
(2002) 08 JH CK 0089
In the Jharkhand High Court
Case No : LPA No. 38 of 1997

Usha Martin Industries Ltd.	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Citation : (2002) 08 JH CK 0089

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : Biren Poddar, for the Appellant; A. Allam and Nehala Sharmin, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This appeal has been preferred by M/s. Usha Martin Industries Limited (Usha Alloys & Steel Division) against the judgment dated 20th December, 1996 passed in CWJC No. 2023 of 1996 (R) whereby and whereunder the writ petition preferred by the appellant for issuance of a writ of mandamus commanding the respondents to grant power subsidy has been rejected.

2. Before discussion on merit of the case, I may mention that the appellant has not given relevant dates of incidence in the writ petition or LPA, has made vague pleading and one may confuse as to what relief the appellant sought for.

It appears that M/s. Usha Martin Industries Ltd. has chain of companies division under it one of them is M/s. Usha Martin Industries (Wire-rope Division) and other is Usha Alloys & Steel Division of M/s. Usha Martin Industries. The present case has been preferred by Usha Alloy & Steel Division of M/s. Usha Martin Industries.

Under Industrial Policy of the State, various incentives were allowed such as capital investment subsidy, subsidy on purchase and installation of captive diesel/ K. Oil, generator set, subsidy in respect of consumption of electricity

(power subsidy), sales tax relief etc.

The present case relates to grant of power subsidy.

3. The State Government issued Industrial Policy, 1981 vide Resolution No. 1153 dated 20th January, 1981 followed by Industrial Policy, 1986 vide Resolution No. 13730, dated 1st September, 1986. The appellant derived some benefits of incentive policy. The Bihar State Credit and Investment Corporation, Patna (BICICO for short) asked the appellant to return the amount received by appellant as subsidy, including power subsidy followed by letter No. 3750, dated 2nd February, 1995 which gave rise to the dispute and filing of writ petition.

The writ petition CWJC No. 2023/96 (R) was preferred by appellant for issuance of writ of mandamus on the respondents to fulfill their promise made through the Industrial Policy, 1981 and Industrial Policy, 1986 for grant of power subsidy.

4. The case of the appellant before the learned single Judge was that the appellant having expanded its unit and having started production on expansion from 1st October, 1986, is entitled for power incentive for a period of five years from the date of production on expansion.

Learned single Judge dismissed the writ petition vide judgment dated 20th December, 1996 mainly on the ground of delay.

5. To determine the question whether the appellant was entitled for any power subsidy and was rightly provided with such benefit or not, we intended to look into the relevant facts but no such fact have been pleaded in the writ petition, nor in this letters patent appeal. This is enough ground to dismiss the writ petition and the appeal.

6. Counsel for the appellant filed a "history sheet of incentive and subsidy claimed" and "brief profile on which LPA has been preferred." None of them are af-fidavited and were filed without any leave of the Court. The counsel for the respondents opposed to rely on any of the fact as mentioned above therein.

However, to find out whether a prima facie case has been made out by the appellant on the basis of the facts as mentioned in the enclosures (Annexures) of which reference given in the brief profile and history sheet, I have gone through those documents.

It appears that Usha Alloy & Steel Division of M/s. Usha Martin Industries Ltd. was establishment in the year 1972 for manufacturing of high and low carbon alloy steel billets. The Government of India from its ministry of Industrial Development vide its licence No. L/IA (1) N-61/72-LC dated 11th October, 1972 allowed licence with capacity of 50,000 (fifty thousand) tones per annum on the basis of maximum utilization of their plant and equipment. It was specifically mentioned that no section of industrial undertaking shall have, except with the approval of Government of India shall have installed capacity in excess of the capacity as mentioned in the licence.

7. As per history sheet and brief profile prepared by the counsel, the Company with an initial investment of Rs. 279.43 lacs created an installed capacity to manufacture 27,000 tonnes of high/low carbon billets and started production from 18th June, 1974. The first expansion took place and production started since 17th August, 1981 when the capacity was increased from 27,000 tonnes to 34,000 tonnes per annum.

In the aforesaid background, the appellant has claimed for power subsidy benefit under Industrial Policy, 1981 on first expansion.

As per history sheet and brief profile, further case of the appellant is that the second expansion took place in the year 1983 when the production capacity was increased from 34,000 tonnes to 50,000 tonnes and on expansion, the production started from 7th October, 1983.

8. It appears that the Government of India from its Ministry of Industry, Department of Industrial Development, Secretariat for Industrial Approvals, LA II Section issued Memo No. CIL : 449 (S6) dated 21st November, 1986 in pursuance of appellant's application S.No. 659 (84)-IL, dated 19th April, 1984 and the licence capacity of appellant was enhanced from 50,000 tonnes to 1,00,000 tonnes.

9. According to appellant, it made third expansion from 50,000 tonnes to 75,000 tonnes and started production from 1st October, 1986. In view of such third expansion, it was entitled for incentive as per Industrial Policy, 1986.

10. The Hindi version of the industrial Policy, 1981 has been enclosed whereas the English version of the Industrial Policy, 1986 has been enclosed by the appellant.

The benefit of power subsidy has been stipulated at Clause 10 of the Industrial Policy, 1981 whereas such benefit has been stipulated at Clause 7 of the Industrial Policy, 1986. The same benefit of incentive is applicable on expansion or diversification of a unit has also been stipulated at Clause 15 of the Industrial Policy, 1986.

To determine the issue whether the appellant is entitled for any such power subsidy, it is necessary to look into both Clause 7 & 15 of the Industrial Policy, 1986 as quoted hereunder :

"7. Relief in respect of consumption of electric power :

7.1 Exemption from payment of minimum guarantee charges.--Small scale industrial units will remain exempted from the payment of minimum guarantee charges for a period of 5 (five) years from the date of their into production. However, the maximum admissible amount of exemption will not exceed Rs. 1000 (one thousand) in one year. The amount in excess of Rs. 1000 (one thousand) per annum, if any, will continue to be borne by the entrepreneurs.

7.2 Exemption from payment of Electricity Duty.--Large, medium small and tiny

industrial units will be exempted to the extent of 25 per cent or Rs. 100 (one) lakh whichever is less per annum, from payment of electricity duty for a period of 5 (five) years with effect from 1st September, 1986 after the date on which the unit goes into production. The exemption will be limited to electricity used for production purpose.

7.3 Power Subsidy.--(a) Small Scale and Tiny industrial units will get subsidy at the rate of 15 (fifteen) paise per unit of the power consumed by them in the process of manufacture for a period of 5 (five) years from the date of commencement of their production after 1st September, 1986.

(b) Large industrial units will get subsidy at the rate of 9 (nine) paise per unit and medium units at the rate of 12 (twelve) paise per unit in respect of power consumed in the process of production for 5 (five) years from the date of production on/or after 1st September, 1986 or for the unexpired period of five years from the date of production if the production commenced prior to 1st September, 1986.

7.4 The benefits mentioned in 7.1, 7.2 and 7.3 (a) (b) will not be available to the Atta Chakkies, Hullers, Cold Storage, Cinemas and Hotels."

15. Incentive for Expansion or Diversification :

Incentives will be allowed to units for expansion or diversification. Expansion implies an increase of at least 25 per cent of the rated capacity of the unit for the items for which it is registered. Diversification implies production of a new item or items not envisaged in the project report on which such loan was sanctioned or not capable of being manufactured by existing machinery. The incentives will be available on the following conditions :

(a) The expansion/diversification programme has been duly registered and approved by the competent authority prescribed by the Government.

(b) The facilities relating to sales tax as mentioned in paragraphs 9.1 and 9.2 will be available for a period of 5 (five) years from the date of commencement of production after expansion/diversification and shall be limited to the extent of expansion/diversification.

(c) In respect of incentives relating to power consumption, incentive will be admissible on the additional consumption of power relating to production purpose consequent upon expansion/ diversification of the unit. The facility will be available for a period of 5 (five) years from the date of commencement of production after expansion/diversification and shall be limited to the extent of expansion/diversification."

From Clause 15, it is evident that incentive is allowed to a unit on expansion which implies an increase of at least 25% of the rated capacity of the Unit for the items for which it is registered.

11. In the case of the appellant, the rated capacity of unit as per initial licence

dated 11th October, 1970 was 50,000 tonnes till the rated capacity was enhanced to 1,00,000 tonnes by letter dated 21st November, 1986. Even if the counsel's statement is accepted, though no specific averment made by appellant either in the writ petition or in appeal, that the first expansion was made from 27,000 tonnes to 34,000 tonnes from 17th August, 1981 and second expansion from 34,000 tonnes to 50,000 tonnes made from 7th October, 1983, none of those so called expansion being an increase of 25 per cent of the rated capacity of 50,000 tonnes, the appellant cannot derive benefit of Industrial Policy, 1981.

Similarly, the so called third expansion from 50,000 tonnes to 75,000 tonnes being within the rated capacity of 1,00,000 tonnes, the appellant cannot derive any benefit of Industrial Policy, 1986.

12. It has already been mentioned that for the reasons best known to the appellant, it has not given the basic relevant facts either in the writ petition or in the appeal. The unaffidavited history sheet or brief profile like a written submission without signature of the counsel for the appellant also cannot be accepted for determination of claim. Though the State Electricity Board is concerned with power subsidy but the appellant, for the reason known to it, has not impleaded the State Electricity Board as party respondent to the writ petition or in this appeal. In absence of the State Electricity Board, it is also not desirable to give any finding in favour of the appellant.

13. For the reasons aforesaid, apart from the delay, there being no merit and the writ petition and appeal being vague, the appeal is dismissed.

However, in the facts and circumstances, there shall be no order, as to costs.