THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION Nos.4850 and 4937 of 2018

COMMON ORDER:

Heard counsel for petitioners and the Government Pleader for Industries appearing for respondents.

2. Petitioners' grievance is that they are being denied subsidy promised vide G.O.Ms.No.178 Industries and Commerce (IP) Department dt.21.06.2005 and G.O.Ms.No.328 Industries and Commerce(IP) Department, dt.13.12.2005.

3. The policy notified under said G.Os. is Industrial Investment Promotion Policy for 2005-2010. The said policy was laid down by the State of Andhra Pradesh to encourage entrepreneurs in the State, who desire to set up new micro small scale medium and large industries, particularly, to SC/ST entrepreneurs.

4. The proprietor of petitioner units, being a person belonging to the said community, with an intention to take advantage of the said policy, started two industries by name M/s Amrutha Industries and M/s Sai Srimannarayana Industries (petitioners in the WPs) in Chodavaram Village of Ramachandrapuram Mandal, East Godavari District in 2009. He contends that Sai Srimannarayana Industries is engaged in grading, polishing and sorting of rice, where as M/s Amrutha Industries is engaged in production of Idli Ravva.

5. Both units started commercial production on 01.06.2010 and have been running successfully and also completed the statutory period prescribed under the said G.Os.

6. Both units applied for incentives towards power tariff reimbursement of Rs.2,44,961/- and Rs.4,33,839/- on 18.12.2014 and Rs.2,51,621 and Rs.4,45,804/- on 25.06.2015 apart from interest subsidy under "Pavalavaddi scheme" for Rs.1,44,53/- and Rs.1,09,537/- on 18.12.2014 and Rs.94.795/- and Rs.76,479/- on 25.05.2015.

7. According to the proprietor of petitioners, applications of both units were recommended for sanction on 16.02.2016 by the General Manager, District Industries Centre, Kakinada, East Godavari District (6th respondent). Petitioners contend that in spite of same, though two years have elapsed, incentives are not yet disbursed and representations made by the petitioners on 07.03.2015, 18.08.2017 and on another occasion were also not responded to.

8. So proprietor of petitioners filed the present Writ Petitions challenging the inaction of the respondents in releasing the benefits to which the units are entitled to under the said G.Os.

9. Counter affidavit is filed by the 6th respondent in both the Writ Petitions contending that as per clause 9.3.2 of

G.Ms.No.328 dt.13.12.2015 if there is utilization of common facilities like common generator(electricity), conveyor belt, common shed, common road, way bridge, etc. like the units are doing, the benefit of the said G.Os., cannot be granted to the petitioners.

10. The Government Pleader for Industries placed reliance on a show cause notice issued by the 6th respondent to the petitioners on 26.03.2015 and 28.03.2015 respectively, pointing out that there was an inspection of the petitioners' units and there was usage of common facilities and since there is no separation wall between the two units, the incentives under the Act cannot be given to the petitioners.

11. Explanation had been filed by the petitioners to the said show cause notices pointing out that the generator connection from M/s Amrutha Industries to M/s Sai Srimannarayana Industries has been disconnected, that the total generator power is being utilized only by M/s Amrutha Industries, that the rice elevator has also been disconnected and weigh bridge is being used only by M/s Amrutha Industries. It is also contended that both industries have their own road ways and are separate entities as per documents and they are separated by fencing. It was therefore denied that there was use of any common utility and a request was made to 6th respondent to visit their respective industries and sanction the incentives i.e.,

reimbursement of power cost and interest subsidy under Pavala Vaddi scheme, and release the sanctioned amounts to their respective units.

12. Subsequently, the 6th respondent communicated an order dt.10.11.2016 stating that another inspection was done of both units, that they were found working and that both units were utilizing only the common road and way bridge and there is no separation wall between the two units. However, he stated that the two units had obtained individual approvals like panchayat NOC from DIC, VAT, DTCP & Factories and having separate power connections.

13. The proprietor of petitioners contends that as per the policy enunciated in G.O.Ms.NO.178 dt.21.06.2005 read with G.O.Ms.No.328 dt.13.12.2005 and in particular, clause 9.3.1 and 9.3.2 thereof which are extracted below, having a common road and a common weigh bridge cannot be said to be prohibited, particularly, when there is no production linkage and no common electrical facilities exist between the two units. He also contends that once M/s Amrutha Industries had established a separate new industrial enterprise by name M/s Sai Srimannarayana Industries through separate identifiable investment, which is also not disputed by the 6th respondent, merely on the ground that there is common weigh bridge and common road, the

respondents cannot deny the benefits of incentives under the said policy to the petitioner.

14. Clause Nos.9.3.1 and 9.3.2 of G.O.Ms.No.178 dt. 21.06.2005 and G.O.Ms.No.328 dt.13.12.2005 are as follows:

> "9.3.0 **General**
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> 9.3.1 If any unit taking up expansion/diversification had availed investment subsidy under any earlier scheme, the subsidy amount already availed would be deducted from the eligible Investment Subsidy, and the totalsubsidy would be limited to Rs.15 lakhs in case of general and RS.20 lakhs and Rs.25 lakhs in case of Women/SC/STs and Women SC/ST Entrepreneurs as per the limits prescribed in the IIPP scheme.
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> 9.3.2 In case of existing Industrial units setting up a new industrial unit with separate identifiable investment, the words 'SEPARATE IDENTIFIABLE INVESTMENT' shall means that the unit should not have any production linkage with the existing manufacturing process and the product should be a separate product itself with independent marketability. The new unit should be in a separate building, should maintain separate books of accounts and the project should be appraised independently by financial institution as a viable project. A new project will not, however, be regarded as a "Separate Identifiable Investment" if the utilities of the existing unit like water, electricity, steam and pollution control systems are extended to the new unit (Government Memo No.27099/IP/A2/97-2, dated 15.06.1998)."

15. The counter affidavit filed by the respondents refers to a report of the Joint Inspection Committee headed by the Revenue Divisional Officer, Ramachandrapuram on 03.03.2018, which states the following:

> "a) The unit holder maintained Separate Power Connection, Accounts, Stock registers.
>
> b) At present no common facilities are utilized.

Earlier the DIC office was issued a show cause notice on the following common utilities:

i) Generator
ii) Weigh Bridge
iii) Rice Elevator
iv) Common Shed
v) Common Road

c) In response to the Show cause notice, the unit holder has agreed in his letter dt.01.04.2015 as the Rice elevator(which is linkage in production) and Generator(which is power generated while power cut) are both disconnected and both the units are separated by fencing and the temporary shed also dismantled.

d) The two items i.e., Rice elevator which is production linkage and Generator(partly) attracts violation which is against the para No.9.3.2 of Operational guidelines of IIPP 2005-10 "In case of existing Industrial enterprises setting up a new industrial enterprise with separate identifiable investment, the words 'SEPARATE IDENTIFIABLE INVESTMENT' shall means that the enterprise/industry should not have any production linkage with the existing manufacturing process and the product should be a separate product itself with independent marketability" and Government Memo No.27099/IP/A2/ 97-2, dated 15.06.1998 of the INDS.& Com.(IP) Department 'that the unit should not have any production linkage with the existing manufacturing process and the product should be a separate product itself with independent marketability.

16. Thus the said report specifically certifies that at present no common facilities are used.

17. The stand of the respondents is that utilization of common facilities, like common generator, conveyor belt, common shed, common road, weigh-bridge for sometime by the petitioners, is reason enough for denying incentives to the petitioners under the industrial policy.

18. *Prima facie,* use of common generator, weigh bridge, common road, and having a common shed which are not specified in paras 9.3.1 and 9.3.2 cannot be a ground to deny incentives, which the petitioners are entitled to, since the only prohibition contained in 9.3.1 is having common <u>utility</u> like water, electricity, steam and pollution control systems by both units. It is not the case of the respondents that there is a single transformer being utilized by both the petitioners for their separate production activity. If the petitioners use a common generator, for running of which petitioner alone bears expenses without drawing any power from State Power Utilities that cannot be put against the petitioners since generator would only be used in the event of a power shut down and not on a regular basis. Likewise, having common weigh-bridge and common road, even if true, cannot be a ground to deny the incentives under the said GOs.

19. It is unfortunate that a State, which wants to encourage "officially" the setting up of industrial enterprises within its territory, is unhappy that a Scheduled Caste entrepreneur has set up more than one enterprise, instead of being happy that both his

enterprises are generating revenue for the State and also employment.

20. I am therefore of the opinion that the action of the respondents in denying incentives, such as power subsidy and pavala vaddi scheme benefits to the petitioners on the aforesaid grounds, is clearly arbitrary, illegal and violative of Article 14 of Constitution of India apart from principle of promissory estoppel, which applies clearly in the facts and circumstances of the present cases.

21. Therefore, both the Writ Petitions are allowed, the action of the respondents in not releasing sanctioned incentives pursuant to sanction letter Lr.No.3853/A1/ 2010 dt.21.04.2015, and Lr.No.420/A1/2011 dt.07.08.2015, is declared as illegal, arbitrary and in violation of Industrial Investments Promotions Policy 2005-2010; and a direction is given to the respondents to forthwith release the incentives towards power tariff reimbursement and interest subsidy under "Pavalavaddi scheme" to the petitioners. No order as to costs.

22. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

12th April, 2018.

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