IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

223 **CWP-7116-2021**
Date of Decision: 29.11.2023

M.D. PLASTIC PRODUCTS
... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS
... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

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Present: Mr. Arshdeep Singh, Advocate
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab.

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VINOD S. BHARDWAJ, J. (ORAL)

Present petition is for directing the respondents to release the sanctioned Capital Subsidy/Investment Incentive of Rs.1,18,600/- as per Sanction Letter dated 10.12.1999 (Annexure P-2) alongwith interest as per the Industrial Policy, 1996 and in terms of Judgment dated 20.05.2011 rendered by this Court in case titled as 'M/s Balak Oxygen Gases Plant and others Versus State of Punjab and another' (Annexure P-7).

Counsel for the petitioner has submitted that the petitioner is the sole proprietorship and was engaged in the manufacturing of plastic granules and running its establishment under the name and style of "M.D. Plastic Products D-300 Focal Point, Patiala since 1998. The petitioner proprietorship was attracted by the incentives provided under the Industrial Policy, 1996 and decided to set up a small scale industrial unit under the above Industrial Policy. He submitted a project report alongwith the supporting documents with the respondents for seeking subsidy. The Director of Industries Department, vide its memo No.DIC/PTA 9168 to 70 addressed to the General Manager, District Industry Centre, Patiala informed that the Committee had sanctioned an amount of Rs.1,18,600/- in favour of the petitioner sole proprietorship. Despite the sanction of the capital subsidy, the amount in question had not been released even though a period of nearly 25 years has elapsed since the sanction of the said capital subsidy/ investment incentive. It is further contended that the name of the petitioner proprietorship figured at Sr. No.930 with seniority number 3227 as framed by the department for payment of subsidy. When despite lapse of a substantive period, the release had not been done, a legal notice dated 25.10.2019 was also sent alongwith other communication and reminders, however, the respondents have failed to reply to the same. A communication was, however, received from respondent No.3, stating that the bank account of the industrial unit of the petitioner was closed, whereupon the personal account details alongwith RTGS and the branch details of the petitioner were furnished therein. Hence, all the formalities, as were required for ensuring release of the capital subsidy, had also been fulfilled. It is contended that since the unit in question had been shut down in the year 2007, hence, there was no occasion for the petitioner to operate the said bank account in the name of the sole proprietorship itself. Eventually, the Oriental Bank of Commerce, Patiala Branch merged with the Punjab National Bank. The fresh account details were also furnished by the petitioner to the respondents, however, the needful has not been done so far. Hence, the present petition.

Reply by way of a counter affidavit had been filed by the Director of Industries and Commerce, Punjab, wherein it is acknowledged by the respondents that a capital subsidy of Rs.1,18,600/- had been sanctioned in favour of the petitioner unit vide letter dated 10.12.1999 alongwith interest in accordance with the directions of the High Court given in its judgment dated 20.05.2011 passed in CWP-19007 of 2002 titled as 'M/s Balak Gases and Oxygen Plant and others Versus State of Punjab and another'. The unit having been set up in 'B-Category' with an investment of Rs.5,93,000/- and 20% of the fixed capital cost on investment (FCI) worked out to Rs.1,18,600/- which was duly sanctioned. The amount in question is payable to the industrial unit and not to the proprietor of the firm. It was on the said score that the respondents contend that the capital subsidy/investment incentive was sanctioned in favour of the firm and not in favour of the proprietor, hence, the capital subsidy was not released in the account of the petitioner as a proprietor. It is further submitted that the industrial unit was found closed at the time of disbursement in the year 2007, hence, the amount could not be released to a closed unit. It was also averred that after finalization of orders of this Court in the case of ***<u>M/s Balak Gases and Oxgen Plant (supra)</u>***, pursuant to dismissal of the SLP by the Hon'ble Supreme Court on 26.03.2015, the State Government decided to frame guidelines to disburse the sanctioned capital subsidy to eligible and entitled closed/sold units. A High Power Committee headed by the Chief Secretary was also constituted by the State of Punjab vide notification dated 21.11.2016 to suggest the guidelines, wherein an interim decision was taken with regard to release of sanctioned amount of capital subsidy. The operative part of the decision dated 11.12.2018 was to the effect that in case the constitution of the unit and its bank account continuously exist in the same manner as was at the time of sanction of the subsidy, then amount of sanctioned capital subsidy may be transferred to such bank account of the unit (firm/company etc.) upon verification and after obtaining an affidavit as per Annexure-I. The guidelines in question were also finalized in the meeting held on 24.09.2019. The subsidy is stated to be not released to the petitioner unit in terms of the abovesaid decision taken by the Department not to release subsidy to the closed units. It is also admitted that the petitioner is the proprietor of the industrial unit and has provided his own personal account number. The Department has specifically submitted in para 16 that it is not denying the claim of subsidy to the petitioner, however, the same was to be disbursed only to the units on the basis of their own seniority and as per the official guidelines framed by them. The decision of the respondents was thus claimed to be justified.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The undisputed facts which emerge from a consideration of the present case are that the petitioner had applied for the grant of capital subsidy under the applicable Industrial Policy, 1996 of the Government as a sole proprietorship firm. An averment in this regard was specifically made in paragraph No.3 of the petitioner that it was a sole proprietorship firm, which such fact has not been disputed by the respondents while filing response to the abovesaid paragraph. The said description has also been mentioned in column No.9 of the application form for permanent registration as a small scale industry submitted by the petitioner, in duplicate, with the respondent Department. The capital subsidy was sanctioned by the respondents vide letter dated 10.12.1999. The respondents still acknowledge their liability to release the said subsidy, however, the twin objections that have been raised by the respondents are to the following effect:

(i) That the petitioner has submitted his personal account detail and that the account of the sole proprietorship is lying closed; and

(ii) The respondent-State has taken a decision in its meeting dated 11.12.2018 as affirmed on 24.09.2019, as per which the capital subsidy was not to be released to a closed units.

A perusal of the decision taken on 11.12.2018 and as affirmed by the council of Ministers in its meeting dated 24.09.2019 shows that the said decision does not prohibit release of capital subsidy in favour of a closed unit. The operative part of the decision, relied upon by the respondents in their written statement, is only to the effect that in case constitution of the firm and its bank account continuously exist, then the payment is to be released in the said account. The said decision does not deal with an issue that the capital subsidy would not be released in favour of a unit which is closed. The operative of the said decision relied upon by the respondents is extracted as under:

> ***"Closed Units***
> *In case the constitution of the unit (firm/company etc.) and its bank account continuously exists in the same manner as was at the time of sanction of subsidy, then amount of sanctioned capital subsidy may be transferred to such bank account of the unit (firm/company etc.) upon verification after obtaining affidavit as per Annexure I"*

Further, the respondents have also failed to refer to any provision of the Industrial Policy, 1996 as per which it may be concluded that an industrial unit ought to be functional even at the time when the respondents release the capital subsidy. The respondent-State has failed to refer to any provision of the Industrial Policy, 1996 as per which it may be concluded that the petitioner did not operate the unit for a period specified in the Industrial Policy, 1996 to be eligible for grant of capital subsidy. In any case, the stand of the respondents stands belied by the fact that the capital subsidy/investment incentive had duly been sanctioned on 10.12.1999. Invariably, the petitioner fulfilled the terms and conditions of eligibility for release of capital subsidy and the same would have been duly considered while sanctioning the said capital subsidy. Even otherwise, the decision taken by the Committee in its meeting dated 11.12.2018 and affirmed by Council of Ministers on 24.09.2019 cannot lay the basis for denial of a benefit that had already been crystallized in favour of the petitioner. Any subsequent decision, taken nearly after 20 years of the subsidy being sanctioned cannot operate retrospectively and justify withholding or denial of the subsidy. The petitioner having altered its position in terms of the Policy of 1996 and an assurance of subsidy by the State, cannot be told after 20 years of accrual of the right that the State is now wanting to alter the conditions and prescribe additional conditions to the detriment of the petitioner. In doing so, action of the State shall be hit by promissory estoppels and bind the State to fulfill its assurance, as promised, once the rights stands crystallized. Any such decision, later in point of time, can be enforced prospectively and after the stake-holders are informed, and would not be cited against a person whose eligibility and entitlement have already been upheld and affirmed. A failure on the part of the State in discharging its obligation and releasing the subsidy, cannot pave way for State to devise ways and mechanism to absolve itself of its liability. Still further, the correspondence relied upon by the respondents and their own averment in the written statement is to the effect that the petitioner is entitled to the grant of capital subsidy.

The second ground for not releasing the subsidy is that the same could not be released for reasons that the capital subsidy was sanctioned in the name of proprietorship firm, whereas the petitioner had furnished his personal account number.

I find that the abovesaid reason cited by the respondents for non-release of the capital subsidy, which was duly sanctioned and the claim of the petitioner to the release thereof is undisputed, to be wholly fallacious. The law in this regard is well settled. The identity of the sole proprietorship is that of the proprietor himself and there can be no distinction drawn qua that. This Court has already held in the matter of ***'Om Parkash Narang Versus The Permanent Lok Adalat (Public Utility Services) and another'*** bearing No.***CWP-35310-2019*** decided on ***11.10.2023*** that there is no legal distinction between the identity of a sole proprietorship vis-a-vis an individual and that any such artificial classification cannot be cited by the respondents as a basis to deny a legitimate due in favour of the petitioner. The juristic entity of the proprietors as well as the proprietorship is one and same and not distinct or separate. The relevant extract of the above judgment reads thus:

> *"The issues that arise for consideration before this Court are as to whether an individual would also include a proprietorship concern/firm or not? Or that the entity of proprietorship concern/firm is different and distinct from that of an individual.*

I find myself in agreement with the judgments relied upon by the counsel for the petitioner which have equated an individual to a proprietorship concern/firm and have held that the entity of the proprietorship concern/firm is not distinct from that of an individual. Further, the said issue was considered by this Court in the matter of ***Association of Property Professionals Versus State of Haryana and Others*** *bearing* ***CWP No.19796-2018*** *decided vide judgment dated 12.12.2022. Relevant extract thereof reads as under:-*

> *"17. In the above-said background, it is essential to look into the definition/interpretation of sole proprietorship under various other statues/statutory framework as an external aid to assign meaning to the said phrase. In the context of the taxation law, a sole proprietorship business in India is not taxed as a different legal entity. Rather, the business owners file their business taxes as a part of their individual tax returns. Similarly, under the Chartered Accountants Act, 1949, Section 2 (haa) defines sole proprietorship to mean individual who engages himself in the practice of accountancy or offers to perform his services refer to in clauses (ii) to (iv) of Sub Section 2. Thus, the entity of sole proprietorship has been described as that of the individual himself. Further, a sole proprietorship does not require any mandatory registration under any law. The requirement for registration of license is only specific to the nature of the business being undertaken. There is no regulatory or statutory mechanism which gives a distinct entity to*

> *a sole proprietorship other than that of the individual-the owner himself.*
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> *18. It is thus a well settled position in law that a proprietory (sic) concern and the proprietor are one and the same and that they cannot be treated as separate juristic entities. The proprietary concern derives its identity and individuality from the proprietor and subsumes itself in the proprietor. Segregation of the two is incomprehensible in law when it comes to determining their rights and liabilities and legal fiction regards them as one. They would thus fall under the definition of an individual. Consequently, the petitioners as sole proprietors cannot be treated as an entity "other than individual" when the registration as a Real Estate Agent is in the name of the proprietory (sic) concerned. The demand raised through Public Notice (Annexure P-8) is thus bad and unsustainable and the petitioners would be liable to pay the registration charges/renewal charges as are applicable to the individuals instead of the category "other than individual"."*

It is incomprehensible that the basic position in law was unknown to the State despite having sufficient legal expertise. It seems that the Authorities were more inclined towards raising objections, even if frivolous & wholly untenable, rather than taking decision to obviate the hardships of the claimant and to reduce their agony and harassment. The position of law on the objection raised has always been well settled and saddled. There being no volatility, there is no reason why the benefit ought to have been withheld.

I am thus of the opinion that the respondents have been playing hide and seek with the petitioner in not releasing the rightful dues in his favour by raising untenable objections, despite the position in law being well settled.

Undisputedly, the respondents have retained the capital subsidy due to the petitioner since 1999 and have delayed the same, on one pretext or the other, for a period of nearly 24 years from the date when the capital subsidy was sanctioned. While deprecating the conduct of the respondents, the present writ petition is allowed. Respondents are directed to release the sanctioned capital subsidy in favour of the petitioner vide memo dated 10.12.1999 within a period of eight weeks of the receipt of a certified copy of this order alongwith interest @ 6% per annum from the date of filing of the present writ petition till its disbursement. The respondents are further burdened with a costs of Rs.50,000/- for subjecting the petitioner to unnecessary harassment by raising frivolous pleas, which were not tenable in law and were raised ignoring the settled law. The costs be deposited with the High Court Legal Services Committee, Chandigarh. The respondents may seek recovery of the said costs from the employee liable, as per law.

Petition stands allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

NOVEMBER 29, 2023
rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No