IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.20 of 2017
IN
Letters Patent Appeal No. 1336 of 2012

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M/s Dumraon Textiles Ltd., a company incorporated under the provisions of the Companies Act, 1956 having its registered office situated at 149-B, Block-G, New Alipore, Kolkata -700 053 and its Head office at Dumraon, PS Dumraon,District Buxar, through its Managing Director, Pawan Patwari, Son of Sri B L Patwari, Resident of Dumraon, PS Dumraon, District Buxar, Bihar

.... Appellant/ Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Old Secretariat, Bailey Road, Patna, Bihar
2. The Principal Secretary cum Industrial Development Commissioner, Govt. of Bihar, Vikash Bhawan, Bailey Road, Patna, Bihar
3. The Principal Secretary cum Commissioner of Commercial Taxex, Govt. 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 having its office at Vidhyut Bhawan, Bailey Road, Patna,
6. The Electrical Superintending Engineer, Bhojpur Electrical Circle, Arrah, Bihar
7. The Electrical Executive Engineer(Commercial and 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

.... Respondent/s/Opp. Parties.

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Appearance :

For the Petitioner/s	:	Mr. Amit Srivastava, Advocate
For the State	:	Mr. Anshuman Singh, AC to AG
For Electricity Board	:	Mr. Vinay Kirti Singh
		Mr. Vinay Kumar Verma
		Mr. Akhilesh Kumar Singh

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 01-11-2017

Seeking recall/review of an order passed in LPA No. 1336 of 2012 on 18.04.2016 on the basis of liberty granted to the petitioner and the observations made in an order dated 04.01.2017 passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No. CC/20016 of 2016/608 of 2017, this application has been filed.

From the records we find that this is the third round of review with regard to the issue in question. On the earlier two rounds, matter traveled upto the Supreme Court and now again the matter is before us and the only limited question which requires consideration is based on the observations made by the Supreme Court in the order passed on 04.01.2017 with regard to granting benefit to the petitioner under the Industrial Incentive Policy, 2006. The relevant portion of the order passed by the Supreme Court based on which this Civil Review application has been filed reads as under :-

> *"It is submitted by Mr. Vasdev, learned senior counsel that neither the Single Bench nor the Division Bench of the High Court has addressed the lis in an appropriate manner, for the simon-pure reason, the*

petitioner never claimed any benefit under the Industrial Incentive Policy 2006, but the claim was advanced on the basis of rehabilitation scheme framed under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). Learned senior counsel would submit that the rehabilitation scheme was initially framed in 2002 and that was amended in 2008 under the SICA, but the benefits that were granted under the 2002 Scheme as amended in 2008, were withdrawn by an executive notification which could not have been done. On a perusal of the judgment passed by the High Court, we find that the said contention has not been dealt with. Learned senior counsel would contend that such a contention was raised before the High Court."

(Emphasis is ours)

It is the case of the petitioner that benefit under the statutory scheme, cannot be withdrawn by a notification issued in exercise of executive power. It seems that it was canvassed before the Hon'ble Supreme Court that this contention has not been dealt with while deciding the appeal. However, from Paragraph-3 onwards of the order passed in Civil Review No. 351 of 2013 arising out of LPA No. 1336 of 2012 and from Paragraphs- 3 to 7 and finally in Paragraph -8 the issue has been dealt with by the Bench in the following manner:-

"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 26^{th} of February, 2008 has been reviewed by the High Power Committee on 27^{th} 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 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 27^{th} 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 contemplate 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."

It is seen that this Court has dealt with the issue and has found that the Industrial Incentive Policy, 2006 has been framed by the State Government in terms of the executive power of the State under Article 162 of the Constitution and therefore has refused to interfere into the matter. The contention put forth before us is that the petitioner's claim was based on the rehabilitation scheme framed under the Sick Industrial Companies (Special Provisions) Act, 1985 and the benefit granted under the statutory rehabilitation scheme framed cannot be withdrawn by an executive notification. The issue has been dealt with *in extenso* by the learned Single Bench itself in its detailed order passed and after examining the scheme itself formulated under the modified and controlled rehabilitation scheme formulated under the BIFR, The finding recorded is that the petitioner's unit is a new unit and cannot be granted the benefit. We find that this issue has been elaborately dealt with by the learned Writ Court and while considering the matter in LPA No. 1336 of 2012. after the first review application Civil Review No. 351 of 2013 was allowed the issue has been considered with reference to right of the old unit to claim the benefit and, therefore, at this stage now we are not inclined to go into the matter. In fact, in Paragraph-2 of the order passed by the learned Single Bench in CWJC No. 7228 of 2009 it has taken note of the modified rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction on 10th January, 2008 and the observations from Paragraph-3 onwards goes to show that after taking note of the said rehabilitation scheme, the learned Single Judge of the Writ Court has dealt with this issue and found that exemption for duty under Clause 2(viii) of the Policy contained in Industrial Incentive Policy dated 12.10.2006 is only for a new unit and not to an old unit. Thereafter, the learned Writ Court has taken note of the issue discussed regarding exemption in AMG/MMG and the benefit conferred after orders passed by the BIFR and after detailed analysis has rejected the contention primarily on account of the fact that the petitioner's were not entitled for exemption from AMG charges as the unit was not working in the year 2006 when the Industrial Policy 2006 was introduced. We find that the learned Single Judge has gone into various issues connected thereto and the Division Bench had approved the same and now on the ground canvassed no review is called for.

That being so, we see no error in the order under review warranting reconsideration.

The application is therefore dismissed.

(Rajendra Menon, CJ)

(Ahsanuddin Amanullah, J)

mrl./-

AFR/NAFR	NAFR
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