

Serial Nos.01 & 02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (WA) No.43/2023 in
WA No.41/2023
MC (WA) No.44/2023 in
WA No.42/2023

Date of order: 13.10.2023

M/s Meghalaya Feed Products vs. Union of India & ors

M/s Meghalaya Feed Products vs. Union of India & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Applicant : Dr. A. Todi, Adv. (VC)

For the Respondents : Ms. A. Pradhan, Adv. vice
Dr. N. Mozika, DSGI
Mr. S. Sen, Sr.GA with
Mr. A. Momin, GA for R/2-4
Mrs. PDB Baruah, Sr.Adv. with
Ms. B. Gosh, Adv. for R/5

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

In view of the good grounds shown, the delay of about 35 days in preferring the appeals is condoned.

2. The appeals are taken up for immediate consideration.
3. The appeals are directed against a judgment and order of August 8, 2023 by which the appellant's writ petitions in respect of the claims for two distinct periods on account of transport subsidy were relegated to a suit.
4. As appropriately noticed in the impugned judgment, this is the second round of litigation. According to the appellant, it was entitled to the benefit under the Transport Subsidy Scheme, 1971 which had been formulated and notified for grant of subsidy on the transport of raw materials and finished goods to and from selected areas with a view to promote the growth of industries. There is no dispute that Meghalaya fell within the selected area "A" of the scheme, wherein the appellant has an industrial unit.
5. Subsidy for divers periods were disbursed to the appellant upon claims being raised. However, two lots of subsidy for the periods of October 1, 2008 to December 31, 2008 and January 1, 2009 to March 31, 2009, respectively, for a total principal amount of Rs.2,33,44,480/- were not disbursed. Indeed, by a letter dated September 2, 2014, the claims for such periods were declined on the ground that the expenses

incurred were in cash and payments made in cash were not eligible to be considered for the relevant subsidy.

6. The appellant challenged the decision by way of two petitions for the two different periods. The relevant petitions under Article 226 of the Constitution were disposed of by holding that claims for subsidy prior to September 10, 2009, even if made in cash, were liable to be considered and claims for any period thereafter, if made in cash, would not be eligible to be considered for subsidy. However, despite this Court holding, in the relevant order of May 3, 2019, that claims made for the previous period, even if disbursed in cash would be considered for grant of the subsidy, the relevant petitions were disposed of on the basis of the following operative order:

“7. Petition is disposed of with a direction to the respondents that they shall re-consider the claim of the petitioner, in the light of the aforesaid observations, for disbursement of the subsidy amounting to Rs.94,74,928/- and Rs.1,38,69,552/- for the periods of 01.10.2008 to 31.12.2008 and 01.01.2009 to 31.03.2009 respectively along with interest from the date of Pre-Audit report and to pass appropriate order thereon whatever permissible under rules within a period of four weeks.”

7. An appeal preferred by the Union stood disposed of since the Union represented in the appeal that the order impugned in the appeal

had already been complied with. The legal effect of this Court's order, which attained finality, was that whether or not the claims for the previous periods were on the basis of disbursements made in cash, they had to be verified and, if found satisfactory upon verification, the claims had to be honoured for the release of the subsidy. However, despite such previous order of this Court and the Union having accepted the same, by an order of August 2, 2019, a substantial part of the combined claim in excess of Rs.2.33 crore was declined and only a principal amount of Rs.1,98,52,054/- was approved for release. The reason recorded in the relevant order was that the subsidy claim during the second half of 2008-09 was significantly higher than what had been paid for the first half of the relevant year. The relevant order further reveals that since some of the payments in respect of the first half of 2008-09 had been denied on account of cash payment, the same principle ought to apply for the claims in respect of the subsequent period.

8. Clearly, this was contrary to the express finding rendered in the order of May 3, 2019 in the earlier round of writ petitions and which

became binding on the parties, including the Union upon the Union's appeal not being pressed.

9. In effect, what the order of May 3, 2019 required was for the Union to re-verify the basis of the claim for the two periods and, at such time of verification, if the appellant could establish that the disbursements as claimed had been made, the requisite subsidy should be released. It was open to the Court to provide for the subsidy as claimed to be released; however, since the Court in exercise of its authority under Article 226 of the Constitution did not enter into the veracity of the claim, it required the Union to reconsider its position in the light of the observations in the relevant order and re-verify the claims for subsidy for the two periods and release the permissible amount within a specified time.

10. The Union completely misread the order; or, at any rate, acted contrary thereto.

11. Notwithstanding the fact that the Union failed to exercise the task that was required of it by the previous order of May 3, 2019 and the Union rejecting substantial parts of the claims on account of payments having been disbursed in cash by the appellant, in the second round of

litigation, the writ court was, again, not in a position to satisfy itself that the entirety of the claims made for the two periods was genuine. This is because writ petitions are heard on affidavit evidence and oral or other documentary evidence are, generally, not received. This was the basis for the writ court relegating the appellant's claim to the civil forum for the appellant to affirmatively establish that the disbursements as claimed had been made for the appellant to be entitled to receive the requisite subsidy.

12. In appeal, there is very little that can be done at this stage since evidence cannot be received for this Court to be satisfied that the entirety of the claims made for the two periods was actually disbursed for the appellant to be entitled to such amounts. However, such exercise can be conducted by the Union. In fact, the previous order of this Court of May 3, 2019 obliged the Union to conduct such exercise, which the Union failed to undertake.

13. Accordingly, the appeals are disposed of and the orders impugned are modified by directing the respondents to re-verify the rejected parts of the claims for the two periods by calling for documents and other evidence from the appellant. A rational and meaningful

verification should be conducted by the Union and the entire exercise completed within eight weeks from date. In the event any part of the claims is to be declined, cogent reasons for such rejection should be furnished. Needless to say, that the interest awarded in terms of the Supreme Court order, as indicated in the Union's order of August 2, 2019, will apply if any part of the balance claim is allowed.

14. In the event that any part of the balance claim is disallowed, it will be open to the appellant to institute an appropriate action before a civil forum for such part of the claim.

15. WA No.41 of 2023 and WA No.42 of 2023 are disposed of on the above basis. The order impugned stands modified as indicated.

16. MC (WA) No.43 of 2023 and MC (WA) No.44 of 2023 are disposed of.

17. There will, however, be no order as to costs.

(B. Bhattacharjee)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
13.10.2023
"Lam DR-PS"