

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT.JUSTICE T. RAJANI

Writ Appeal No.1922 of 2005

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No. 20251 of 2005 dated 14.9.2005. The appellant is the petitioner in the writ petition. They filed the said writ petition questioning the action of the respondents in issuing G.O. Ms. No. 306 dated 10.12.2004 keeping in abeyance the earlier orders issued in G.O. Ms. No. 290 dated 30.11.2004. They sought a consequential direction to the respondents to implement and extend the incentives under G.O. Ms. No.290 dated 30.11.2004.

The appellant-writ petitioner is a medium scale industry manufacturing rubberized coir products at Jinnaram Mandal, Medak District. In terms of the Target 2000 Scheme, certain incentives were granted to small and medium scale industries and among the conditions, prescribed for grant of such concession, was that the unit should commence commercial production by 31.3.2002. While the appellant-writ petitioner was granted an eligibility certificate on 18.1.2001, they failed to commence commercial production by 31.3.2002. Thereafter G.O. Ms. No. 290 dated 30.11.2004 was issued modifying the earlier guidelines issued in G.O. Ms. No. 588 dated 20.11.2000 (the Target 2000 Scheme) extending the last date for commencement of commercial production till 31.3.2005. G.O. Ms. No. 290 was, however, kept in abeyance by the subsequent order in G.O. Ms. No. 306 dated 10.12.2004. The appellant-writ petitioner claims to have addressed a letter on 06.12.2004, after G.O.Ms.No.290 was issued on 30.11.2004 but before it was kept in abeyance by G.O.Ms. No.306 dated 10.12.2004, informing the respondents that they would commence commercial production by 31.3.2005.

Sri Challa Gunaranjan, learned counsel for the appellant-writ petitioner, would submit that the appellant-writ petitioner commenced commercial production on 28.3.2005, and informed the respondents accordingly; the appellant-writ petitioner had altered their position, purchased plant and machinery, and had procured orders from several customers before G.O.Ms. No. 306 was issued on 10.12.2004; consequently the doctrine of promissory estoppel would apply; and the respondents were, therefore, precluded from refusing to grant the appellant-writ petitioner extension upto 31.3.2005 for commencement of commercial production, and for grant of benefits under the Target – 2000 Scheme.

In the order under appeal, the learned Single Judge observed that the doctrine of promissory estoppel is an equitable doctrine, and must yield to equity; when there was no scheme in force as on the date of commencement of commercial production by the appellant-writ petitioner, it would be inequitable to compel the Government to extend the benefit to the appellant-writ petitioner; the principle of legitimate expectation would also not apply, as it is only when a person fulfils the prescribed eligibility criteria, can he claim to have a legitimate expectation; and a person who does not satisfy the eligibility criteria, for conferment of any benefit, cannot claim legitimate expectation.

As the writ petition was dismissed at the stage of admission itself, no counter affidavit was filed by the respondents before the learned Single Judge. During the course of hearing of this appeal, a counter affidavit has been filed by the respondents contending that, since the appellant-writ petitioner did not commence commercial production by 31.3.2002, a show cause notice was issued to them; thereafter a final order was passed on 15.10.2003 informing the appellant-writ petitioner that the eligibility certificate, issued to their unit on 18.1.2001, was cancelled since no reply had been received from them to the show cause.

The reference second cited, in the order of cancellation dated 15.10.2003, is the show cause notice dated 4.12.2002.

While Sri Challa Gunaranjan, learned counsel for the appellant-writ petitioner, would contend, placing reliance on the averment in the counter affidavit, that a show cause notice was issued on 15.10.2003, and on the very same day a final order was passed, it is evident from the order of cancellation dated 15.10.2003, a copy of which has been placed for our perusal, that a show cause notice was issued on 4.12.2002. It is evident therefore that, even before G.O. Ms. No. 290 was issued on 30.11.2004 extending the final date of commercial production from 31.3.2002 to 31.3.2005, the eligibility certificate of the appellant-writ petitioner was cancelled by proceedings dated 15.10.2003. As the very eligibility certificate was cancelled by then, issuance of G.O. Ms. No. 290 dated 30.11.2004, subsequent thereto, extending the last date for commencing commercial production till 31.3.2005 is of no avail.

Sri Challa Gunaranjan, learned counsel for the appellant-writ petitioner, would contend that neither a copy of the show cause notice nor a copy of the order of cancellation was furnished to the appellant-writ petitioner; and a reply affidavit has been filed to that effect. Questions whether the show cause notice was served on, and the order of cancellation was communicated to, the appellant-writ petitioner are all matters extraneous to this writ petition wherein only the order issued by the Government, in G.O. Ms. No. 306 dated 10.12.2004 keeping the earlier orders in G.O. Ms. No. 290 dated 30.11.2004 in abeyance, is questioned. While the learned Government Pleader for Industries would submit that the cancellation order dated 15.10.2003 was sent under Certificate of Posting, as is recorded in the order itself, these are again matters which we would not delve into in the present writ proceedings. Suffice it to make it clear that it is only if the order of cancellation is held to be illegal, can the validity of the subsequent G.O. Ms. No. 306 dated 10.12.2004, keeping G.O. Ms. No.290 dated 30.11.2004 in abeyance, be

examined. As long as the order, cancelling the eligibility certificate, remains in force, the validity or otherwise of the subsequent Government Orders are of little consequence.

Sri Challa Gunaranjan, learned counsel for the appellant-writ petitioner, seeks liberty to question the order of cancellation. The question whether the appellant-writ petitioner can now, after a lapse of more than thirteen years, question the order of cancellation is again a matter which we would not consider in the present writ proceedings. Suffice it to make it clear that we have not examined the validity of G.O. Ms. No.306 dated 10.12.2004 as the record placed before us reveals that the appellant-writ petitioner's eligibility, under the Target 2000 Scheme, was cancelled more than a year prior thereto on 15.10.2003 itself.

While Sri Challa Gunaranjan, learned counsel for the appellant-writ petitioner, seeks a direction to the respondents to furnish a copy of the order of cancellation and the show cause notice, learned Government Pleader for Industries would submit that no such order is necessary as a copy of both the show cause notice and the order of cancellation would be made available to the learned counsel for the appellant-writ petitioner during the course of the day.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(T. RAJANI, J)

24th July, 2017

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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
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Date: 24.7.2017

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