IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.351 of 2013
Arising out of
LPA No. 1336 of 2012

M/S Dumraon Textiles Ltd. a company incorporated under the provisions of the Companies Act, 1956 having its registered office situated at 140-B, Block-G, New Alipore, Kolkata- 700053 and its Head Office at Dumraon, P.S. Dumraon, District-Buxar, through its Managing Director, Pawan Patwari, son of Sri B.L. Patwari, Resident of Dumraon, P.S. Dumraon, District- Buxar, Bihar.

.... Petitioner/Appellant

Versus

1. The State of Bihar through Chief Secretary, Old Secretariat, Bailey Road, Patna, Bihar
2. The Principal Secretary Cum Industrial Development Commissioner, Government of Bihar, Vikash Bhawan, Bailey Road, Patna, Bihar
3. The Principal Secretary Cum Commissioner of Commercial Taxes, Government of Bihar, Bailey Road, Patna, Bihar
4. The Bihar State Electricity Board Having its Office at Vidhyut Bhawan, Bailey Road, Patna, Bihar through its Chairman
5. The Chairman, Bihar State Electricity Board, Vidhyut Bhawan, Bailey Road, Patna, Bihar
6. The Electrical Superintending Engineer, Bhojpur Electrical Circle, Arrah, Bihar
7. The Electrical Executive Engineer (Commercial & Revenue), Electricity Supply Circle, Arrah, Bihar
8. The Assistant Electrical Engineer, Electric Supply Division, Dumraon, Buxar.
9. The Assistant Commissioner of Commercial Taxes, Buxar, Bihar

.... Respondents/Respondents.

Appearance :

For the Petitioner : Mr. Uday Chandra Jha, Advocate.
Mr. Anjani Kumar Jha, Advocate.
For Respondent Board : Mr. Vinay Kirti Singh, Addl. Standing Counsel
Mr. Vijay Kumar Verma, Advocate.
For the State : Mr. Harishankar Roy, Advocate.

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 18-04-2016

I.A. No. 7428 of 2013

The application is for condonation of delay of 4 months 29 days in filing the Civil Review Application.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the petitioner has shown sufficient cause to seek condonation of delay of 4 months 29 days in filing the present Civil Review Application.

3. Consequently, Interlocutory Application No. 7428 of 2013 is allowed and delay of 4 months 29 days in filing the present Civil Review Application is condoned.

Civil Review No. 351 of 2013

The application is for review of the order passed by this Court on 7th of February, 2014, whereby the Review Petition filed by the appellant was dismissed as the appellant failed to pay a sum of Rs. 20,00,000/-.

2. Earlier C.W.J.C. No. 7228 of 2009 was dismissed by the learned Single Bench on 16th of April, 2012. The Letters Patent Appeal No. 1336 of 2012 against the said order was dismissed on 25th of February, 2013 when the appellant made a statement that it is not in a position to make any payment against the outstanding dues of the Electricity Board. Aggrieved against the order passed by the Letters Patent Bench, the appellant filed Special Leave Petition before the Hon'ble Supreme Court, which was decided on 5th of August, 2013. The Supreme Court ordered that on deposit of Rs. 20,00,000/-, the appellant shall be at liberty to file a Review Application. It is

thereafter, the appellant filed Review Application, which was dismissed on 7th of February, 2014. Still aggrieved, the appellant filed Special Leave Petition (Civil Appeal Nos. 4063-64 of 2015) before the Supreme Court, which was allowed on 24th of April, 2015, setting aside the order passed on 7th of February, 2014 with direction to decide the Civil Review Application on merits.

3. Since the appellant has deposited a sum of Rs. 20,00,000/-, and the Letters Patent Appeal was dismissed for the reason that appellant is unable to make any payment, we deem it appropriate to allow Civil Review No. 351 of 2013 and restore L.P.A. No. 1336 of 2012 to its original file.

L.P.A. No. 1336 of 2012

The Letters Patent Appeal is directed against an order passed by a Single Bench of this Court on 16th of April, 2012, whereby the claim of the appellant for directing the respondents to grant exemption from payment of Electricity Duty as well as from payment of Annual Minimum Guarantee Charges for a period of seven years from the date of recommencement of production upon rehabilitation on 31st of March, 2007, remained unsuccessful.

2. The admitted facts are that the appellant started the production in the year 1968 with installed capacity of 12320 spindles which was subsequently increased to 25960 spindles by 1981. After

the net worth of the appellant started eroding, it approached the Board for Industrial and Financial Reconstruction (for short "the Board") under the provisions of the Sick Industrial Company (Special Provision) Act, 1985. The appellant Unit was declared sick on 19th of July, 2000 and Punjab National Bank was appointed as Nodal Agency for exploring the possibility of rehabilitation of the Unit. A Draft Rehabilitation Scheme was prepared on 18th of February, 2002, which was sanctioned by the Board on 6th of August, 2002. The modified Rehabilitation Scheme was prepared and circulated and was finally approved by the Board on 10th of January, 2008. The relevant clause of the Board on which the appellant relies reads as under :-

> "11.2 **Govt. of Bihar/Bihar State Electricity Board (BSEB)**
>
> 11.2.1 To exempt the unit from the payment of Electricity Duty for a period of 7 years from the date of sanction of the scheme by the Board in terms of Industrial Incentive Policy of Bihar- 2006.
>
> 11.2.2 To grant incentive for Capital Investment on Captive Power Generation/Diesel Generating Set in terms of Industrial Incentive Policy of Bihar- 2006.
>
> 11.2.3 To grant exemption of annual minimum guarantee (AMG/monthly minimum guarantee (MMG) and Delayed Payment Surcharge (DPS) from the date of declaration of the Unit as a sick unit i.e., 19.07.2000, for a period of 5 years."

3. It is the stand of the appellant that in pursuance of such Scheme, the High Power Committee under the Chairmanship of the Chief Secretary, Bihar, Patna decided on 26th of February, 2008 to

grant benefit of exemption from payment of Electricity Duty in terms of Industrial Incentive Policy, 2006. But, thereafter the decision taken by the Committee on 26th of February, 2008 has been reviewed by the High Power Committee on 27th of February, 2009. It is the said decision, which was challenged by the appellant in the Writ Application which remained unsuccessful before the learned Single Bench.

4. Learned counsel for the appellant argued that once the High Power Committee had decided to grant exemption from the Electricity Duty, the same could not have been reviewed by another High Power Committee without giving any opportunity of hearing to the appellant. It is also argued that the decision to grant exemption was a decision pursuant to the decision of the Board, therefore, the State could only challenge the recommendation of the Board by way of an appeal before the appellate authority and not unilaterally review the decision on 27th of February, 2009. It is also argued that the benefit of exemption does not contravene any provision of the Statute, therefore, the concession given by the State is binding on the State and could not have been recalled. It is also argued that the Industrial Incentive Policy is not a Statute and, therefore, the State is estopped to deny the benefit of the Industrial Incentive Policy to the appellant.

5. We have heard learned counsel for the parties and

find no merit in the present Letters Patent Appeal.

6. The Industrial Incentive Policy, 2006 (for short "the Policy) has been framed by the State Government in terms of the executive power of the State in terms of Article 162 of the Constitution. Such policy has been framed by the State Government for uniform application of all Industrial Units in the State. Such policy contemplates incentives to new Industrial Units and not to the existing Units. The appellant is an old Unit established in the year 1968 and has not been set up in pursuance of the Policy of 2006. Therefore, the benefit of Industrial Incentive Policy could not be granted to the appellant as it is not permissible under the Policy so notified.

7. We do not find any merit in the argument that such policy is not a law. The law is not only the law made by the State Legislature but a policy framed for uniform application of all Industrial Units in exercise of the executive power of the State is also a law. The State functionaries could not act in contravention of the policy framed by the State Government in terms of its executive power so as to confer any benefit to the appellant in contravention of the said scheme. Therefore, the decision of the High Power Committee on 26th of February, 2008, which is in contravention of the policy framed, has been rightly reviewed by the High Power Committee on 27th of February, 2009. The appellant could not claim

benefit of Industrial Incentive Policy, 2006 being an old Unit; as such policy is meant for inviting Industrial Units to set up industry in the State and to grant benefit to new Units alone.

8. The order passed by the Board is only a recommendation. The Board could not give any direction to confer benefit in contravention of a scheme. Therefore, while considering the recommendations of the Board, the State is justified in law to hold that the appellant is not entitled to exemption being an old Unit.

9. In view therefore, we do not find any merit in the present Letters Patent Appeal. The same is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P.K.P./Anand
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