

NAFR

HIGH COURT OF CHHATTISGARH, BILASPU

WRIT PETITION (C) NO. 363 OF 2015

Chhattisgarh Biomass Energy
Developers Association and Others

---- Petitioners

Versus

State of Chhattisgarh and Others

---- Respondents

For Petitioners	:	Mr. Buddy Rangnathan and Mr. Ankit Singhal, Advocates
For State	:	Mr. A.S. Gaharwar, Additional Advocate General
For CSPDCL	:	Mr. Anumeh Shrivastava, Advocate

HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE SHRI JUSTICE P. SAM KOSHY

ORDER ON BOARD

Per Navin Sinha, Acting CJ

02.03.2015

1. The present writ application has been filed assailing the notification dated 12.11.2014 issued in exercise of powers under Section 3-B of the Chhattisgarh Electricity Duty Act, 1949 (hereinafter referred to as 'the Act'). It retrospectively withdraws the exemption granted to the Petitioners from payment of Electricity Duty under the Industrial Policy of 2004-09.

2. Learned Counsel for the Petitioners submits that they have altered their position to their prejudice on the representation made by the

Respondents to grant exemption. Recall of the exemption with retrospective effect asking them to pay duty is contrary to law, barred by promissory estoppel and shall affect the Industry adversely.

3. Learned Additional Advocate General for the State submits that the order dated 12.11.2014 is reasoned referring to the grounds on which it was considered necessary to recall the benefit of exemption retrospectively.

4. At this stage, we are not concerned with the merits of the decision as we find that the Petitioners essentially seeks certiorari for quashing of notification dated 12.11.2014 coupled with mandamus to grant benefit of exemption from payment of electricity dues as promised earlier.

5. The first principle for grant of mandamus is a demand and refusal of relief. It does not appear from the pleadings that the Petitioners have approached the Authorities first inviting their attention to their grievance. They have rushed to the Court directly.

6. In (2013) 5 SCC 427 (Rajasthan State Industrial Development and Investment Corpn. v. Subhash Sindhi Coop. Housing Society) it was observed as follows:

“24.....Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should

have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the reinforcement of his legal right.....”

7. We are therefore of the opinion that the Petitioners may represent before the Authorities first who are expected to decide the representation within a maximum period of four weeks from the date of receipt and/or production of certified copy of this order before them. It is further observed that the Respondents shall act reasonably, responsibly and fairly by taking a decision on the representation within the time indicated and not keep it pending and frustrate the representation itself by inaction even while they proceed to take consequential action pursuant to the issuance of the impugned notification. Nothing in the present order shall be deemed or construed as any observation or opinion on the merits of the case against the Petitioners since we have refused to entertain the writ petition on a technicality of the writ jurisdiction only.

8. The writ application is disposed with the aforesaid observations and directions.

ACTING CHIEF JUSTICE

JUDGE