IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

C O R A M
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE
W.P.No.23615 of 2012
&
M.P.No.1 of 2012

1.S.Pannerselvam
2.P.S.Palanisamy
3.S.A.Ganeshkumar
4.P.Tamilselvi
5.R.S.Prakash
6.S.Sharmiladevi
7.S.Saraswathi
8.G.Gomathi
9.K.Sellappan
10.G.Rajendran
11.K.Gurusamy
12.P.Meenashisundaram
13.M.Santhi
14.P.Athappan
15.A.Saroja
16.V.Palanisamy
17.P.Sellammal
18.C.Chinnammal
19.P.Malarkodi
20.S.Saraswathi
21.K.Raju
22.R.Thilagavathy
23.R.Eswaran
24.M.Ramasamy
25.R.Sampoornam
26.M.K.Subramaniam
27.S.Vijayalakshmi
28.S.Saravanan
29.S.Loganathan
30.S.M.Saravanan
31.N.Kandasamy
32.K.Chinnammal ... Petitioners

Vs.

1.The Principal Accountant General (Civil Audit),
Tamil Nadu & Pondicherry,
361, Anna Salai, Chennai - 600 018.

2.The Director of Handlooms & Textiles,
"Kuralagam", Broadway,
Chennai - 600 108.

3.The Deputy Director of Handlooms & Textiles,
Room No.407, Collectorate, 4th Floor,
Salem - 636 001.

4.The Assistant Enforcement Officer,
Handlooms Reservation Wing,
Room No.408, Collectorate, 4th Floor,
Salem - 636 001. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the entire records relating to the impugned orders of recovery of the subsidy passed by the 3rd respondent in his proceedings Na.Ka.4923/2013/M dated 18.05.2012 and the Audit observations of the Department of the 1st respondent dated 16.11.2007 made in No.Prl.AG(CA)/ISCIII/II/27-007/07-08/258 and quash the same.

For Petitioners : Mr.K.Premkumar
For Respondent 1 : Mr.T.Ravikumar, Standing counsel
For Respondents 2 to 4 : Mr.L.P.Shanmuga Sundaram, Special Government Pleader

ORDER

This writ petition has been filed challenging the separate orders all dated 18.05.2012 passed against the respective petitioners by the third respondent.

2. It is the case of the petitioners that they are power-loom weavers and they are entitled for subsidy from the Government of Tamil Nadu under the scheme for modernization of power-loom introduced in the year 2002. According to the petitioners, only after scrutinising and verification of the respective petitioners' applications for grant of subsidy, the fourth respondent recommended to the second respondent for sanction and release of subsidy to all the petitioners under the aforesaid scheme and pursuant to the recommendation, the second respondent has also sanctioned the subsidy. It is the case of all the petitioners that pursuant to the said sanction on 14.03.2006 , they have availed the subsidy as early as in the year 2006 itself. However, according to the petitioners, all of a sudden, on 29.12.2011, the third respondent issued separate show cause notices to each of the petitioners, based on audit objections, calling upon them to pay back the subsidy amount, since they were ineligible to obtain the subsidy. Separate replies were also sent to the third respondent by each of the petitioners to the respective show cause notices. However, it is the case of the petitioners that by total non-application of mind, the third respondent passed separate impugned orders all dated 18.05.2012 against each of the petitioners without assigning any reason for return of subsidy amount which the petitioners have received in the year 2006 under the scheme introduced by the Government of Tamil Nadu.

Aggrieved by the impugned orders dated 08.05.2012 passed by the third respondent, this writ petition has been filed.

3. A counter affidavit has been filed by the respondents 2, 3 and 4. According to them, the petitioners are ineligible to obtain the subsidy under the scheme. Further it is their case that due to audit objections raised, because of the ineligibility of the petitioners to receive the subsidy, the third respondent called upon each of the petitioners to return the subsidy amount which they received from the fourth respondent. Therefore, according to them, the third respondent has applied its mind and only thereafter passed the impugned orders.

4. Heard Mr.K.Premkumar, learned counsel for the petitioners and Mr.T.Ravikumar, learned counsel for the first respondent and Mr.L.P.Shanmuga Sundaram, Special Government Pleader for the second, third and fourth respondents.

5. The learned counsel for the petitioners submitted that by a stereotype order and by total non-application of mind, the third respondent has passed the impugned orders against each of the petitioners. According to him, all the petitioners are eligible to avail subsidy as per the scheme and accordingly, they were granted subsidy as early as on 14.03.2006. According to him, after a lapse of almost 5 years, the third respondent all of a sudden issued the show cause notices calling upon the respective petitioners to pay back the subsidy amount which they availed legally from the fourth respondent.

6. The learned counsel for the petitioners also drew the attention of this Court to the impugned orders and submitted that by total non application of mind, without giving any reason whatsoever, the third respondent has passed the impugned orders.

7. Per contra learned counsel for the second, third and fourth respondents would submit that only due to audit objections and only due to their ineligibility, to get subsidy of the petitioners to avail the subsidy, the impugned orders passed were against the petitioners calling upon them to return the subsidy which they availed unlawfully under the scheme.

Discussion:

8. This court has perused and examined the impugned orders as well as the other materials available on record.

9. The petitioners have received the subsidy as early as on 14.03.2006. Admittedly, there is no communication from the respondents from the date of receipt of the subsidy and the date of the show cause notices which was issued on 29.12.2011 calling upon the respective petitioners to return the subsidy. The show cause notices were issued after a lapse of almost

five years from the date of sanction of subsidy to the respective petitioners.

10. It is the case of the respondents that serious audit objections were raised for grant of subsidy to the petitioners as they were ineligible to get subsidy However, as seen from the impugned orders, excepting for stating that the petitioners are ineligible to obtain subsidy, on account of audit objections, the third respondent has not disclosed the reasons for the ineligibility of the petitioners to get subsidy under the scheme. The claim for return of subsidy by the third respondent from the respective petitioners is also hopelessly barred by the law of limitation as the claim has been made only on 29.12.2011 whereas the sanction for grant of subsidy was issued on 14.03.2006. Even as seen from the typed set of papers filed by the petitioners, the audit objection was raised on 16.11.2007 itself whereas the show cause notices were issued to the petitioners only on 29.12.2011. Further as seen from the impugned orders, a copy of the audit objection report has also not been furnished to the petitioners. All these factors will unambiguously lead to the conclusion that the impugned orders dated 18.05.2012 is arbitrary, unjust, unreasonable and is hopelessly barred by law of limitation and has been issued by total non application of mind.

11. In the result, the impugned orders in proceedings Na.Ka.4923/2011/M dated 18.05.2012 and the Audit observations of the Department of the 1st respondent dated 16.11.2007 made in No.Prl.AG(CA)/ISCIII/II/27-007/07-08/258 are hereby quashed. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Accountant General (Civil Audit),
Tamil Nadu & Pondicherry,
361, Anna Salai, Chennai - 600 018.

2.The Director of Handlooms & Textiles,
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3.The Deputy Director of Handlooms & Textiles,
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Room No.408, Collectorate, 4th Floor,
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+1 cc to Spl Government Pleader Sr.No. 4324

W.P.No.23615 of 2012

A.SK(11/03/2020)