, 1988. According to the same, the petitioner must show that sixty per cent or more of the capital has been issued for the industrial units has been paid up (ii) that more than half of the factory building for the project has been constructed (iii) that a firm order has been placed for more than half of the plant and machinery required for the industrial unit. The petitioner has not produced any material before this Court to show that he has fulfilled the above conditions so as to come under the category that it has taken the effective steps. There is also nothing on record to show that the petitioner has placed any material before the General Manager, District Industrial Centre, Mohali, who issued the certificates vide Annexure P-1 and P-6 that he fulfilled these conditions. Admittedly, the petitioner-unit came into production after March 30, 1988. Therefore, it is imperative on the part of the petitioner to show that he has taken effective steps to establish the unit. Failure on the part of the petitioner to show that he has taken effective steps also disentitles him from getting incentives under 1978 Policy. Therefore, on this ground also, I am of the opinion, that the petitioner is not entitled to get any relief.

In view of my foregoing discussion I do not find any merit in this writ petition, Writ petition is, therefore, dismissed but without costs.