IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5535 OF 2012

Karan Distilleries Pvt. Ltd. ..Petitioner

v/s.

The State of Maharashtra & Ors. ..Respondents

Mr. S.M.Gorwadkar, Sr. Advocate i/b. Mr. Kamlesh Mali for the Petitioner
Mr. Manish Pabale, APP for the Respondent/State.

CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ.
DATED : 10TH MARCH 2017

ORAL JUDGMENT (PER A.S. OKA, J)

1. The submissions of the learned Counsel appearing for the parties were heard earlier in this petition which was on final hearing cause list. The controversy involved in this petition is very limited.

2. With a view to appreciate the controversy, a brief reference to the facts of the case will be necessary. According to the case of the Petitioner, it has set up a distillery having a license for manufacturing of alcohol from grain. It is the case made out in the petition that for manufacturing alcohol, the Petitioner is using

jowar. It is stated that from the year 2006-2007, the manufacturing is approximately 50% of its annual capacity.

3. Reliance is placed by the Petitioner on the State Government Resolution dated 8th June, 2007. A copy of the resolution is annexed as Exhibit A. The resolution records that the manufacture of alcohol by the use of jowar is a viable option. The said Government Resolution records that demand for alcohol is ever increasing. Therefore, the Government Resolution (GR) was issued to encourage manufacturing of liquor without using sugarcane. The GR records that an incentive will be payable to those projects which will be set up and commissioned before the end of the year 2009. Under the GR, to the eligible industries, incentive is made payable at the rate of Rs.10/- per litre.

4. The Petitioner applied for subsidy under the said GR. Thereafter, representations were made from time to time. The prayer in this petition under Article 226 of the Constitution of India is for directing the State Government to reconsider the application of the Petitioner dated 28th December, 2009. There is a reply filed by Shri Yeshwant Manga Pawar, Deputy Commissioner of State Excise. In paragraphs (4) and (5) of the said reply, Shri Pawar has stated thus:-

> "(4). With reference to para 3(f) of the Petition, I say that the Government Resolution (Exhibit A to the Petition) clearly stats that the Distillery and Integrated Unit Financial Assistance Scheme 2007 is entitled to new units becoming operational in industrially backward areas as declared by the Indian Industries Department, who are in D or D+ zone. I say that as per this Government Resolution, none other than those units coming up in other parts of the State except D or D+ zone would be entitled to financial assistance.
>
> (5) With reference to Para 3(g to I) of the <u>Petition, I say that the Petitioner has made representations from time to time but the Government vide its letter dated 10.08.2011 (Exhibit-P to the Petition) has conveyed to the Petitioner that the scheme for financial assistance is applicable only to those units who have commenced production after the announcement of the scheme and not to those who had been operational prior to the announcement of the scheme."</u>
>
> (underline supplied)

5. Thus, the stand taken by the State Government is the same as the stand reflected from the communication dated 10th August, 2011 (Exhibit P to the petition) addressed by the State Government to the Petitioner. The stand taken is that the benefits under the GR dated 8th June, 2007 will be admissible only to those industries which are set up after the date of the said GR. It is

further stated that the scheme has been closed and the scheme has ceased to apply with effect from 20th August, 2009. In paragraph 16 of the reply, it is stated that the scheme under the GR is applicable only to those units which became operational between 8th June 2007 and 20th August, 2009.

6. The learned Senior Counsel appearing for the Petitioner submitted that on plain reading of the said GR it is apparent that it does not provide that the benefits thereunder will not be available to those industries which are in existence prior to the date of the said GR. He submitted that the GR states that the benefits thereunder will be available only to those industries which come into existence by the end of the year 2009. He also relied upon the decision of the Apex Court in the case of **K.J.S. Buttar vs. Union of India**[1]. He submitted that arbitrary cut off date for applicability of a GR cannot be fixed by the State Government as the same will be violative of Article 14 of the Constitution of India. The learned AGP supported the stand taken in the reply filed by Shri Pawar.

7. We have given careful consideration to the submissions. We have carefully perused the GR dated 8th June, 2007. The perusal of the same shows that the benefits available under the scheme

---

1 (2011) 11 SCC 429

floated under the said GR have been set out in clause (10) thereof. Clause (9) imposes a condition that the scheme will apply only to those projects which are set up in D and D+ zones and if the industry is set up in any other zone, the same will not be entitled for the benefit under the scheme. The clause (5) of the scheme records that the scheme has been brought with a view to encourage the industries to manufacture alcohol by using jowar, bajra etc.

8. Clause (2) of the GR provides that only those industries which are set up and commissioned by the end of the year 2009 will be entitled to benefits of the scheme. There is no clause in the said GR which provides that the scheme will not apply to the existing industries as of 8th June, 2007 which are otherwise covered by the scheme. Thus, the stand taken in the affidavit of Shri Pawar and in particular in paragraph 16 that the financial assistance under the said GR is available only to those units which became operational between 8th June, 2007 and 20th August, 2009 appears to be completely contrary to the contents of the said GR. There is no indication in the GR that the industries which are already in existence and which are otherwise covered by the GR are excluded only on the ground that the same were in existence

on the date of the GR.

8. Therefore, in our view, the case of the Petitioner could not have been rejected only on the ground that the Petitioner's industry was in existence as of 8th June, 2007. Therefore, the case of the Petitioner will have to be reconsidered by the State Government. Needless to add that even if the State Government finds that the Petitioner is eligible to the benefits under the said scheme covered by the said GR, the Petitioner will be entitled to receive the benefits under the scheme from the date of the said GR and not from the date on which the Petitioner started its manufacturing activity. Needless to add that in such a case, the Petitioner will be entitled to benefit only till the date of the closure of the scheme as set out in the affidavit of Shri Pawar.

9. Accordingly, we dispose of the petition by passing following order:-

i) We direct the State Government to re-consider the case of the Petitioner for grant of benefits under the Government Resolution dated 8th June, 2007 in the light of what is held in this judgment. The prayer of the Petitioner shall not be rejected only on the ground that the production unit of the Petitioner was already functional on the date of the said Government Resolution;

ii) We make it clear that we have not examined whether the Petitioner is otherwise eligible for the benefits under the Government Resolution dated 8th June, 2007. Suffice it to say that the case of the Petitioner shall not be rejected only on the ground that the industry was operational on the date of the Government Resolution;

iii) Appropriate decision shall be taken by the State Government within a period of three months from the date on which an authenticated copy of this judgment and order is produced with the concerned department of the State;

iv) Rule is made partly absolute in above terms.

v) All concerned to act upon an authenticated copy of this Order.

(SMT.ANUJA PRABHUDESSAI, J) **(A.S. OKA, J)**