THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.814 of 2018

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.4937 of 2018 dated 12.04.2018, which was disposed of along with W.P.No.4850 of 2018.

The respondent-writ petitioner herein established a new unit which, according to the learned counsel for the respondent-writ petitioner, is independent of the unit of the petitioner in W.P.No.4850 of 2018. In terms of G.O.Ms.No.178 dated 21.06.2005, read with G.O.Ms.No.327 dated 13.12.2005, the Government of Andhra Pradesh, with a view to promote Andhra Pradesh as an attractive and competitive destination for industrial investment, offered various incentives/benefits to all eligible new industrial units set up in the State. The controversy in this writ petition revolves around the scope and purport of Para 9.3.2 of the Operational Guidelines which reads as under:

> "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)."

A show cause notice was issued to the respondent-writ petitioner on 26.03.2015, informing them that their unit was inspected on 03.03.2015 and it was found that they were using common utilities such as generator, weigh bridge, rice elevator, common shed between the units and common road, and that they should submit their explanation within the time stipulated in the order. The respondent-writ petitioner, by their letter dated 01.04.2015, informed the General Manager, District Industries Centre, Kakinada that they had disconnected the generator connection; they were not having weigh bridge for the new unit; the rice elevator was also disconnected; the weigh bridge was being used only for the other unit; both industries had their own roadways, and were separate entities as per the documents; both the industries were separated by fencing; the temporary shed had also been dismantled; and there were no common utilities between both the industrial units. The respondent-writ petitioner requested the authorities to inspect their industry, and sanction the incentives i.e reimbursement of power cost and pavala vaddi, and release the sanctioned amount.

The unit appears to have been inspected on the same day on which the respondent-writ petitioner furnished their reply to the show cause notice and, in the note file, it appears to have been recorded that the feeding elevator and generator connection to the unit were removed, and no common facilities were being used by both the units. A request was made that the claim be processed.

In reply to a query, under the Right to Information Act, the Deputy Director of Industries, Kakinada informed, vide letter dated 11.01.2018, that the mee-seva claim of the respondent-writ petitioner dated 18.12.2014 for reimbursement of pavala vaddi, and their mee-seva claims dated 18.12.2014 and 25.06.2015 for reimbursement of power cost were sanctioned by the Commissioner of Industries; the issue was placed in the District Industrial Promotion Committee Meeting held on 13.11.2017; and, as per the decision of the District Collector, a letter was addressed to the Commissioner of Industries, Vijayawada to depute one Joint Director to inspect the unit with the local Commercial Tax Officer, Tahsildar, Branch Manager, APSFC and a representatives from the DCCI.

Sri S.Sridhar, learned counsel for the respondent-writ petitioner, would draw our attention to the Joint Verification Report of both the units on 03.03.2018 wherein it is stated that, at present, no common facilities are being used; the rice elevator and the generator, which provided linkage, were disconnected and were separated by fencing; and the two items i.e rice elevator and generator attracted violation which was against Para 9.3.2 of the Operational Guidelines.

The fact, however, remains that, despite receipt of the report, the District Industries Promotion Committee has yet to take a decision thereupon. Even before such a decision was taken, the respondent-writ petitioner filed the Writ Petition requesting the Learned Single Judge to examine their claim on merits and, on the basis of such a claim, the Learned Single Judge had recorded his finding that, since the common facilities were no longer being used, the benefits should be extended to the respondent-writ petitioner. It is only after a decision is taken, by the authority which is conferred with such a power i.e the District Industries Promotion Committee, would this Court be justified in examining such a decision within the parameters of judicial review. In proceedings under Article 226 of the Constitution of India this Court would, ordinarily, not take upon itself the task of examining, like the primary authority, whether or not the respondent-writ petitioner is entitled for the benefits available under the Scheme, and whether or not Para 9.3.2 of the Operational Guidelines has been violated.

While Sri S.Sridhar, learned counsel for the respondent-writ petitioner, would point out that the order under appeal came to be passed, since no decision was taken by the competent authority for the past several years, the order which this Court would ordinarily pass, in case there is an inordinate delay in a decision being taken, is to direct the competent authority to take a decision within a specified time frame. Questions as to whether disconnecting the common generator and rice elevator would suffice for the respondent-writ petitioner to be paid the incentives, or whether use of these common facilities for a short duration would require harsh measures, such as denying a substantial part of the incentives, being taken etc are all matters for the District Industries Promotion Committee, Kakinada to decide in the first instance.

Suffice it, therefore, to set aside the order under appeal and, instead, direct the District Collector, Kakinada to forthwith convene a meeting of the District Industries Promotion Committee, East Godavari to examine the respondent-writ petitioner’s claim for grant of incentives in terms of the Operational Guidelines, pass a reasoned order after due deliberations in the meeting, and communicate their decision, along with the reasons therefore, to the respondent-writ petitioner.

As the respondent-writ petitioner's claim for grant of incentives is pending consideration for the past four years, it is but appropriate that the respondent-authorities are directed to complete the entire exercise, culminating in a reasoned decision being communicated to the respondent-writ petitioner, with utmost expedition and, in any event, not later than two months from the date of receipt of a copy of this order.

The Writ Appeal is disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

18th June, 2018
JSU

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.814 of 2018

Date: 18.06.2018

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