

(2000) 08 PAT CK 0051

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2689 of 2000 (R)

Tata Cummins Ltd. and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-08-2000

Acts Referred:

Citation : (2000) 3 BLJR 2264 : (2001) 1 PLJR 260

Hon'ble Judges : M.Y. Eqbal, J;A.K. Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. L.K. Bajla, learned Counsel for the petitioners and learned Government Advocate.

2. In this Writ application, the petitioner, who is an industrial unit, seeks appropriate relief for exemption from payment of sales tax on the furnished products manufactured and sold materials as well as purchase of raw materials under the Industrial Policy, 1995.

3. The petitioners case is that the petitioner-Industry was set up and came into production between 1st September, 1995 to 31st August, 2000 and, therefore, it is entitled to get exemption in view of the Government Notification No. S.O. 478 and S.O. 479 dated 22nd December, 1995.

4. It appears that the claim of the petitioner was rejected by the Deputy Commissioner, Commercial Taxes as back as in 1998, which is evident from the letter dated 2.11.1998, a copy of which has been annexed as Annexure 16 to the Writ application. The ground of rejection was that the petitioner did not fulfil the conditions contained in the policy of the 1995 in order to get relief under the said policy.

5. From perusal of Annexure 16, it appears that the claim of the petitioner was rejected on the ground that it has no right, title and interest over the land where

the industry was set up inasmuch as it was not transferred to the petitioner by way of valid lease.

6. Mr. Bajla mainly contended that merely because the petitioner is not having a lease of the land under a valid registered deed of lease, the claim of the petitioner could not have been rejected.

7. For better appreciation of the submission of the learned Counsel, we shall look into the relevant provisions of the Industrial Policy of 1995. Clause 7.1 and 7.2 of the policy reads as under:

7.1 LAND/SHED IN GROWTH CENTRES/ INDUSTRIAL/ AREAS/ E.P.I.P. ETC.

Land/sheds in Growth Centres, Industrial Areas, etc. would be allotted to entrepreneurs for sitting their industrial units on lease of 90 years with option for renewal.

The rent payable for the land would be subject to revision after every 20 years.

The predetermined cost of developed land/shed will be realised in easy installments. The entrepreneur shall have the right to mortgage the land/shed with the Financial Institutions/Banks. No separate permission will be required either of the Government or the Industrial Area Development Authority for mortgaging the leased land to the Financial Institutions/Banks within the lease period for securing term loan/working capital loans for the Unit for which the land/shed has been leased. The industry department would determine the period of construction for the large, medium and small scale units. The lease deed would carry the condition that if the unit is not constructed within the prescribed period the land could be taken back.

Authorities managing Industrial Areas and Growth Centres would be the Single Contact point for clearances regarding allotment of land.

7.2 LAND FOR INDUSTRIAL OUTSIDE GROWTH CENTRES/ INDUSTRIAL AREAS.

Besides availing of infrastructure facilities in Industrial Areas and Growth Centres an entrepreneur can also site his plant by purchasing land or through allotment of Government land. State Government will also assist in facilitation purchase as also in acquiring land for locating industries. The State Government has already amended the Bihar Tenancy Act authorising conversion of agricultural land. Similar amendments in other Tenancy Acts will be carried out.

8. From bare reading of the aforesaid Clauses, it is manifest that the industrial unit, which seeks benefit under the Policy, must have its industrial unit on the land taken on lease for 90 years with option for renewal. Clause 7.2 provides that if the land belongs to the State Government, there must be a valid allotment of the land in favour of the industrial unit by the State Government.

9. Admittedly, the petitioner is not having a valid lease either obtained from the State Government or from its sub-lease namely, TELCO Ltd. It is also not

disputed that the State Government had granted lease in favour of TISCO for a fixed period. TISCO in its turn granted a sub-lease to TELCO and TELCO to have granted lease to the petitioner. It is also not in dispute that the lease granted to TISCO by the State Government since expired in 1995 and till date the lease has not been renewed in favour of TISCO by the State Government.

10. We can take judicial notice of the fact that TISCO filed a Writ application seeking mandamus directing the State Government to renew the lease. That Writ application was dismissed by a Bench of this Court and the said judgment was affirmed up to the Supreme Court.

11. Be that as it may, the matter with regard to renewal of lease by the State Government in favour of TISCO is still pending under consideration. In that view of the matter, we are of the opinion that if the interest of the alleged lease since came to an end by reason of the expiry of the lease, how sublease from a sub-lease can be said to have interest over the land. In that view of the matter, we are of the opinion that the claim of the petitioners for grant of benefit under the Industrial Policy of 1995 was rightly rejected by the respondents in 1998. It is rather surprising that the petitioners moved this Court challenging the decision of the respondents after two years.

12. However, Mr. Bajla submitted that in view of the decision of a Division Bench of this Court dated 4.1.2000 passed in CWJC No. 1599/99(R), the petitioners become entitled to claim the benefit under the provision, we are of the opinion that any claim or benefit having been rejected long back cannot be revived by a subsequent judgment of Courts given in cases filed by the different persons. We are also of the view that the law has been well settled that the industrial unit cannot claim benefits under the policy as a matter of right unless all the conditions are strictly complied with and such policy must not be in conflict within Statute or the Rules time to time issued by the Department concerned.

13. Having regard to the facts and circumstances of the case, we are not inclined to grant any relief to the petitioners. This Writ application is dismissed.