(1992) 07 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5989 of 1986

Taneja Woollen Mills APPELLANT

Vs

General Manager, District Industries Centre and Others RESPONDENT

Date of Decision : 08-07-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Industrial Incentives Code under the Industrial Policy Statement Rules, 1978 — Rule 2.17

Citation : (1993) 105 PLR 89

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : H.L. Sibal and Satish Sibal, for the Appellant; P.S. Thiara, Assistant A.G., for the Respondent

Judgement

V.K. Bali, J.—This judgment shall dispose of Civil Writ Petition Nos. 5989, 4359, 5991, 5990 of 1986, 6082, 7724 of 1987 and 6213, 7970 and 9427 of 1988. The facts have, however, been extract from Civil Writ Petition No. 5989 of 1986.

2. Petitioner M/S Taneja Woollen Mills seeks a writ in the nature of Certiorari so as to quash the orders dated 8.7.1986 Annexure P-21 as also communication of the order aforesaid conveyed to the petitioner vide order letter dated 29.9.1986 by which orders, the applications of the petitioner for grant of interest free loan for two years i.e. 1983- 84 and 1984-85 were rejected by the Director of Industries.

3. Briefly the case of petitioner M/S Taneja Woollen Mills is that originally a partnership firm having a fixed capital of Rs. 6 lacs was registered and the same was taken over by M/S Swastika Wool Traders Private Limited with effect from 1.10.1986. The unit of the petitioner was registered with the object of taking benefits of the incentives as laid down in the Industrial Policy Statement notified on 21.3.1979 by the Punjab State. It purchased about 412412 square yards of land in village Bhore in district Ludhiana and the whole land so purchased was

utilised for the factory premises wherein the total capital investment in land and building at the relevant time was to the tune of Rs. 6 lacs. The petitioner with a view to be covered by the Punjab Industrial Incentive Code under Industrial Policy Statement effective from 1.4.1978, published in the Punjab Government Gazette on 21.3.1979, through notification had made an application in form A on 23.5.1980. The application was with a view to seek benefit and enjoy the incentives which had been mentioned in the said Code. The application was processed and the unit was registered on 18.5.1982. Inasmuch as, according to the Code specified in the notification, the unit of petitioner was in group IV of Schedule II, the petitioner''s unit was registered under Group IV. It requires to be mentioned here that under the notification mentioned above, the industrial units were to get interest free loans in the way and manner mentioned in rule 4.3 which, in turn, provides entitlement of a unit at 5 per cent in area groups I and II and 6 per cent in area groups III and IV of the sale value of goods manufactured by the unit in its own premises or 25 per cent, 30 per cent, 35 per cent and 40 per cent of the amount of fixed capital investment of the unit as on 1st April of the year of claim in area groups I,II,III and IV respectively subject to a ceiling of Rs. 5 lacs per annum in area group I and II and Rs. 7 lacs in area groups III and IV. As per rule 4.3(2), the interest free loan was to be given annually for 5 years, 6 years, 8 years and 10 years for area groups, I, II, III and IV respectively. As indicated above, it is the benefits that were meant for group IV in which the petitioner''s unit fell. In pursuance of the benefits as spelled out above as also in consequence of the registration of the petitioner''s unit in group IV, it was granted interest free loan of Rs. 11,480.80P in respect of year 1981-82 and an office order to that effect was passed, copy whereof, has been placed as Annexure P3. the petitioner also executed a mortgage deed on judicial stamp paper as required. Similarly for the year 1982-83, interest free loan of Rs. 97,000/- was granted to the petitioner and in respect thereof, a mortgage deed was executed. The petitioner was also entitled to exemption on electricity from payment of excise duty as provided for in Rule 6 of the Code for a period of ten years and with a view to obtain the said relief as well, an application was made which was granted and the certificate was issued vide Annexure P8. the Chief Electrical Inspector to Government Punjab even addressed a letter to the Sub Divisional Officer, Punjab State Electricity Board, Ludhiana intimating that the petitioner had been exempted from the levy and payment of electricity duty from 15.1.1982 to 14.1.1992. In accordance with Industrial Policy Statement, capital subsidy was to be enjoyed by the petitioner under Rule 8 read with Rule 8.1. of the Rules which, in turn, provides that 15 per cent of the subsidy of the fixed capital investment has to be allowed in the backward districts and in pursuance of the said provision, the petitioner was granted subsidy to the tune of Rs. 2,56,000/- vide letter dated 14.10.1982, Out of the amount aforesaid, Rs. 18,000/- were to be disbursed after the payment of Rs. 1,20,241/- which was reported to be still payable. The Director of Industries disbursed an amount of Rs. 2,38,000/- vide letter dated 20.5.1983 and the petitioner was required to execute an agreement bond in respect of both the sums of Rs. 2,38,000/- and

Rs. 18,000/-.

4. The case of petitioner is that he had installed the balance of the machinery in accordance with the original project report submitted by it to the department in which he asked for further subsidy of 15 per cent amounting to Rs. 1,00,971.22P. The said application was favourably recommended by the District Industries Centre, Ludhiana to the Director of Industries. In so far as interest free loan is concerned, the petitioner got the same in respect to the previous years whereas in respect to the subsequent years 1983-84, 1984-85 and 1985-85 it moved applications to the tune of Rs. 4,46,843.28P, Rs. 5,14,191.36P and Rs. 3,40,681.34P respectively. The total amount claimed as interest free loan for these three years comes to Rs. 13,01,715.98P. The three applications for grant of interest free loans as also grant of 15% subsidy remained pending with the respondents though the same, were forwarded by respondent No.1 with his recommendations. While the petitioner was awaiting favourable result of his applications, the Director of Industries issued a directive to the General Manager, District Industries Centre, Ludhiana wherein it was mentioned that the concessions which are mentioned in the Incentive Policy are not admissible to the units in backward areas/bet areas which are set up within 10 Kilometres from the limits of Municipal Corporation Ludhiana and all the pending cases were directed to be closed. It was also directed that steps be taken so that such units be -deregistered and the amount already paid be not recovered. In pursuance thereof, the petitioner received letter dated 29.9.1986 whereby it was intimated that its applications for the grant of interest, free loan for the years 1983-84 and 1984-85 have been rejected by the Director of Industries Punjab vide orders dated 29.8.1986. The order is Annexure P20 whereas communication to the petitioner is Annexure P21 and the same have been challenged in the present petition as mentioned above. Based on the aforesaid facts, the case of the petitioner is that it established the industry depending on the said policy which was administered by the competent officers who from time to time issued various instructions and provided the petitioner with subsidy, exemption from payment of electricity duty and interest free loans and, therefore, the applications for the years 1983-84 and 1984-85 could not be rejected, thus, nullifying the orders with regard to the entitlement of the petitioner. It is also stated that the orders have been passed without hearing the petitioner. The principle of promissory estoppel is also sought to be made applicable as the petitioner established the business on the basis of the said assurance and took loan from the State Bank of India and the National Small Industries Corporation Limited of over 12 lacs. It had been relying on the release of the amount of over Rs. 13 lacs claimed vide various applications and on that basis it incurred heavy losses of interest which is accuring day to day on account of said liability to the aforesaid Institutions. It is also sought to be made out that the respondents cannot back out from the fulfilment of the promises which had been made in the policy known as Punjab Industrial Incentive Code under the Industrial Policy Statement as published in the Punjab Government Gazette on 21.3.1979.

5. This petition has been contested by the respondents and in the written statement filed, it is pleaded that the Industrial Policy Statement for grant of incentives to new industries was announced on 10.3.1978 and the area groups have been specified in para 8.2. of the Policy Statement. These Rules which were to govern the incentives of Policy Statement were notified on 21.3.1979. These area groups of the Policy Statement were notified under Rule 2.17 read with Schedule II of the Rules. Under group III of Schedule II, the units within 10 Kilometres from Municipal limits of Ludhiana town have been excluded for grant of incentives. Thus, the industrial units located within 10 kilometres of the Municipal limits which were enjoying the benefit of well developed urban town of Ludhiana having been specifically excluded from area group III, could not be expected to become eligible for higher grade of incentives. The backward areas falling beyond 10 Kilometres of Municipal limits were covered under area group IV. It is further contended that the admissibility of incentives to the industrial units is basically covered under Rule 1.17 where area groups have been defined. It was clearly specified that rest of the districts excluding Ludhiana town and areas falling within 10 Kilometres from Municipal limits will be eligible for incentives. The units having been specifically excluded from grant of incentives under area group III cannot become entitled for incentives under area group IV. Inasmuch as arguments of learned counsel appearing for the State are based upon the defence as projected above, I do not feel any necessity to refer to other pleadings contained in the written statement.

6. Mr. H.L. Sibal, the learned Senior Advocate appearing on behalf of the petitioner mainly contends that the petitioner is entitled to all the benefits, reference of which has been given above, and the moment the area where the petitioner established his industrial units is declared to be a backward area, the fact that it may, in a given case, also fall within 10 Kilometres from the Municipal limits of the town would not make any difference to the petitioner unit and the same shall be entitled to all the benefits that are admissible to area group IV. Obviously, the contention of counsel for the State is otherwise. In order to appreciate the controversy involved in the matter, it shall be useful to refer to the relevant Rules and the Schedule of the Code.

7. Whereas word ''Unit, has been defined in Rule 2.7 and Area Group has been defined in Rule 2.17. The same reads as follows:-

''2.7 ''Unit means a new industrial unit of manufacturing undertaking which has taken effective steps to set up industry on or after 1st April, 1978 with new plant and machinery or part thereof."

"2.17 ''Area Group'' means the areas given in Schedule II of these Rules."

Schedule II attached to the Rules that has come into being by virtue of Rule 2.17 is reproduced below: -

SCHEDULE II (See rule 2.17) -- District Group I

Group II Group III Group IV -- 1. Amritsar Amritsar Rest of the All Sub- including District. mountain Cheharta areas and Verka. 2. Jullundur Focal Goraya Rest of the Border areas Point/ district (within 16 Indl. excluding Kms of the areas. Jullundur International Town and border). Backward area falling areas declared within 10 as such by the Kms from State Municipal Government, limits. 3. Ludhiana Ditto Khanna Rest of the Exception would Town district be made in excluding case of areas Ludhiana considered as Town and developed and areas failing these may placed within 10 Km in groups I,II,III from depending upon Municipal the limits. development. 4. Patiala - Rajpura Rest of the Gobindgarh District. 5. Kapurthala - Phagwara Ditto 6. Ropar - S.A.S.Nagar Ditto 7. Gurdaspur - Batala Town Ditto

8. Faridkot - Moga Ditto 9. Ferozepur - - Whole of the District. 10. Hoshiarpur - - Ditto 11. Bhatinda - - Ditto 12. Sangrur - - Ditto ---

8. It shall be made out from the perusal of Schedule II reporduced above that in all the districts of Punjab, various areas in the said districts have been bifurcated into Group I, II, HI and IV. Whereas the contention of learned counsel for the petitioner is that the present case is covered by Group IV, the area where industrial unit has been established being admittedly backward so declared by the State Government, the contention of learned counsel appearing for the respondents is that the area being within 10 Kilometres of the Municipal limits of Ludhiana would fall under Group III. Besides the question of applicability of equitable estoppel, the other question that requires adjudication in the present case is as to whether the area where the petitioner has established its industrial unit would fall under Group III or Group IV of Schedule II. In fact if the second question as mentioned above turns in favour of the petitioner, there shall be no necessity whatsoever to decide the first question with regard to equitable estoppel. Before answering the second question, it shall be useful to notice the definition of Backward Area as contained in rule 2.3. Backward area has been defined to mean an area declared as industrially backward by the State Government or by Government of India, as the case may be for the purpose of grant of incentives for the establishment of industries.

9. After going through all the relevant Rules and the pleadings of the parties as also hearing the learned counsel, in my view, the second question posed is very simple and so is the answer. Area Group means the area given in Schedule II of the Rules and as noticed above, backward area means an area declared as industrially backward by the State Government or by the Government of India for the purpose of grant of incentives for the establishment of industries. While framing Schedule II and placing a particular district in Group IV, the authorities could not be oblivious to the situation that in a given case there could be a backward area declared as such by the Government which also may be within 10 Kilometres from the Municipal limits. The facts of the present case amply

demonstrate that such a situation was possible. As noticed above, the area where the petitioner has established an industrial unit is admittedly one which has been declared to be backward by the State Government and is also within 10 Kilometres from the Municipal limits of Jalandhar.

10. In so far as Group III is concerned, the same from an overall reading of Schedule II seems to be general pertaining to areas 10 Kilometres from the Municipal limits. When such an area is also backward area declared as such by the State Government, the same would necessarily be treated as an exception to the general group or may be called a special group. Obviously, the special group would exclude the general group in case of over-lapping. It is cardinal rule of interpretation that the matters covering special fields would apply even though they may also be covered under the general field. That being so, the unit of the petitioner would obviously be in Group IV even though the same is also within 10 Kilometres from the Municipal limits of Jalandhar. As observed above, if this question has to be answered which is being answered in favour of the petitioner, there will be no necessity at all to go into the question of applicability of principle of equitable estoppel. It, is, however, mentioned in passing that the respondents had correctly considered the case of the petitioner to be covered under Group IV. It was covered by the Punjab Industrial Incentives for various concessions as noticed above. The petitioner was admittedly granted the benefits available for Group IV. It was granted interest free loan of Rs. 11,480.80P in respect of year 1981-82 as also interest free loan of Rs. 97,000/- for the year 1982-83. It was also exempted from payment of excise duty for a period of 10 years It was also granted subsidy to the tune of Rs. 2,56,000/- out of which an amount of Rs. 18,000/- was to be disbursed after the payment of Rs. 1,20,241/- which is still payable. The Director of Industries also disbursed an amount of Rs. 2,38,000/-. It is too late in the day for the respondents to turn round at this stage and completely change its stand by pleading that there has been mistake in placing the petitioner in Group IV. The petitioner had done everything considering that his case would be covered under Group IV and so much so even the benefits permissible under Group IV were accorded to it, it shall not be fair for the respondents at this stage to deny the petitioner the remaining concessions that it might be entitled to.

11. In view of what has been said above, this petition is allowed. Letter Annexure P20 and Directive Annexure P21 issued by respondent No. 2 by which the petitioner was deprived of the incentives which it enjoyed in accordance with the Punjab Industrial Incentive Code are quashed. Further a direction is issued to the respondents to continue to provide to the petitioner all the incentives which have been mentioned in the Punjab Industrial Incentive Code and to sanction the applications of the petitioner Annexures P17 and P19 for interest free loans as also application Annexure P15 for grant of subsidy as also exempt it from payment of excise duty and interest free loans. There shall be no order as to costs.

12. In Civil Writ Petition No. 4359 of 1986 directive Annexure P22 issued by respondent No. 2 by which the petitioner has been deprived of the incentive which it enjoyed in accordance with the Punjab Industrial Incentive Code under Industrial Policy Statement published on 21.3.1979 effective from 1.4.1978 is quashed. Further a direction is issued to the respondents to continue to provide to the petitioner all the incentives which have been mentioned in the Punjab Industrial Incentive Code and to sanction the applications for interest free loans Annexures P18 to P20 for the years 1982-83, 1983-84 and 1984-85 and other benefits such as subsidy, exemptions from payment of electricity and interest free loans. There shall be no order as to costs.

13. In Civil Writ Petition No. 5991 of 1986 letters Annexures P3 and P7 are quashed. The petitioner shall be entitled to all the benefits/concessions as may be permissible as per entitlement to the Group in which it falls. There shall be no order as to costs.

14. In Civil Writ Petition No. 5990 of 1986, letters Annexures P3 and P9 are quashed. Directions in the present case shall also be similar as in Civil Writ Petition No. 5991 of 1986.

15. In Civil Writ Petition No. 6082 of 1987 the petitioner shall be entitled to all the benefits/concessions as may be permissible as per entitlement to the Group in which it falls. There shall be no order as to costs.

16. Annexure P16 in Civil Writ Petition No. 7724 of 1987 is quashed and the petitioner shall be entitled to all the benefits/concessions as may be permissible to the Group in which it falls. There shall be no order as to costs.

17. In Civil Writ Petition No. 6213 of 1988, Annexures P19 and P21 in Civil Writ Petition No. 9427 of 1988 Annexure P18 are quashed. The directions in these two writ petitions are also similar as in the above- mentioned cases.

18. In Civil Writ Petition No. 7970 of 1988, Annexure P14 is quashed. Petitioners shall be entitled to all the benefits/concessions as may be permissible as per entitlement to the Group in which they fall. There shall be no order as to costs.

