

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (T) No.7 of 2007

(Letter dated 8-9-2005 issued by the Member Secretary, State Level Committee and Director, Chhattisgarh State Renewable Energy Development Agency)

1. K.N. Oil Industries Limited, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Ashram Road, Mahasamund (C.G.)
Through its authorised signatory Hemratan Jhabak, S/o Late Sheolal Jhabak, aged about 63 years.
2. Hemratan Jhabak, S/o Late Sheolal Jhabak, aged about 63 years, R/o College Road, Mahasamund (C.G.) authorised signatory of K.N. Oil Industries Limited, Ashram Road, Mahasamund (C.G.)

---- Petitioners

Versus

1. State Level Committee, through member Secretary and Director, Chhattisgarh Renewable Energy Development Agency, MIG A-20/1, Sector-I, Raipur
2. State of Chhattisgarh through
 - (a) Principal Secretary, Energy Department, DKS Bhawan, Mantralaya, Raipur
 - (b) Commissioner, Industries, Chhattisgarh
 - (c) Commissioner, Commercial Taxes, Chhattisgarh
3. Chief Engineer, Commercial, C.S.E.B.
4. Chief Electrical Inspector, Chhattisgarh

---- Respondents

For Petitioners: Mrs. Smiti Sharma, Advocate.

For Respondents No.2 (a), (b), (c) and 4 / State: -

Mr. Anand Dadariya, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

22/03/2018

1. Petitioner No.1 is a Company incorporated under the provisions of the Companies Act, 1956 and is involved in the running of a solvent extraction plant and generation of electrical energy from non-

conventional sources. As per notification dated 28-2-1995, the dealers who would set up non-conventional power generation system from non-conventional sources, were granted certain concessions under the Madhya Pradesh General Sales Tax, 1958 and the Central Sales Act, 1956. The petitioner Company accordingly applied for provisional eligibility certificate claiming to be falling under Category II of the said notification for availing such concession under the notification. Ultimately, the petitioner Company was granted provisional eligibility certificate on 7-7-1998 and thereafter, on 18-7-2005, a permanent eligibility certificate was granted vide Annexure P-3 and thereafter, within two months that certificate was cancelled on 8-9-2005. This writ petition has been filed stating that the order of cancellation of the petitioners' permanent certificate without affording a reasonable opportunity of being heard that too with retrospective effect, is without jurisdiction and without authority of law which has been opposed by filing return by the State/respondents No.2 (a), (b), (c) and 4. No rejoinder has been filed by the petitioners.

2. Mrs. Smiti Sharma, learned counsel appearing for the petitioners, would submit that the certificate of eligibility for availing the facility of exemption from payment of tax under notification dated 28-2-1995 has been revoked / cancelled without authority of law as neither opportunity of hearing has been afforded to the petitioners nor such grounds exist for such cancellation that too with retrospective effect, therefore, the order of cancellation of the petitioners' permanent certificate deserves to be quashed.
3. Mr. Anand Dadariya, learned State counsel, would submit that the Member Secretary, State Level Committee, was not authorised to grant such certificate and the petitioner Industry was not eligible for

such an exemption certificate, therefore, its eligibility has rightly been revoked / cancelled.

4. Mrs. Sharma, learned counsel for the petitioners, would further submit that the notification dated 28-2-1995 (clause 8 of the Annexure appended to it) clearly entitles the Member Secretary, State Level Committee to issue a permanent eligibility certificate under the said notification, therefore, it would not have been held that the Member Secretary was not authorised to issue such eligibility certificate.
5. Mr. Dadariya, learned State counsel, would further submit that the State Level Committee has not considered the case of the petitioners.
6. It is not in dispute that the petitioner Company was granted permanent eligibility certificate for availing the facility of exemption from payment of commercial tax under the notification dated 28-2-1995, on 18-7-2005 and it is also not in dispute that before cancelling the said certificate, reasonable opportunity of being heard was not afforded to the petitioners and no notice was served to the petitioners before taking such extreme step of revoking the said eligibility. Merely on the basis of instructions issued by the Principal Secretary, Department of Energy, Government of Chhattisgarh dated 8-9-2005, the certificate has been revoked.
7. In the matter of **State of U.P. v. Maharaja Dharmander Prasad Singh**¹, the Supreme Court has held as under: -

“The show cause notice itself is an impalpable congeries of suspicions and fears, of relevant or irrelevant matter and has included some trivia. On a matter of such importance where the stakes are heavy for the lessees who claim to have made large investments on the project and where a number of grounds require the determination of factual

1 AIR 1989 SC 997

matters of some complexity, the statutory authority should, in the facts of this case, have afforded a personal hearing to the lessees.”

8. In the matter of Vishal Pharmaceutical Laboratories v. General Manager, District Industries Centre and others², the M.P. High Court referring to Maharaja Dharmander Prasad Singh's case (supra) has held that before cancellation of certificate affording opportunity of hearing is imperative and observed as under: -

“6. Undisputedly the question of grant or refusal of eligibility certificate depends on examination of relevant materials and this aspect should be better left to the competent authorities. However, when the eligibility certificate is refused or cancelled retrospectively, it naturally consigns the holder of such eligibility certificate to extra burden and inconvenience. When stakes are so high, it is necessary that the competent authority should have heard the petitioners in that behalf.”

9. At this stage, the argument that the Member Secretary, State Level Committee was not competent to issue certificate deserves to be rejected, as the State / respondents No.2 (a), (b), (c) and 4 could have produced the entire records before the Court along with the return to demonstrate that it has not been considered by the State Level Committee, which has not been done. Therefore, the argument of learned State counsel that the Member Secretary, State Level Committee was not competent to issue the certificate, in absence of record, cannot be adjudicated upon at this stage in absence of record.
10. Reverting to the facts of the present case, it is quite vivid that the eligibility certificate, which has been issued to petitioner No.1, was revoked unilaterally without affording opportunity of hearing and that too upon the instructions of the Principal Secretary of the State

² (1995) 96 STC 125

Government which cannot be approved by this Court. If an authority was not competent to issue certificate or it was granted on irrelevant material, the course open and permissible to the State Government was to afford opportunity of hearing and then to consider the reply of the Industry and could have taken decision thereafter which has not been done, as such, the order of the State Government is in teeth of the principles of natural justice.

11. As a fallout and consequence of the aforesaid discussion, the order Annexure P-5 dated 8-9-2005 is hereby quashed. However, the respondents are at liberty to proceed in accordance with law.
12. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma