
(2017) 04 RAJ CK 0158
In the Rajasthan High Court
Case No : 486 of 2015

The State of Rajasthan

APPELLANT

Vs

Ashok Hotel & Anr.

RESPONDENT

Date of Decision : 17-04-2017

Acts Referred:

Citation : (2017) 04 RAJ CK 0158

Hon'ble Judges : Gopal Krishan Vyas, G.R. Moolchandani

Bench : DIVISION BENCH

Advocate : K.L. Thakur AAG, K.L. Thakur, Pratistha Dave, Kuldeep Mathur

Judgement

1. In both the above appeals filed by the appellants the judgment dated 11.7.2013 passed by the learned Single Judge in SBCWP No.4383/1999 is under challenge.

Learned counsel for the appellants submits that the judgment impugned whereby respondent firm held entitled to receive the subsidy of Rs.2,49,000/- is not sustainable in law in view of the judgment rendered by the Division Bench of this Court in DBSAW No.562/2000 (M/s. B.D. Textiles, Pali Marwar Vs. State of Rajasthan & Ors.), decided on 11.8.2009, in which while considering the same issue for grant of subsidy, the Division Bench of this court held that firm is not entitled for subsidy under the Central Investment Subsidy Scheme of 1971, therefore, the judgment impugned may kindly be quashed.

2. Learned counsel for the appearing on behalf of the respondent firm submits that upon facts the judgment of Division Bench in case of M/s. B.D. Textile is not applicable because in that case, the claim of subsidy was rejected by the Division Bench on the ground that the firm M/s. B.D. Textile has failed to submit application form in prescribed form alongwith certain information and documents on or before cut off date which is 30.9.1988, whereas in this case, undisputedly, the application for grant of subsidy was filed by the respondent-firm under Central Investment Subsidy Scheme, 1971 on 30.4.1987 much prior to the cut

off date 30.9.1988 and this fact has not been disputed by the appellants in their reply to the writ petition, therefore, the learned Single Judge while following the judgment of the Division Bench of this Court in DBSAW No.281/2005 (Union of India Vs. M/s. M. Processing House P. Ltd. & Ors.), decided on 25.4.2007 allowed the claim of subsidy of the firm. It is also submitted that in aforesaid judgment, the learned Single Judge came to the conclusion that delay was attributed to RFC itself as they slept over the matter for long time. The learned Single Judge has rightly followed the judgment of this Court in the case of Union of India Vs. M/s. M. Processing House P. Ltd. & Ors (supra) to hold respondent-firm entitled for subsidy. Thus, it is submitted that in view of the above, both the special appeals may kindly be dismissed.

3. After hearing learned counsel for the parties, we have perused the judgments cited by the learned counsel for the appellants in the case of M/s. B.D. Textile Mills, Pali Marwar Vs. State of Rajasthan & Ors (supra), so also, the judgment in the case of Union of India Vs. M/s. M. Processing House P. Ltd. & Ors (supra) and find that the claim of subsidy was rejected by the Division Bench in the case of M/s. B.D. Textile Mills, Pali Marwar Vs. State of Rajasthan & Ors (supra) on the ground that although the application form was submitted prior to 30.9.1988 but that was not complete in all respect, whereas in this case, admittedly, the application form for grant of subsidy amounting to Rs.2,49,000/- was filed in accordance with Central Investment Subsidy Scheme, 1971 in time on 30.4.1987. Therefore, upon facts of this case, the judgment rendered by the Division Bench of this Court in the case of M/s. B.D. Textile Mills, Pali Marwar Vs. State of Rajasthan & Ors (supra), is not applicable.

4. In our opinion, no error has been committed by the learned Single Judge to follow the judgment of this court in the case of Union of India Vs. M/s. M. Processing House P. Ltd. & Ors (supra) in which following adjudication was made by the Division Bench of this Court, which reads as under : "Considering the aforesaid direction of the M.P. High Court, the Hon"ble Supreme Court explained the revised direction as under :-

"We do not think that there can be any quarrel with the direction (a) given by the High Court. The direction (a) says that the State Level Committee shall be revived or any other authority constituted to discharge the work which the said committee was supposed to discharge under the said scheme. Such a committee, or the authority, as the case may be, was directed to examine the applications of the petitioners on merits on the basis of eligibility qualifications before the scheme expired on 30.9.1998. It means that only those units/industries which have acquired the eligibility qualifications before the said date were held eligible for the financial assistance thereunder, but not others."

"This was indeed, the direction given by the Division Bench earlier in Bajrang Extraction. In this behalf, it is well to remember the distinction between "substantive and mandatory requirement" and "formal and procedural requirement" pointed out by this Court in Mangalore Chemicals and Fertilisers

Ltd. V. Dy. Commr. of Commercial Taxes 1992 Supp (1) SCC 21 ? a decision which deals with a similar exemption notification."

This judgment was rendered by the Hon"ble Supreme Court on 1.11.1995 after the decision in Umasha Textile and Anr.

The second judgment in the cluster of judgments annexed with the main judgment reported in the aforesaid report was on an appeal preferred by the Union of India against Aarbee Pipe and Profiles and Ors. which came to be decided on 1.2.1996 with the following order :-

"In view of the decision of this Court in State of M.P. v. Agro Engineering (MP) (P) Ltd. and another judgment of this Court in Umasha Textile v. Union of India dated 5.12.1995, we see no reason to entertain this petition. The authorities will, therefore, take appropriate action in accordance with the ratio in the aforesaid two decisions. The special leave petition is disposed of accordingly." These three decisions leave no room of doubt that those industries which had acquired eligibility for claiming subsidy prior to 30.9.1988 substantively were entitled to be considered for eligibility if the applications have been made earlier thereto and that such eligibility claim to subsidy shall not be defeated only on account of procedural ground.

This principle was reiterated in the principal judgment reported in the aforesaid report where the Hon"ble Supreme Court said :-

"The substratum of the directions in all those cases is that if the applications are made on or before 30.9.1988 substantially complying with the requirements enumerated in the guidelines issued by the Government of India, they would be considered and disposed of for granting subsidy as per the scheme. The same should be the order in this case." Thus the ratio was clearly laid that what was required to be complied with by the claimant for subsidy, was substantively complying with the requirements enumerated in the guidelines issued by the Government of India and not the literal compliance of procedure that was stated in the scheme.

Necessarily this exercise is required to be completed also by the claimant for grant of the subsidy.

Taking into consideration the aforesaid ratio of the Hon"ble Supreme Court decision, it is apparent that so far substantive eligibility criteria is concerned, the respondent-petitioner had acquired the same before the expiry of the scheme. That is to say getting itself registered with the District Industries Centre, taking effective steps for setting up the industry in the backward area which was listed amongst eligible area within which the new industrial unit was to be set up and has made substantial investment for setting up the industry in the industrial area. The fact that such industry should be set up by the aid of financial institution or by self-generated resources is not an essential condition for eligibility to claim subsidy. It only relates to identify the agency through which

the subsidy is to be disbursed, but has nothing to do with substantive criteria of eligibility which remain unaffected by the fact of agency who finances the industry.

In the present case, the RFC has ultimately allowed the application of the petitioner-respondent by sanctioning the loan after expiry of scheme. The delay was attributed to the RFC itself as per the opinion of the industry department but assuming the RFC would have refused to grant the loan and left the petitioner to own resources, it would not have rendered the respondent-petitioner ineligible to claim the subsidy under the Central Subsidy Scheme. In that event subsidy would have been directly disbursed to the claimant and not through the financial institution, who could have appropriated the same towards repayment of loan.

This is clear pointer of fact that obtaining the loan or attaching the sanction letter of the financial institution was not an essential pre-condition for sanction or even grant of subsidy. The grant of loan by financial institution would have only affected the subsequent aspect of manner of disbursing the subsidy and that stage could reach only after the sanction of the subsidy. Non-sanctioning of financial assistance by the financial institution before expiry of the scheme would not have affected the decision to grant subsidy. The quantum of subsidy would not have been effected by availing loan or not availing the loan by the industry set up a new industrial unit in the backward area.

Therefore, so far the State Level Committee is concerned, it was only to consider the eligibility of industrial unit to subsidy and quantum of subsidy to be granted. It had nothing to do with the sanction of financial institution. It is only after the applicant was found eligible and subsidy is sanctioned that the matter would reach the stage to identify the disbursing agency of the subsidy. If the loan is sanctioned in favour of the industry by the financial institution, the institution granting loan will become the disbursing agency. In other case 85% subsidy would be disbursed immediately and 15% subsidy were to be disbursed only after industrial unit commenced production.

Since by the date the application was actually considered by the State Level Committee, after the direction of this Court, the loan in favour of petitioner had been sanctioned and certificate of sanction of loan was also before the committee which could only be relevant for identifying that of otherwise subsidy is sanctioned, who would be its disbursing agency. But as on the date application was moved by the industry when it had fulfilled all conditions for laying claim to subsidy the application of petitioner for availing loan had not been disposed off and was pending. It was impossible to enclose with the application, the certificate of sanction of loan by R.F.C., Non-fulfillment of an impossible procedural requirement for the purpose subsequent to sanctioning of subsidy, could not be a ground to refuse the subsidy. It would be denying the benefit on formal procedural requirement having no bearing on substantive aspect of the matter and could not have been a ground of rejection."

5. In view of the above, there is no force in both the appeals, therefore, both the special appeals are hereby dismissed.