

OD 3

WPO/1221/2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

STAR CEMENT LIMITED AND ANR
VS
STATE OF WEST BENGAL AND ORS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 14th June, 2023.

Appearance:
Mr. Arindam Banerjee, Adv.
Ms. Arpita Saha, Adv.
Mr. Ajay Agarwal, Adv.
Mr. Arka Banerjee, Adv.
Ms. Sahali Manna, Adv.
. . .for the petitioners.

The Court: Despite service, none appears for the respondents. Affidavit of service filed today be kept on record.

Learned counsel appearing for the petitioner contends that despite the petitioner being entitled to incentive under the West Bengal State Support for Industries Scheme, 2013 as per Notification dated October 1, 2013 issued by the Government of West Bengal, Commerce and Industries Department, the benefit of such scheme could not be obtained as yet by the petitioner due to non-issuance of registration certificate (RC)-I to the petitioner. Consequently, it is submitted, the petitioner could not file an online application for RC-II. However, as stipulated under the scheme, the petitioner duly deposited its relevant

documents in hard copy form with the authorities within the stipulated time for RC-II.

It is contended that the Notification provides that the last date for submission of online application through the WBIDC website was July 16, 2018 and subsequent submission of documents to the Director of Industries (DI) for the preliminary Registration Certificate, RC-I had to be completed by July 31, 2018. The incentive sanctioned under the scheme would remain valid, as per the notification, till August 31, 2018. Within such period, that is on August 7, 2018, the petitioner had applied before the West Bengal Pollution Control Board for change of name of the petitioner. However, the petitioner-company, which previously operated under the name "Cement Manufacturing Company Ltd.", had duly deposited the erstwhile Consent to Establish issued by the WBPCB in favour of the petitioner, in its earlier name.

That apart, all other relevant documents had also been submitted duly by the petitioner.

However, the respondent authorities initially did not grant RC-1 to the petitioner on the premise that the Pollution Control Board issued a letter indicating the change of name of the petitioner in the Consent to Establish only on September 17, 2018, that is, subsequent to expiry of the scheme on August 31, 2018.

As such, the petitioner was constrained to move this Court in WPO 2924 of 2022. A coordinate Bench, vide order dated February 24, 2023, decided the said writ petition with a direction on the respondent no.2 to consider the petitioners' eligibility under the facts disclosed therein or any other relevant fact which the parties might bring to the notice of the authority and pass a reasoned order

within a period of three weeks from the said date. The respondent no.2 was also to pass a reasoned order after giving hearing to the authorised representative of the petitioner no.1.

The learned Single Judge, inter alia, also observed that the respondent no.2 should take an informed decision in the matter whether the petitioner's change of name would disentitle the petitioner from the incentives under the relevant clauses to the scheme.

Pursuant to such direction, the DI, West Bengal, by a further order dated March 21, 2023, reiterated his previous stand and again refused to grant the RC-I to the petitioner for alleged violation of Clause 2 of the Scheme. The DI was of the opinion that the company has submitted the NOC in the name of the petitioner, that is, Star Cement Ltd.; however, the same had been issued after the expiry of this scheme.

Upon detailed consideration of the materials annexed, it is evident that the Scheme-in-question clearly stipulates that the last date of validity of the Scheme was August 31, 2018.

However, it has to be noted that the petitioner no. 1 had duly submitted its application along with all relevant documents. The only apparent discrepancy in the documents, which was minor in nature, was that the Consent to Establish granted by the West Bengal Pollution Control Board was issued in the erstwhile name of the petitioner company.

However, it is nobody's case that the petitioner is not the same entity as the Cement Manufacturing Company Ltd., upon change of its name to Star Cement Ltd.

The primary premise on which the DI has refused the petitioner's request to grant the RC-I is that the petitioner had failed to submit requisite documents before the expiry of the scheme on August 31, 2018.

Such premise, however, is entirely misconceived. It is to be noted that the petitioner had already filed all relevant documents along with its application, including the Consent to Establish which had been issued in the name of the petitioner no. 1 itself, but in its previous name. The change of name is not disputed from any quarter. The issuance of a letter by the WBPCB referring to the change of name of the petitioner and recording the same on September 17, 2018 was a mere ancillary formality, not having the effect of vitiating the petitioner's application or the documents filed by them.

Hence, merely on the basis of such empty formality, the DI had no authority to refuse the benefit of the scheme to the petitioner company.

In its impugned order, the DI has also observed that the company had submitted during hearing that its certificate of incorporation issued by the ROC, evidencing its change of name from Cement Manufacturing Company Limited to Star Cement Limited, was already on record and the change of name before the ROC had taken place on June 21, 2016, much before the Scheme having expired. Such relevant consideration, however, was entirely missed out by the DI.

In view of the above discussions, there is no reason why the RC-I was refused by the DI to the petitioner even on the second occasion. That apart, in view of the petitioner having duly complied with the Scheme by presenting the hard copies of all relevant documents before the authorities for the purpose of obtaining RC-II, there is also no reason why the respondent authority should not

proceed to process the application of the petitioner for RC-II deeming that the same was validly filed within time, immediately after the issuance of RC-I.

In such view of the matter, WPO 1221 of 2023 is allowed, thereby directing respondent no.2 to issue the Registration Certificate (RC)-I to the petitioner no. 1 within the contemplation of the West Bengal State Support for Industries Scheme, 2013 floated by the Government of West Bengal at the earliest, positively within one month from date.

Immediately thereafter, the respondent authorities shall proceed further to process the application of the petitioner for issuance of Registration Certificate (RC)-II to the petitioner within the said Scheme. If otherwise the petitioner has complied with all due formalities and upon being duly satisfied on a prior inspection as provided under the Scheme, the respondent authorities shall also issue the RC-II in favour of the petitioner within a reasonable time thereafter to facilitate the petitioner getting the benefit of the Scheme at the earliest.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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