

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WA.No. 1177 of 2013 () IN WP(C).25129/2006

AGAINST THE ORDER/JUDGMENT IN WP(C) 25129/2006 DATED

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APPELLANTS/RESPONDENTS 1 TO 2 IN WPC :

1. STATE OF KERALA
REP. BY THE GENERAL MANAGER
DISTRICT INDUSTRIESCENTRE, KOTTAYAM.
2. THE DIRECTOR, INDUSTRIES & COMMERCE, VIKAS BHAVAN,
THIRUVANANTHAPURAM.

BY SR. GOVERNMENT PLEADER, SRI. P.I. DAVIS

RESPONDENTS/PETITIONER AND ADDL.2ND PETITIONER :

1. GOPINATHAN NAIR
RAJI COFFEE WORKS, KOTHANALLOOR, KOTTAYAM - 686 632.(LATE)
2. SMT.P.C.KAMALADEVI, W/O.LATE GOPINATHAN NAIR, RAJI COFFEE
WORKS, KOTHANALLOOR, KOTTAYAM DISTRICT - 686 632.

R2 BY ADV. SRI.M.P.KRISHNAN NAIR
SRI.M.P.HARIKUMARAN PILLAI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, Ag.C.J. & A.M. SHAFFIQUE, J.

W.A. No. 1177 OF 2013

Dated this the 6th day of March, 2015

JUDGMENT

Ashok Bhushan, Ag.C.J.

Heard learned Government Pleader appearing for the appellants and Sri. M.P. Krishnan Nair appearing for the respondent.

2. This writ appeal has been filed against the judgment dated 14.02.2013 passed by learned Single Judge in W.P.(C) No.25129 of 2006. The writ petition was filed by the petitioner seeking for the following reliefs:

- "i. To call for the entire records of the petitioner's case and action taken in pursuance of Exts.P4 and P5 representations.
- ii. To issue a writ in the nature of mandamus or any other writ, order or direction declaring that the petitioner is entitled to get Rs.22,200/- as subsidy with interest at market rate at 18% per annum.
- iii. Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to effect payment of Rs.22,200/- as subsidy to the petitioner with interest at the rate of 18% per annum.
- iv. To direct the respondents to act according to law."

3. The petitioner had established a unit for manufacturing 'coffee power' with effect from 01.11.1999. The

petitioner had applied for payment of subsidy. On 15.09.2003 only a subsidy of Rs.10,000 was given. Petitioner filed appeal before the appellate authority. Ultimately, by order dated 17.03.2006, the authority took a decision to grant a further subsidy amounting to Rs.22,200/- to the petitioner. But the amount was not paid to the petitioner. Petitioner submitted a representation dated 15.05.2006. When the payment was not made, the petitioner approached this Court with the aforesaid prayers.

4. Counter affidavit was filed by the respondents stating that though sanction of further amount of Rs.22,200/- was made, it was not paid. It was stated that the Assistant District Industries Officer has submitted a report, after inspection on 09.06.2006, stating that the unit of petitioner is not working and it is closed for the past few years. Petitioner himself has by letter dated 15.05.2006 informed that the industrial unit is not working. Due to the above reason the payment was not made.

5. Learned Single Judge by the impugned judgment has allowed the writ petition directing payment of subsidy of Rs.22,200/-. The reason given by the learned Single Judge in the

judgment is that "subsidy was sanctioned while the industry was functioning." Learned Government Pleader appearing for the appellants submits that as the unit has stopped production few years back from the date when the appellate authority allowed the subsidy of Rs.22,200/-, the petitioner was not entitled for subsidy. It is submitted that the unit was neither working on the date when subsidy was granted nor there was any intention of running of the unit. Learned counsel for the petitioner per contra submitted that the entitlement of subsidy was on account of the starting up process of the manufacturing unit and the petitioner was rightly entitled for the subsidy.

6. We have considered the submission of learned counsel for the parties and perused the record. The subsidy was sanctioned on 17.03.2006 by the appellate authority. With regard to the disbursement of the subsidy, the Assistant District Industries Officer inspected the unit and has submitted a report dated 09.05.2006 which is brought on record as Ext.R1(a). Petitioner thereafter submitted a letter dated 15.05.2006. It is useful to extract the letter of petitioner which is to the following effect(translated version):

"'Raji Coffee Works' , a business establishment started by me on 01.11.1999, after 5½ years, working, is being temporarily shut down, due to technical reasons.

I most humbly pray that the Investment subsidy amount (Rs.22,200/-) granted to me, may kindly be released to me early."

From the letter of the petitioner itself it is clear that he started the unit on 01.11.1999 and after 5½ years it was shut down in the first half of 2005. Thus on the date when subsidy was sanctioned, the unit was not functioning. Learned Single Judge has allowed the writ petition on the premise that "subsidy was sanctioned while the industry was functioning." When the Assistant District Industries Officer inspected the unit for the purpose of disbursement of subsidy, it came to know that the unit was closed for several years.

7. We do not think that the action of appellants is unjustified or arbitrary. Even in the letter of petitioner there was no indication that petitioner is intending to run the unit. The subsidy is granted only to help the manufacturing unit. In the present case, however, the unit having been closed, the denial of disbursement of subsidy cannot be said to be arbitrary or perverse.

8. Learned counsel for the writ petitioner submitted that subsidy was sanctioned by order dated 17.03.2006 which was never withdrawn. Be that as it may, there is no issue regarding sanction of subsidy which was issued in favour of the petitioner, but disbursement was withheld on account of the reason noted in the inspection report of Assistant District Industries Officer. Learned Single Judge has committed error in allowing the writ petition on the ground that subsidy was sanctioned at the time when the unit was functioning which fact is factually incorrect.

In the above view of the matter, we allow the writ appeal setting aside the judgment of learned Single Judge and dismissing the writ petition.

**Ashok Bhushan,
Acting Chief Justice.**

**A.M. Shaffique,
Judge.**