
(2007) 01 OHC CK 0001
In the Orissa High Court

The ECP Infotech

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-01-2007

Acts Referred:

Citation : (2007) 103 CLT 215 : (2007) 1 OLR 417 Supp

Hon'ble Judges : I. Mahanty, J;A.K. Ganguly, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I. Mahanty, J.—In this writ application, the Petitioner-company ECP Infotech, registered under the Companies Act, 1957 has prayed for the following reliefs:

- i. To set aside the cancellation of Lease Agreement vide Annexure-10;
- ii. Restraining IDCO to disconnect the Electric Supply to the Petitioner's Unit;
- iii. For uninterrupted power supply to the Petitioner's Unit without charging for its power back-up facilities through its Generator;
- iv. To provide all infra structural facilities as provided in Industrial Policy and IT/ ICT Policies;
- v. Payment of compensation amounting to Rs. 99,00,000/- to make good of the loses sustained by the Petitioner Company, and
- vi. IDCO to refund the rents and electricity charges to the Petitioner illegally and unreasonably collected from it.

The Petitioner-company M/s. E.C.P Industries was established in the year 1983-84 under the Companies Act, 1957 and a subsidiary company, i.e., E.C.P Infotech was established on 21.8.2000 and has been registered by the Software Technology Park of India which is a Nodal Agency of Govt. of India for establishment and promotion . of I.T and I.TES (Information and Technology Enabled Services) activities. It is further averred that the Petitioner took up ITES

activities in Medical Transcription (MT) also known as Health Business Process Outsourcing (HBPO) which has a high demand in U.S.A. The Petitioner further states that in order to compete with the growth of IT and ITES services worldwide and in order to match with the competitive growth and to attract such business, the State of Orissa in order to facilitate establishment of such IT sector by private entrepreneurs has issued from time to time various industrial policies and IT policies containing various promises for infrastructural facilities and incentives in the State of Orissa. The Petitioner further avers that being attracted by the policies announced by the State of Orissa and generally believing such promises and/or assurances, sought to establish an establishment in the State of Orissa and for such purposes, the Petitioner entered into a lease agreement with IDCO-OP.No.3 on 6.5.2000 for providing accommodation at Tower-2000 initially till 30.4.2003. The Petitioner further avers that it has made an investment of more than 1.5 crore. In the said establishment, the Petitioner's enterprise is a Public Utility Service and it is a service provider to various clients in the U.S.A. in the field of Medical Transcription. The Petitioner in order to generate employment for educated youths, provides free of cost training in Medical Transcription for six months to assist unemployed youths of the State to acquire training in order to enable them to earn a substantial livelihood.

In the background of these facts, the Petitioner, inter alia, states that due to power disconnections, non-compliance of infrastructural facilities and failure to provide back-up power during power-cuts, the same has interrupted working in the establishment which was required to provide round 0" Clock, i.e, 24 hours on-line service to its various clients mainly in U.S.A. and, inter alia, has faced following problems in course of their occupation of its premises:

- i) Scheduled Power-Cuts;
- ii) Failure of back-up power;
- iii) Non-provision of exemption from the electricity utility and excavated charge towards rent;
- iv) Non-compliance of various infrastructural facilities; v) Loss of Rs. 99 lakhs due to non-compliance.

2. The various issues raised by the Petitioner in the writ application and the reply thereto by the Opposite parties at the threshold shows that for money claim for damages on account of the alleged losses suffered by the Petitioner, the present writ application is not maintainable. The main contention raised by the Learned Counsel for the Opposite parties is that the present writ application is not maintainable inasmuch as the Petitioner is not entitled in law to raise money claim for damages in a writ application. The questions of fact have to be determined and further the other point raised by the Petitioner relating justifiability of the cancellation of the lease cannot be adjudicated in a writ application.

3. Learned Counsel for the Petitioner in response to the aforesaid issue of maintainability of the writ application has contended that the writ petition is maintainable, inasmuch as, the thrust of the Petitioner's grievance is based on the plea of "promissory estoppel" arising out of the promises made by the State of Orissa in the various Industrial Policy Resolution (IPR) and IT Policies of the State and further that the Opposite party No. 3-IDCO being a Nodal Agency for the State to implement its objective, may not be permitted to be treated as a new landlord for the purposes of leasing out its premises. But it must be stated that as an authority, it must have the responsibility cast upon it as a Nodal Agencies to aid and assist the State in order to achieve the objectives undertaken by the various policies. In other words, it is contended by the Petitioner that IDCO- Opposite party No. 3, a Govt. of Orissa undertaking is also bound to give effect to and/ or act in aid of the policies declared by the Govt. of Orissa. In this regard, Learned Counsel for the Petitioner draws the attention of this Court in particular to Clause 8.1 of the Industrial Policy, 1996, Clauses 18.7 and 18.11 of the Orissa Industrial Policy, 200 1 and Clauses 5.1.4, 5.1.5, 5.2, 5.2.3 and 6 of the Information & Technology Policy which are as follows:

8.1 - Exemption of Electricity Duty

New industrial units with contract demand up to 500 KVA will be exempted from payment of electricity duty for a period of 5 years from the date of power supply.

Clauses 1 8.7 and 18.11 of the Orissa Industrial Policy, 2001:

18.7 - New industrial units with contract demand up to 100 KVA will be exempted from the payment of electricity duty for a period of 5 years from the date of availing power supply for commercial production.

18.11 - Information Technology, Bio-technology and Tourism related activities (existing or new) which are treated as industrial activity will be entitled to have power at industrial and not commercial rate or tariff subject to OERC approval.

Clauses 5.1.4, 5.1.5, 5.2, 5.2.3 and 6 of the Information & Technology Policy:

5.1.4 - Important IT building infrastructure such as IT Parks, STPI Complex shall be free from power cuts.

5.1.5 - IT/ITES unjts will be exempted from the payment of electricity duty as per the provisions of Industrial Policy of the Government.

5.2 - Incentives that are available on application.

5.2.3 - Energy charges at Industrial Tariff for IT/ITES units:

Electrical energy consumption by IT/ITES units shall be charged at industrial rate subject to approval of OERC.

6. ROLE OF OCAC:

Orissa Computer Application Centre will continue its role as the agency for

computerization of the Government. In addition it will function as the Directorate for information Technology in the State. Following major functions will be looked after by OCAC:

- (i) Involve, co-ordinate and participate in the Computerization of all Departments in the Government.
- (ii) Provide, organize, outsource and co-ordinate training to new users of computer hardware and software and upgrade the skill level of existing users in the Government, entrepreneurs of identified schemes, teachers and trainers. Necessary funds will be provided by Departments' budget.
- (iii) Prepare documents, programs and campaigns to increase the visibility of the State as a Destination of Choice for IT investments from investors.
- (iv) Design, host and maintain websites of Government Departments, organizations and institutions and necessary software packages as and when requested.
- (v) Design, host and maintain the official information Portal of the Government.
- (vi) Implement, co-ordinate and monitor all Schemes of the State Government in the Information Technology Department pertaining to Information Technology, IT Enabled Services and Communication sector.
- (vii) Consult, process, procure and maintain hardware and software resources of all Departments in the Government.
- (viii) Plan, and formulate various strategies, visions, policies and projects for the Government to achieve success in its mission to reach the benefits of information Technology to the people. It will explore these whenever possible on the public private partnership.
- (ix) Plan, invest, execute projects to build up adequate IT Infrastructure in the State on the basis of build-Operate-Transfer (BOT), Build-Own -Operate-Transfer (BOOT) and Build -Own-Operate (BOO).
- (x) Outsource technologies and IT services not available in the State and work back to assimilate, absorb and develop the technology for the same in the State.
- (xi) Collaborate with Technology Leaders to bring in new technologies to increase the local skill level.
- (xii) Promote and establish institutions of Excellence in the State in the IT, ITES and Communication sector to create world-class facilities for training and education.

4. The Govt. of Orissa from time to time issued various policy directives for the purpose of growth of industrialization of the State as well as for enhancing the employment opportunity within the State. The latest policy in operation at the moment is the Information and Communication Technology (ICT) Policy, 2004

issued by the Department of Information Technology, Govt. of Orissa dated 10.2.2004 vide Annexure-5 to the present writ application. In terms of the aforesaid ICT Policy, 2004 Clause-8(b) is quoted herein below:

8(b) - Doubts relating to interpretation of any term and/ or dispute relating to the operation of any provision under this policy shall have to be referred to the Department of Information Technology, Government of Orissa for clarification/ resolution and the decision of Government in this regard shall be final and binding on all concerned.

5. On consideration of the various reliefs sought for by the present Petitioner, we are of the view that the prayer for damages is clearly not maintainable in present writ application and we accordingly reject such prayer but observe that it is open to the Petitioner to seek redressal of such grievance in an appropriate forum.

In so far as other reliefs sought for, i.e., challenge to cancellation of the lease agreement, exemption from payment of electricity duty and claim for various benefits based on various Industrial Policy Resolutions of the State of Orissa as well as the Information and Communication Technology Policy, 2004 are concerned, we are of the view that the Department of Information Technology, Govt. of Orissa in terms of the aforesaid Clause in the ICT Policy, 2004 should resolve all disputes arising in the present writ application. Since the rival contentions deal with the interpretation of terms of various policies issued by the State from time to time as well as the disputes due to operation of any provision under the said policy, we are of the view that the Department of Information Technology, Govt. of Orissa should resolve all such disputes by calling upon both the parties, i.e., the Petitioner and O.P. No. 3. For such purpose, we direct the Petitioner to make a detailed representation before the Secretary, Department of Information and Technology within a period of two week from today. If such a representation is filed, the same shall be considered within a period of three months from the date of filing of the representation alongwith a copy of this order.

6. Pursuant to various directions issued by this Court during the pendency of this writ application, the Petitioner has paid various sums towards his outstanding dues to IDCO, i.e., Rs. 5.00 lakhs was paid by the cheque on 7.8.2006, leaving some outstanding balance dues. The Petitioner is directed to go on paying the current rent as well as the electricity dues to IDCO, i.e., with effect from August, 2006 till the final determination is made by the Department of Technology pursuant to the directions given in this order. The outstanding dues if any, towards rent, electricity etc., as on 1st of August, 2006 shall abide by the direction for payment/adjustment, that may be made upon the final determination to be made by the Secretary, Department of Information Technology. We, however, make it clear that anything contained in this order shall not be construed as expression of any opinion on the merits of the claims made by the Petitioner. The writ application stands disposed of in terms of the aforesaid directions.

A.K. Ganguly, J.

7. I agree.