BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.06.2022**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.12031 of 2012

S.Shahul Hammed ... Petitioner

Vs.

1. The Commissioner and Director
   Industries and Commerce,
   Chepauk, Chennai – 5.

2. The General Manager,
   District Industries Centre,
   Sivagangai. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the first respondent in his proceedings Rc.No.6706/LC2/2007 dated 27.04.2012 and quash the same as illegal and consequentially to direct the second respondent to grant LTPT subsidy in accordance with the eligibility certificate issued by the second respondent in his proceedings D.DIS.NO.4091/D/2001 dated 28.09.2001 within the period that may be stipulated by this Court.

For Petitioner : M/S.Geethanjali
for M/S.Ajmal Associates

For R2 : Mr.N.Muthuvijayan
Special Government Pleader

For R1 : No appearance

ORDER

The present writ petition has been filed challenging an order passed by the second respondent herein under which the request of the petitioner for payment of subsidy has been rejected on the ground that the Small Scale Unit has gone out of production within a period of five years from the date of commencement of production.

2. Admittedly the petitioner was granted a certificate to the effect that it is a Small Scale Industry and the petitioner rice mill was entitled to receive subsidy from the District Industry Centre as contemplated under G.O.Ms.No.37 Small Industries (E III) Department, dated 20.07.2000. As per the eligibility certificate issued by the second respondent herein, the petitioner was entitled to receive subsidy for the period between 01.06.2001 and 31.05.2004 in three installments. According to the petitioner, he has received only the first installment for the period covering between 01.06.2001 to 31.05.2002 for the first year. When the petitioner made a demand for payment of the subsidy amount for the second and third years, the same has been rejected under the impugned order.

3. As per G.O.Ms.No.37, whenever, a unit starts its production, the production should continue for the next five years. Incase, if the production is stopped within a period of five years, the subsidy holder is liable to refund the subsidy which he has already been received from the second respondent Department. It is also one of the conditions in the Government order that, incase, if there is any re-constitution or alienation of the industry, even then the subsidy will be stopped and already paid subsidy will have to be refunded.

4. The learned Counsel for the petitioner submitted that the production had to be stopped on 28.04.2006 only because of the fact that the Food Corporation of India had not supplied paddy for hulling. The petitioner rice mill was closed on the date of inspection only for the purpose of maintenance and hence the finding in the impugned order that the mill has stopped its production on 14.08.2006 is not factually correct. The learned Counsel for the petitioner has further contended that the petitioner mill has been alienated only on 28.04.2006 beyond the period of five years prescribed under the Government Order. Hence the reasons assigned in the impugned order for rejection of the subsidy are not legally sustainable.

5. Per contra, the learned Counsel for the respondent contended that even as per the reply of the writ petitioner dated 14.08.2006, the petitioner rice mill has stopped the production on 28.04.2006. Hence, in view of the Government Order, the petitioner would not be entitled to receive the subsidy for any period. He further contended that already paid subsidy is also liable to be recovered from the writ petitioner rice mill.

6. I have carefully considered the submissions made on either side.

7. Admittedly, the petitioner rice mill has been registered as a Small Scale Industry and eligible for receiving subsidy from the second respondent. The petitioner rice mill has started his production on 01.06.2001, having eligibility to receive subsidy till 31.05.2004. The petitioner rice mill has also received its subsidy at the rate of 40% for the period covering 01.06.2001 to 31.05.2002.

The petitioner rice mill made a representation for receiving the subsidy for the subsequent periods covering between 01.06.2002 to 31.05.2004. This request has been rejected under the impugned order for the reasons cited supra. Before issuing the impugned order, a show cause notice has been sent to the writ petitioner rice mill calling for an explanation. The petitioner rice mill has sent an explanation on 14.08.2006, admitting that they have stopped the production from 28.04.2006 i.e., within a period of five years from the date of starting of the production. Hence, it is clear that as per the Government Order, the petitioner would not be entitled to receive subsidy under the scheme, when they have stopped their production within a period of five years. However, the second reason assigned in the impugned order that they have alienated the property within a period of five years is not factually correct, in view of the fact that the alienation has taken place only on 28.04.2006, much beyond the period of five years. However, the impugned order is sustainable with regard to the reason that the production has been stopped within a period of five years. The request of the petitioner for subsidy has to be considered only in tune with the Government Order. Since the petitioner is not eligible as per the Government Order, this Court is not in a position to exercise its jurisdiction under Article 226, to quash the order and permit the petitioner to receive his subsidy.

8. For the foregoing reasons, the Writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/07/2022
Sub Assistant Registrar(CS)

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To
1.The Commissioner and Director
Industries and Commerce,
Chepauk, Chennai – 5.

2.The General Manager,
District Industries Centre,
Sivagangai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-28300[F] dated 27/06/2022)
+1 CC to M/s.SPL.GP (SR-28235[F] dated 27/06/2022)

W.P.(MD).No.12031 of 2012
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