

(1998) 02 PAT CK 0071

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3519 of 1997 (R)

Tis Fab Limited

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-02-1998

Acts Referred:

Bihar Finance Act, 1981 — Section 7(3)

Citation : (1998) 46 BLJR 566 : (1998) 2 PLJR 148 : (2000) 118 STC 396

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Advocate : Pawan Kumar, M.S. Mittal and G.P. Singh, for the Appellant; Indrani Sen Choudhary, S.C.I., for the Respondent

Final Decision : Allowed

Judgement

R.A. Sharma, J.—In order to implement the State Government's Industrial Policy, 1995, the Governor of Bihar in exercise of power conferred by Sub-section (3) of Section 7 of the Bihar Finance Act, 1981 (hereinafter referred to as "the Act") issued a notification dated December 22, 1995 (hereinafter referred to as "the notification") providing incentives to the entrepreneurs to establish new industrial units and/or to expand the old ones. The notification contains package of relief in the form of exemption from payment of sales tax to those industries in which the production starts between September 1, 1995 to August 31, 2000. In order to avail of the relief under the notification the entrepreneurs were required to move the application along with requisite documents including a certificate from the Director of Industries.

2. The petitioner moved an application dated February 13, 1996 within time before the Deputy Commissioner, Commercial Taxes, Adityapur, Circle Jamshedpur (hereinafter to be referred to as "the Deputy Commissioner") seeking exemption certificate under the notification so as to avail the benefit of exemption from payment of sales tax. Vide order dated May 27, 1997 the Deputy Commissioner rejected the petitioner's application. The petitioner filed a revision

challenging the above order of the Deputy Commissioner before the Commissioner, who vide Order dated June 6, 1997 allowed the revision and set aside the order of the Deputy Commissioner holding that the Deputy Commissioner has no jurisdiction to pass such an order on the application for exemption. The matter was, accordingly, remanded to the Joint Commissioner for decision. The Joint Commissioner thereafter rejected the petitioner's application vide order dated November 5, 1997 on the ground that the petitioner has not filed the certificate of the Director of Industries certifying the date of production. A true copy of this order has been filed as annexure 19 to the amendment petition. Being aggrieved thereby the petitioner has filed this writ petition.

3. The respondents have filed a counter-affidavit and the petitioner has filed a rejoinder affidavit in reply thereto. We have heard the learned counsel for the parties.

4. The learned counsel appearing for the petitioner has raised two submissions in support of this petition, namely, (i) the impugned order dated November 5, 1997 was passed by the Joint Commissioner without giving any opportunity of being heard to the petitioner, and (ii) as the requisite certificate has been issued by the Director of Industries on November 25, 1997 the Joint Commissioner ought to consider the petitioner's prayer for grant of exemption certificate afresh taking into consideration the said certificate. Learned Standing Counsel, however, has opposed the said submissions and has prayed for dismissal of the writ petition.

5. The notification requires that an application for exemption certificate is to be accompanied by the requisite documents, one of which is the certificate as regard the date of production of the new/expansion unit from the Director of Industries. The petitioner did apply for such a certificate before the Director, but initially it was not issued due to bureaucratic delay and when it was issued vide letter dated June 23, 1997, it contains typing error inasmuch as it mentions that it has been issued under "1993 Industrial Policy", whereas such certificate was sought for and in fact was issued under "1995 Industrial Policy". On July 10, 1997 the petitioner applied before the Director of Industries for correction of the said error. The Director took about three and half months to correct that error and ultimately issued the corrected certificate dated November 25, 1997. In the meantime the Deputy Commissioner vide letter dated October 27, 1997 asked the petitioner to obtain the certificate from the Director of Industries and file the same up to November 5, 1997. The petitioner accordingly gave a letter on November 5, 1997 to the Deputy Commissioner informing him thereby that the certificate dated June 23, 1997 issued by the Director of Industries contains an error and that it has applied before him for its correction and as soon as the corrected certificate is given to it, the same shall be filed immediately thereafter. On November 5, 1997 itself the Joint Commissioner rejected the petitioner's application.

6. Clause 19 of the notification has laid down that the application for exemption can be rejected if it is not accompanied by requisite paper after giving a

reasonable opportunity of being heard to the applicant.

7. In paragraph No. 23 of the writ petition, the petitioner has stated that neither any notice nor any opportunity of being heard was given to it by the Joint Commissioner before passing the impugned order. It is also clear from the pleadings of the parties and the documents annexed in support thereof that only a letter was issued by the Deputy Commissioner asking the petitioner to furnish the certificate from the Director of Industries up to January 5, 1997. The petitioner on November 5, 1997 has given a letter to the Deputy Commissioner informing him that after the Director has corrected the error and has issued a corrected certificate, the same shall be filed immediately thereafter. But the Joint Commissioner on November 5, 1997 itself rejected the petitioner's application without waiting for the corrected certificate and without giving any opportunity of being heard to the petitioner. No notice or letter was issued by the Joint Commissioner giving opportunity to the petitioner to have his say in the matter and/or to show cause as to why its application for exemption certificate be not rejected. Clause 19 of the notification specifically requires the authority concerned to reject the application for exemption certificate only after giving an opportunity of being heard to the concerned applicant. Admittedly no such opportunity was given to the petitioner. The impugned order, therefore, suffers from serious infirmity and, therefore, has to go. The first submission of the learned counsel for the petitioner is, accordingly, accepted.

8. As regard the second submission, it may be mentioned here that the Director has issued a corrected certificate on November 25, 1997 certifying October 2, 1995 as the date of production in the expansion part of the petitioner's industry. The said date falls within the period notified by the Government in the notification for grant of exemption from payment of sales tax. Normally the petitioner was thus entitled to the exemption certificate as it has commenced the production in its expansion part of the industry with effect from October 2, 1995, but its claim was rejected by the impugned order on account of want of certificate from the Director of Industries. The petitioner did every thing, which was within its power by applying for a certificate and further applying for correcting the typing error in the certificate dated June 23, 1997 issued by the Director. But there was a bureaucratic delay of about three and half months in correcting the said error for which the petitioner cannot be held responsible. The bureaucratic delays are well-known and unless the concerned person is in any way responsible for such a delay, he cannot be deprived of the benefits to which he is entitled under the law.

9. Generally on the basis of the subsequent events an order cannot be declared to be bad, but this Court can take them into consideration to do justice in the case. In this connection reference may be made to the case of B.R. Ramabhadriah Vs. Secretary, Food and Agriculture Department, Andhra Pradesh and others, wherein the Supreme Court laid down as under :

".....The court can undoubtedly take note of changed circumstances and

suitably mould the relief to be granted to the party concerned in order to mete out justice in the case. As far as possible the anxiety and endeavour of the Court should be to remedy an injustice when it is brought to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds"

Although the aforesaid observations were made by the Supreme Court in a case where the material facts had undergone change subsequent to the filing of the writ application but the same principle will apply if the subsequent events, having the material bearing on the controversy in question, have taken place after the impugned order was passed.

10. Before parting with the case, it is appropriate to deal with the preliminary objection raised by the learned Standing Counsel about the maintainability of this writ petition on the ground of alternative remedy of revision Under Clause 18(3) of the notification. The learned counsel for the petitioner has in this connection submitted that unless the order adversely affects the revenue no revision is maintainable. It is, however, not necessary to go into this question, because in our view when this Court has entertained the writ petition at the admission stage and the parties have exchanged affidavits, it will not be appropriate to dismiss it on the ground of alternative remedy. The preliminary objection is, accordingly, rejected.

11. This writ petition is allowed and the impugned order dated November 5, 1997 passed by the Joint Commissioner, as contained in annexure 19 to the amendment application, is hereby quashed. The Joint Commissioner (respondent No. 3) is directed to decide the petitioner's application for exemption certificate afresh in accordance with law within a period of two months from the date of production of the certified copy of this order.