(2003) 08 JH CK 0022

Jharkhand High Court

Case No: Writ Petition (T) No. 6568 of 2002

Mittal Polypacks Pvt. Ltd.	APPELLANT
Vs	
State of Jharkhand and Others	RESPONDENT

Date of Decision: Aug. 21, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2003) 4 JCR 416 : (2005) 141 STC 257

Hon'ble Judges: P.K. Balasubramanyan, C.J; R.K. Merathia, J

Bench: Division Bench

Advocate: Biren Poddar and Dharshana Poddar Mishra, for the Appellant; K.K. Jhunjhunwala, G.P.III, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. By way of this writ petition, the petitioner claims that it is entitled to have a prior permission to expand/ modernize its industry and consequently avail the benefits allowed under the notifications issued in that behalf.

2. The following facts are relevant :

The erstwhile Government of Bihar announced an Industrial Policy 1995 which was to remain in force between 1.9.1995 to 31.8.2000. To carry out the objectives of the said policy, certain notifications were issued. Under Notification Nos. SO 478 and 479 (both dated 22.12.1995) certain ex-emption from payment of sales tax were to be allowed to the new industrial-units, and also the existing industrial units intending expansion/diversification/modernization, provided the production is started between 1.9.1995 to 3.1.8.2000.

3. The petitioner as an existing unit undertook an expansion programme. On expanded capacity the unit was allowed exemption from the date of such

production i.e. 17.9.1996 for eight years i.e. upto 16.9.2004.

4. On 2.3.2000, Notification Nos. 57 and 58 were issued amending SO 478 and 479, whereby the benefits were extended to those hew units also who are granted a prior permission before expiry of the policy i.e. 31.8.2000, provided they start production within five years from such permission.

5. It appears that a letter dated 9.2.2000, was submitted before the concerned authority on 8.5.2000, by the petitioner, requesting for a permission to undertake modernization programme, under the Industrial Policy 1995.

6. On 2.6.2000 an inspection of petitioner''s unit was made. On 25.8.2000 the petitioner made a reminder. On 29.8.2000 a meeting was held to consider the applications for grant of prior permission made by several industries including that of petitioner, but no decision could be taken in absence of adequate informations and the meeting was adjourned to 21.9.2000. In the meantime, the Industrial Policy, 1995 expired on 31.8.2000. On 20.9.2000 the petitioner filed an application before the Industrial Development Commissioner Bihar, Patna for issuance of prior approval for the proposed modernization (expansion) programme. After the State of Jharkhand was created on 15.11.2000, the petitioner requested the Director of Industries, Government of Jharkhand, Ranchi on 4.4.2002 for grant of the pending approval under the Industrial Policy, 1995, as the files have already been sent from Patna. The said request has been rejected by letter dated 24.10.2002 on the ground that there is no prior permission in favour of the petitioner under the Industrial Policy 1995, and the policy has expired on 31.8.2000. The petitioner has challenged the said order in this writ petition.

7. Mr. Poddar, learned counsel for the petitioner submitted that the application for prior permission was under active consideration before the expiry of the Industrial Policy, 1995, and therefore it has been wrongly rejected on the ground that the said policy expired. If a decision was not taken on that application, by the authorities, the petitioner is not at fault. The application survived by virtue of notifications SO 57 and 58 adopted by the State of Jharkhand. The notifications are to be harmoniously and liberally construed. He relied on Commissioner of Central Excise Vs. M.P.V. and Engg. Industries, in support of his contention that the petitioner cannot be deprived merely because the authorities did not take a decision within time.

8. Mr. Jhunjhunwala, learned counsel appearing for the respondents-State submitted that the aforesaid notifications were necessarily issued on the basis of the Industrial Policy of 1995. He further submitted that only those industries which were given prior approval before the expiry of the industrial policy on 31.8.2000 were covered by the notification and therefore the authority has rightly rejected the said request.

9. In this case, we are concerned with the existing industry intending to under-take expansion/modernization. For them, it was provided in SO 57 and 58 dated 2.3.2000

that they have to apply for a prior permission before the specified authorities who in turn will communicate the decision on such application within sixty days, failing which an application could be made before the higher authorities, who will communicate the decision within the next sixty days. It does not provide for a situation, where the higher authorities failed to communicate the decision.

It appears that keeping in view that the policy was to expire on 31.8.2000, this four month''s period was provided for disposal of such application.

10. In the present case the petitioner made the application on 8.5.2000 and did not move the higher authorities if the decision was not communicated on the application with him sixty days. Moreover, even if the petitioner had moved the higher authorities, the policy expired on 31.8.2000, before the expiry of next sixty days within which the decision was to be communicated by the higher authorities. If the contention of Mr. Poddar is accepted, then even if the application was made just before the expiry of the policy, the same will survive till a decision was taken on that application. We are of the view that this could not be the object and intention to continue the provisions for an indefinite period. For example, if, as per the prayer of the petitioner, the respondents are directed to take a decision on the application of the petitioner, independent of the expiry of the policy; and if a prior permission is granted, then the petitioner will be entitled to commence production within next five years, and for eight years therefrom, the petitioner will be entitled to the benefit of exemption.
In our considered view, such interpretation cannot be given even if the policy and the notifications are construed liberally and harmoniously as submitted by Mr. Poddar.

Whatever may be the reasons, the fact remains that the petitioner was not granted prior permission before the expiry of the policy, may be due to acts/omissions on the part of the petitioner or the concerned authorities.

11. The submission of Mr. Poddar that the said notifications still survived after the expiry of Industrial Policy cannot be accepted. The said notifications were necessarily issued to carry out the Industrial Policy, 1995 and in fact, they referred to the Industrial Policy, 1995. Clause 3 of the Notification SO 57 and 58 provided that the concerned provisions will come into effect from the date of enforcement of the Industrial Policy, 1995. Therefore, it is clear that the said notifications are related and dependent on the Industrial Policy, 1995.

12. The judgment in Commissioner of Central Excise (supra) will not be applicable to the facts of this case. In that case, from the date of grant of registration certificate as a small scale industry unit, certain exemptions were allowed. Such registration was issued after about 15 months. In that situation, the Supreme Court held that in such a situation the unit could not be deprived of the benefit to which it was otherwise entitled merely be-cause the authorities concerned took their own time in

disposing of the application. Here there is a cut off date i.e. the date when policy expires.

13. Mr. Poddar also relied on the judgment of this Court in WP (T) No. 5712 of 2002, Ambay Cement v. State of Jharkhand and Ors. This case is also not applicable to the present case. In that case even after granting a temporary registration certificate in favour of the unit on 5.5.2000 the authorities insisted for a prior permission further. In that situation, the temporary registration granted by the Government was treated as prior permission for starting a "new industry" as any specific proforma for grant of prior permission for a "new industry" under the said notification, could not be shown.

14. Moreover, the Supreme Court in the case of State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, held that the exemption notification issued by Finance Department to carry out the objectives of the industrial policy could not run contrary to the Industrial Incentive Policy. In other words the policy is the guiding factor for the notifications issued to carry out the objectives of the policy.

15. Mr. Poddar further submitted that the provision for obtaining prior permission was introduced in SO 57 and 58. If these notifications are read as a whole, it will mean that the provision covering the new industry coming into production within five years from the date of grant of prior permission will also apply to the existing industries like the petitioner. Even if we agree with the said submission, it does not help the petitioner. As noticed above, the industrial policy expired on 31.8.2000 and there was no prior permission in favour of the petitioner prior to expiry of the policy. There is no provision dealing with a situation, where an application for prior permission was made diligently in terms of the notifications SO 57 and 58, but no decision was communicated either by the specified authorities within sixty days and by the higher authorities within the next sixty days. Neither it is treated a deemed grant or deemed refusal. This position was known to the entrepreneurs. Therefore, it appears that the pending applications also lapsed on the expiry of the policy on 31.8.2000. Probably this amendment was introduced to save those units, who inspite of their best efforts were not in a position to start production before the expiry of the policy.

16. Having considered the claim of the petitioner from various angle, we are of the view that no relief can be granted to the petitioner as prayed for. As noticed above, there is no scope for any liberal construction for accepting the claim of the petitioner.

In the result, the writ petition is dismissed. No cost.