In the High Court at Calcutta

Constitutional Writ Jurisdiction

Original Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.O. No.2336 of 2022

Electrosteel Castings Limited and Another
Vs.
The State of West Bengal and Others

For the petitioners	:	Mr. Kishore Dutta, Sr. Adv., Mr. Arif Ali, Adv., Mr. Prabhat Kr. Srivastawa, Adv., Ms. Ankita Singh, Adv.
For the State Respondent	:	Mr. Somnath Ganguli, A.G.P., Mr. Sukalpa Seal, Adv., Mr. Paritosh Sinha, Adv.
For the respondent no.5	:	Mr. T.M. Siddiqui, Adv., Mr. Suddhadev Adak, Adv.
Hearing concluded on	:	28.08.2023
Judgment on	:	25.09.2023

Sabyasachi Bhattacharyya, J:-

1. The West Bengal Government floated an incentive scheme by the name of "The West Bengal Incentive Scheme, 2004" (for short, "the 2004 Scheme") *vide* Notification No.134-CL/O/Incentive/17/03/01 dated March 24, 2004, published in the Official Gazette on March 31, 2004.

2. An "eligible unit" under Clause 3(xviii) of the 2004 Scheme means a unit in the large/small scale sector having Registration Certificate issued by the Directorate of Industries (DI) and Eligibility Certificate by the WBIDC or Registration Certificate issued by the District Industries Centre, as the case may be.

3. The petitioner no.1 made a composite application for registration and eligibility under the said Scheme and obtained a Registration Certificate on March 4, 2005 and an Eligibility Certificate on February 8, 2006. Thereafter, the petitioner applied for an amendment of the Registration Certificate on December 14, 2005 to modify the 'Item of Manufacture' from "Piped Coal Gas" to "Conversion of Furnace (Furnace Oil to Coal Gas)". Such amendment was allowed, thereby modifying the 'Item of Manufacture' as "use of Coal Gas in place of Furnace Oil."

4. It is relevant to mention that the Eligibility Certificate issued on February 8, 2006 also showed the 'Item of Manufacture' as "use of Piped Coal Gas in place of Furnace Oil."

5. Pursuant to a Certificate of Expenditure issued by the respondent no.6, that is, Greater Calcutta Gas Supply Corporation Limited (GCGSCL), the WBIDC sanctioned Piped Coal Gas subsidy under the 2004 Scheme to the petitioner no. 1 to the tune of Rs.10,00,000/- towards capital investment for conversion for the use of Piped Gas and Rs.186.71 Lakh towards Coal Gas subsidy.

6. Thereafter, the sanction of Piped Coal Gas subsidy was amended on June 15, 2009, revising the subsidy to Rs.186.52 Lakh instead of Rs. 186.71 Lakh. Subsequently, *vide* letter dated July 8, 2009, the

WBIDC sanctioned Coal Gas subsidy amounting to Rs.218.61 Lakh on September 3, 2009.

7. The petitioners, allegedly, were enjoying benefits out of the previous Scheme in the form of Sales Tax, for which it had not applied for afresh despite sanction letters being issued by the WBIDC.

8. The petitioners had applied for issuing certificate for obtaining incentive under the previous scheme for subsidy of Sales Tax before the Sales Tax Authorities, in reply to which it was intimated that since there is no disclosed item for sale, it cannot issue a certificate certifying the tax paid by the petitioners.

9. The petitioners, realizing that the item of sale, being Ductile Iron Pipe, had not been mentioned in the application and, as such, wrote to the DI requesting for an amendment to the Registration Certificate dated March 4, 2005, for amendment of 'Item of Manufacture' to be read as "Use of Coal Gas for Manufacture of 2 Lakh MTs of Ductile Iron Pipe". However, such amendment was refused.

10. Further litigation ensued. A writ petition bearing WP No.110 (W) of 2019 was preferred, which was decided by a coordinate Bench on March 15, 2019 by directing the respondent-Authorities to consider and decide the amendment application of the petitioners within eight weeks from the date of communication of the order, granting reasonable opportunity of hearing to the petitioners.

11. A hearing was held but no order was passed, compelling the petitioner to file WP No.345 (W) of 2020 which was decided on October 21, 2020 directing the respondent no.2 to pass a reasoned order. In the meantime, *vide* letter dated January 13, 2020 issued by the respondent no.1, a clarification was sought from respondent no.6 mentioning that any wrong input may cost an "unpleasant burden" of Rs.4,11,87,004/- to the State Exchequer. According to the petitioners, such observation swayed the respondent no.6, prompting the latter to change its previous stand and indicate that use of Piped Gas for commercial purpose was commenced prior to January, 2004.

12. Learned counsel for the petitioners argues that the Eligibility Clause that is Clause 2(xviii) of the 2004 Scheme covers the petitioners. Both the Eligibility Certificate as well as the Registration Certificate were issued to the petitioners and the issue of the petitioner's eligibility to get subsidies under the 2004 Scheme could not have been reopened by the respondents subsequently.

13. It is submitted that the Eligibility Criteria contemplates subsidy for conversion for use of Piped Gas in case of existing units, for a period of five years from the date of commencement of supply of gas or commercial manufacture/operation of the unit. It is argued that commercial operation of the unit of the petitioners commenced after January 1, 2004. Apart from the fact that Eligibility Certificate and sanction orders were already issued by the WBIDC to the petitioners, it is argued that Registration Certificate was also duly issued. Hence, in the garb of refusing an amendment to the Registration Certificate, the respondents acted without jurisdiction and authority in virtually holding that the petitioners are not entitled to the subsidy at all.

14. The respondent no.6 -GSGSCL, it is argued, has taken a contradictory stand. Initially it issued a certificate on April 29, 2008 stating that the petitioners were consuming Coal Gas for its commercial production since January 2, 2004 and reiterated such stand on November 6, 2019; but subsequently, under the warning of the Joint Secretary of the Government of West Bengal to re-verify its stand, the respondent no. 6 altered its till-then consistent position and intimated that metering system was installed at the petitioners' premises on November 01, 2003 which "should be" treated as the date of commencement of supply.

15. It is argued that the petitioners had taken the supply on November 01, 2003 for the purpose of setting up and fabrication of the unit, but had started commercial production only on and from January 2, 2004. The above contention, it is argued, is borne out by the consumption pattern and production pattern, which ascertains the date of actual commercial production. It is argued that the respondent no.6 issued a certificate of expenditure in 2007 demonstrating that from November 01, 2003 to January 06, 2004, the bill raised by respondent no.6 was only for Rs.95,931/- whereas from January 6, 2004 till January 31, 2004, the consumption bills raised on the petitioners was to the tune of Rs.6,00,505/-. The petitioners also forwarded its documents pertaining to month-wise and year-wise production of DI pipes to the DI *vide* letter August 30, 2019, which have not been disputed by the respondents in their oppositions.

16. Learned senior counsel appearing for the petitioners contends that the above relevant documents and facts were not considered by the respondents while passing the impugned order. It is submitted that the only ground of rejection was that there is no way to segregate trial production and commercial production and as such, the DI considered the date of commencement of production to be November 01, 2003. It is argued that such question is not disputed and cannot be reopened since the certificate and the letter of respondent no.6 clearly mentioned that starting date for consumption of Piped Coal Gas for commercial production was January 2, 2004.

17. Learned senior counsel argues that the DI, under the Scheme, has no obligation to ascertain the commencement date of commercial production. As to the respondents' argument that the amendment was sought after the expiry of the Scheme period, learned senior counsel for the petitioners argues that the application for registration was to be filed within the period of operation of the Scheme, which was duly done and registration granted in the present case.

18. The Scheme operates by an application for registration being made which, upon scrutiny, if found to be in order, the applicant unit is to be registered by issuance of a certificate of registration with a copy to the WBIDC for issuance of eligibility certificate. Upon its satisfaction, the WBIDC issues an Eligibility Certificate with a copy endorsed to the DI. Thereafter the DI and WBIDC may cause joint inspection if considered necessary. The WBIDC issued the Eligibility Certificate on February 8, 2006 in the present case.

19. The respondents also argue that there was no scope of amendment of "item of activity" in the certificate of registration except for employment, investment, etc. However, the certificates of registration and eligibility fulfilled the requirements as stated in the operational procedure and the amendment is only formal in nature.

20. Learned counsel for the respondent nos.1 to 4 contends that the first amendment was sought by the petitioners within the subsistence of the Scheme. Consequently, the concerned authority had issued the amended Registration Certificate on January 20, 2006 in respect of change of annual capacity of activity of the project. However, the petitioners applied on August 8, 2014, after nine years from the date of grant of original Registration Certificate and subsequent to the end of the validity period of the Registration Certification on March 3, 2008 and even after the expiry of the Scheme on March 31, 2009, seeking to insert the terms "use of Coal Gas for manufacture of 2 Lakh MT of Ductile Iron Pipes" under the item of activity, which was not permitted after the expiry of the 2004 Scheme.

21. During the hearing before the concerned authority, the petitioners were requested to submit several documents, including a letter stating the reasons for submission of prayer for further amendment after a period of more than eight years since the first amendment, month-wise and year-wise production versus consumption figures of DI pipe and Piped Coal Gas for 5 years starting from the date on which the Piped Coal Gas was first supplied along with Monthly Coal Gas Bill supplied by respondent no.6 and a declaration that Piped Coal Gas was solely used for the production of DI pipes for the period referred to above.

22. It is reiterated by the respondent nos. 1 to 4 that even as per the petitioners, Piped Coal Gas was used from November, 2003 on trial basis whereas for commercial purpose from January, 2004.

23. As per Clause 13.1 of the Scheme, an existing unit is eligible for subsidy for conversion for use of Piped Gas in case the existing unit undertakes conversion for use of Piped Gas for manufacture/operation on or after January 01, 2004. The petitioners started such use from prior thereto, that is, from November, 2003.

24. That apart, learned counsel for the respondent nos. 1 to 4 argues that no change or amendment of certificate can be entertained after the expiry of the Scheme.

25. Heard learned counsel for the parties. The Scheme has been annexed to the writ petition. Under the eligibility criteria, a unit has to have a Registration Certificate issued by the DI and Eligibility Certificate from the WBIDC to be eligible for subsidies under the 2004 Scheme. In the present case, the Certificate of Registration was issued in favour of the petitioners by the DI on March 4, 2005 and the Eligibility Certificate issued by the WBIDC on February 8, 2006.

26. After such issuance, the respondent nos.1 to 4 cannot resile from such position and reopen the issue of the petitioners' eligibility on the pretext of deciding on an amendment application by the petitioners. At the worst, the respondent nos. 1 to 4 could have refused such amendment, but not reopen the issue of eligibility of the petitioners.

27. Secondly, there is no specific bar in the Scheme to apply for an amendment to the Registration Certificate even after the expiry of the Scheme period. The disbursal of subsidy under the 2004 Scheme pertains to the period envisaged by the Scheme and not beyond. However, the amendment, if allowed, would relate back to the date of the Registration Certificate and, as such, could be allowed even subsequently.

28. Thirdly, the amendment sought by the petitioners was formal in nature, not touching the eligibility of the petitioners under the 2004 Scheme as such.

29. The mode of production (using piped coal gas) determines the eligibility, which would remain unchanged even after the amendment. It is only the end-product manufactured by such process which was sought to be amended. There is no dispute that the petitioners actually manufactured ductile iron pipes during the relevant period, for which they furnished documents to the respondents as well. Now the petitioners only want to introduce that to the Registration Certificate to enable them to get sales tax subsidies under a different scheme. There is no reason why the same should be refused, because the petitioner's eligibility under the 2004 Scheme remains the same. In respect of such eligibility, nothing turns on the manufactured product.

30. Sub-Clause 13.1 of the 2004 Scheme lays down the scope of subsidy. The caption thereof is "Subsidy for conversion for use of piped gas". The sub-clause stipulates that an existing unit, irrespective of its location, undertaking conversion "for use of piped gas for manufacture/operation" on or after 1st January, 2004 will be eligible to subsidy.

31. In the present case, the debate raised by the respondents post facto is whether the petitioners started such commercial production before or after the cut-off date of January 1, 2004. The said issue is not relevant for deciding the petitioners' request for amendment, in any event.

32. Moreover, as per the query of the respondent-Authorities, the petitioners produced substantial documents to indicate its consumption pattern from the date when the connection was first taken, that is, November 01, 2003 onwards.

33. The petitioners' case is that commercial production was started from January 2, 2004. Documents were produced by the petitioners to indicate that the consumption was minimal prior to January 1, 2004, obviously indicating that the same was a trial period, during which the facility was being set up. Hence, within the contemplation of the Scheme, the conversion for use of piped gas, which had to be for manufacture/operation, started only after January 01, 2004 in terms of Clause 13.1 of the Scheme.

34. That apart, the said chapter cannot be reopened after grant of Eligibility Certificate and Registration Certificate under the Scheme long back. Clause 13.1 read with Clause 3(xviii) shows that a unit will be deemed to be an eligible unit under the Scheme upon Registration Certificate being issued by the DI and Eligibility Certificate being issued by the WBIDC, which happened for the petitioners long back.

35. The respondent nos.1 to 4 acted palpably without jurisdiction in reopening the question of eligibility in the garb of deciding on an application for amendment of the registration certificate.

36. Insofar as justification for the delay in seeking the amendment is concerned, the petitioners have made out sufficient explanation, since Sales Tax subsidy under a different scheme was refused to the petitioners due to non-mention of the end product under the 2004 Scheme, for which the Registration Certificate was sought to be amended.

37. In view of the above considerations, the grounds of refusal in the impugned decision of the respondent nos.1 to 4 to reject the amendment sought by the petitioners are palpably illegal and *de hors* the law and beyond the provisions of the 2004 Scheme.

38. Hence, WPO No.2336 of 2023 is allowed, thereby setting aside the impugned decision of the respondent no.6, whereby the amendment sought by the petitioner was rejected.

39. The respondent no.2 shall reconsider, in the light of the above observations, the application for amendment of Registration Certificate filed by the petitioners, which was refused by the impugned decision, by taking into consideration all documents produced by the petitioner on such score. In the event the respondent no.2 has any further queries from the petitioners, the petitioners shall be given a further opportunity to produce documents, if so required, upon which the respondent no.2 shall come to a reasoned conclusion as to the application for amendment of the petitioners. It is expected that such reconsideration and consequential steps shall be concluded by the respondent no.2 at the earliest, preferably within one month from the date of communication of this order to the respondent no.2.

40. There will be no order as to costs.

41. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)