

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble The Chief Justice T. S. Sivagnanam

and

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 2458 of 2023

With

IA No. CAN 1 of 2023

CAN 2 of 2023

State of West Bengal & anr.

Vs.

M/s. Ambuja Cements Limited & Ors.

For the Appellant State : Mr. Kishore Dutta, ld. A.G.
Mr. Anirban Ray, ld. G.P.
Mr. Tanoy Chakraborty
....advocates

For the respondent no. 1 & 2 : Mr. Ratnanko Banerjee, ld. Sr. Adv.
Mr. Sakya Sen
Mr. Rajarshi Dutta
Mr. Soorjya Ganguli
Mr. Somdutta Bhattacharyya
Mr. Mohit Dang
...advocates

Reserved on : 29.04.2024

Judgment on : 14.05.2024

Hiranmay Bhattacharyya, J.:-

1. This appeal is at the instance of the State of West Bengal and is directed against an order dated 31.08.2023 passed by a learned Single Judge in WPA 9546 of 2019.
2. By the order impugned, the writ petition stood allowed and the authorities of the State of West Bengal were directed to ensure that the balance amount due to the writ petitioners in terms of the break up given in the

supplementary affidavit filed by the writ petitioners before the learned Single Judge is disbursed to the writ petitioners within the time limit stipulated thereunder. By the said order, the order of the Additional Chief Secretary dated 14.02.2019 was set aside.

- 3.** Ambuja Cement Ltd. (for short “ACL”) shifted its cement manufacturing unit to Farakka in the District of Murshidabad. The Commerce and Industries Department vide letter dated 02.03.2006 granted Special Package of Incentives to ACL Farakka unit under the West Bengal Incentive Scheme, 2000 (for short “WBIS, 2000”) which inter alia included the benefit of Industrial Promotion Assistance (for short “IPA”) without any financial cap for a period of five years and two months from the date of commencement of commercial production. The Director of Industries, West Bengal issued the Certificate of Registration under the WBIS, 2000 to ACL on May 16, 2006 in respect of its Farakka unit, the validity period of which was up to May 15, 2009. The unit claims to have commenced its commercial production at its Farakka unit from May 31, 2007. ACL claims that the unit is entitled to claim incentives for a period of five years and two months from the date of commencement of commercial production i.e., from May 31, 2007 to July 31, 2012.
- 4.** West Bengal Industrial Development Corporation (for short “WBIDC”) issued Eligibility Certificate under WBIS 2000 on May 18, 2010 in respect of the cement unit of ACL situated at Farakka. ACL claims that the WBIDC by a letter dated June 13, 2011 sanctioned Rs. 628.22 lakhs for the first year (2007-08), Rs. 1443.41 Lakhs for the second year (2008-09) and Rs. 3518.76 lakhs for the third year (2009-10) towards IPA. The ACL claims that IPA for the periods 2007-08 and 2008-09 has been received in full and only a portion of IPA for the period 2009-10 has been received by ACL.
- 5.** ACL submitted a representation claiming release of IPA under WBIS, 2000. Alleging that the IPA under the WBIS, 2000 has not been released in favour of ACL, a writ petition being WP No. 1397 (W) of 2018 was filed which was disposed of by an order dated 31.01.2018 by directing the first respondent

therein to consider and decide the claim lodged by ACL in its letter dated July 14, 2017 in accordance with law after affording a reasonable opportunity of hearing to the writ petitioners and by passing a reasoned order within the time limit stipulated thereunder.

6. Pursuant to the said order dated 31.01.2018 passed in WPA 1397 of 2018, the Additional Chief Secretary passed an order dated 14.02.2019 which was challenged by ACL in writ petition being WPA 9546 of 2019. The said writ petition was allowed by the impugned order. Being aggrieved by the order dated 31.08.2023 passed by the learned Single Judge in WPA 9546 of 2019, the State of West Bengal has approached this Court with this intra court appeal.
7. The Learned Advocate General contended that a sum of Rs. 41.1039 crores was released in favour of ACL as IPA against Fixed Capital Investment (for short "FCI") of Rs. 41 crores. By referring to Para 2 of the order dated 02.03.2006, he contended that IPA was granted in lieu of Interest Subsidy. He also referred to Para 9 of the said order in support of his contention that there is a financial cap for release of IPA. He also placed reliance on the observations of the Finance Department dated 28.12.2018 to buttress his contention that IPA had a financial cap. The Learned Advocate General further contended that directing the State to release IPA in excess of FCI would be opposed to public policy. In support of such contention, the learned Advocate General referred to the provisions of Section 23 of the Indian Contract Act and the decisions of the Hon'ble Supreme Court in **Gherulal Parakh vs. Mahadeodas Maiya and Others** reported at **AIR 1959 (SC) 781** and **Central Inland Water Transport Corporation Ltd. and Another vs. Brojo Nath Ganguly and Another** reported at **(1986) 3 SCC 156**.
8. He contended that the purpose for grant of incentives is to encourage setting up of industries. According to him, FCI is the benchmark and in the absence of a declared policy that the amount of IPA may exceed FCI, a direction upon the State to grant IPA over and above the FCI would be against public interest.

9. Mr. Banerjee learned Senior Counsel submitted that Special Package of Incentives granted to ACL vide letter dated 02.03.2006 specifically states that IPA would be without any financial cap. He submitted that the learned Single Judge after considering the special package observed that the appellants herein went on continuously acting on the said special package for more than two years by duly disbursing the subsidies in favour of ACL. He further submitted that the learned Single Judge observed that the special package given to ACL was clear to the effect that there would not be any financial cap by way of adjustment against VAT and CST liability of that year. Mr. Banerjee also placed reliance upon a decision of this Court in **MAT 1965 of 2022** in the case of **State of West Bengal and Another vs. Birla Corporation & Others** delivered on 09.04.2024 in support of his contention that the IPA as per the special package of incentives was without any financial cap.
10. Heard the learned advocates for the parties and perused the materials placed.
11. This Court shall first decide as to whether the Special Package of Incentives granted in favour of ACL vide order dated 02.03.2006 stipulated any overall financial cap based on Fixed Capital Investment for release of IPA.
12. The State of West Bengal introduced the WBIS, 2000 which came into effect on and from 01.01.2000 and remained valid for a period of 5 years ending on 31.12.2004. Para 3(xiii) of the said scheme defines “Mega Unit” to mean an eligible unit of special characteristics set up on or after 01.01.2000 with investment exceeding Rs. 25 crores (w.e.f 01.07.2001). An eligible industrial unit under the said scheme is entitled to various subsidies including Interest Subsidy.
13. Para 18 of the WBIS, 2000 deals with Mega Projects. It states that notwithstanding anything contained anywhere in the Scheme, the State Government may consider granting special package of incentives under WBIS, 2000 to a mega project having due regard to the characteristics of the project case by case basis in the following areas namely size of investment, special nature of industry, employment potentiality, downstream effect of industry, ancillarisation effect of the industry and export potentiality.

- 14.** Government of West Bengal, Commerce and Industries Department vide letter being No. 148/88/C&I dated 02.03.2006 approved a special package for ACL located at Farakka, Murshidabad as the unit had proposed to set up a cement manufacturing unit with an investment of Rs. 100 crores.
- 15.** The said package provided for IPA and all other subsidies as laid down under the WBIS, 2000 except Interest Subsidy.
- 16.** As per the said package, IPA was 75% of the VAT and Central Sales Tax (CST) paid in the year previous to the year for which IPA would be released without any financial cap by way of adjustment against VAT and CST liability of that year. The VAT and CST paid would not include VAT and CST paid on purchase of raw material.
- 17.** The mode of calculation of IPA was specifically laid down in the approval letter dated 02.03.2006. The unit was entitled to make applications in prescribed forms, on commencement of commercial production and on investment of Rs. 25 crores, to the Managing Director WBIDC Ltd. praying for release of incentives. On receipt of the application, Managing Director, WBIDC would intimate the Commissioner, Commercial Taxes certifying that the unit has been duly registered with Director of Industries, W.B under WBIS, 2000 and Eligibility Certificate has been issued by the WBIDC under the said Scheme. The unit has to apply before the Commissioner, Commercial Taxes requesting him to certify the total amount of tax paid during the year on sales and purchase in respect of which the application has been made. Upon receipt of such application the Commissioner, Commercial Taxes, W.B, after verification, would issue a certificate to the MD, WBIDC certifying the tax paid by the unit on its sales during the year in question. The MD, WBIDC Ltd., on receipt of the aforesaid intimation, will issue cheques for an amount of 75% of the Tax paid by the Unit on its sales in the previous year as IPA. The system would continue for the number of years for which the IPA will be available. It was also specified therein that the benefits will be available for a period as detailed in the enclosed statement A.

- 18.** It is also evident from the said approval letter that it was issued with the concurrence of the Finance Department.
- 19.** After going through the special package of incentives, this Court finds that IPA was to be calculated and released in the following manner.
- (i) IPA would be 75% of the VAT and CST paid in the year previous to the year during which IPA would be released.
 - (ii) IPA would be released without any financial cap.
 - (iii) IPA would be by way of adjustment against VAT and CST liability of that year.
 - (iv) IPA would be available in the scale detailed in enclosed statement A.
- 20.** It is the specific stand of the State that total incentive shall not exceed 100% of the Fixed Capital Investment. In other words, State seeks to impose a cap on the total IPA allowable in respect of a unit based on Fixed Capital Investment.
- 21.** Clause 8 under the heading “Mode of Calculation of IPA” in the approval letter dated 02.03.2006 states that the system will continue for the number of years for which the IPA will be available. Clause (i) under the heading “Package” also states that IPA would be released without any financial cap.
- 22.** ACL claims to have commenced its commercial production with effect from May 31, 2007. Eligibility Certificate for Incentives for Mega Project under the WBIS, 2000 appears to have been issued on May 18, 2010 by WBIDS in favour of ACL. Clause (b) of the Eligibility certificate dated May 18, 2010 states that the IPA @ 75% of VAT and CST paid in the previous year for which IPA would be released for five years and two months from the date of commencement of commercial production i.e., 31.05.2007, without any cap.
- 23.** This Court, therefore, holds that the special package approved for ACL does not stipulate any overall financial cap based on Fixed Capital Investment for release of IPA.
- 24.** If the object of the State was to limit IPA to the extent of FCI, a stipulation to that effect ought to have been incorporated in the order extending Special Package of Incentives. The Special Package of Incentives extended in favour of

ACL is silent as to any overall financial cap on IPA based on FCI. To the mind of this Court, in the absence of any stipulation against release of IPA over and above the limit of FCI in the order extending Special Package of Incentives, the claim for release of IPA could not have been rejected on the ground that it exceeds FCI limit. Any contrary interpretation would amount to adding a restrictive clause in the Special Package of Incentives, which is impermissible.

- 25.** Pursuant to the order dated 31.01.2018 passed in W.P. No. 1397 of 2018, Additional Chief Secretary, Department of Industry, Commerce & Enterprise, Government of W.B conducted a hearing and passed an order dated 14.02.2019 thereby rejecting the application of ACL for disbursement of incentive in excess of Fixed Capital Investment.
- 26.** The finding returned by the Additional Chief Secretary in its order dated 14.02.2019 is based on the observation of the Finance Department dated 28.12.2018. This Court finds that such observation of the Finance Department was in the context of specification of overall financial limit in Para 20(e)(iii) of WBIS, 2004 that the total incentive shall not exceed 100% of the FCI in any case.
- 27.** The Additional Chief Secretary after quoting a portion of the observation of the Finance Department dated 28.12.2018 in his order dated 14.02.2019 observed that ACL was not entitled for incentive in excess of FCI limit at any point of time.
- 28.** ACL has not claimed any benefits under WBIS, 2004. The issue that arises for consideration is whether IPA as per the approved package for Mega Project in favour of ACL can be disbursed without any financial cap. Such issue has to be answered by considering the special package approved in favour of ACL vide letter dated 02.03.2006 only and not by the terms of WBIS, 2004.
- 29.** Para 18 of WBIS, 2000 deals with Mega Projects and starts with a non obstante clause as stated hereinbefore. Therefore, the conditions stipulated in the special package approved for ACL would have primacy over all other terms of the WBIS, 2000.

- 30.** This Court after considering the package and the mode of calculation of incentives has already held that IPA in favour of ACL would be without any financial cap.
- 31.** The Additional Chief Secretary in his order dated 14.02.2019 expressed a prima facie view that the effect of the order dated 02.03.2006 was that IPA was granted to de-cap the Interest subsidy. After noting Para 9 of the said order dated 02.03.2006, it was observed that IPA is valid for a period of ten years or till the financial cap is reached, whichever ends earlier.
- 32.** The Additional Chief Secretary in the said order observed that the views of the Finance Department only reconfirms what has been stated in the order dated 02.03.2006.
- 33.** For better appreciation, Para 9 of the order dated 02.03.2006 is extracted hereinafter.

“9. In addition to the Industrial Promotion Assistance an amount not exceeding 15% of the VAT paid in the previous year will be released in the manner as indicated above as adjustment against admissible amount of Capital Investment Subsidy and Employment Generation Subsidy for a period of 10 years or till the financial cap is reached whichever ends earlier.”

- 34.** Para 9 starts with the expression “in addition to the Industrial Promotion Assistance”. It is evident therefrom that the nature of the incentive extended by way of special package vide order dated 02.03.2006 in Para 9 is in addition to IPA. Therefore, the expression “for a period of ten years or till the financial cap is reached whichever ends earlier” is not relatable to IPA. That apart, Clause (i) of the order dated 02.03.2006 deals with IPA and specifies that the same will be available as per the scale detailed in the enclosed Annexure “A” which is relatable only to the date of commencement of commercial production and the number of years for which IPA would be available. To the mind of this Court, the order dated 02.03.2006 in no uncertain terms states IPA would be released for the period mentioned in statement A. It goes without saying that only the period for which IPA would be released has been fixed but no financial cap has been imposed therein.

35. The finding of the Additional Chief Secretary is based on irrelevant materials as the observation of the Finance Department relates to WBIS, 2004 which does not have any manner of application to the case on hand. That apart the finding is based on incorrect interpretation of the relevant clauses of the order dated 02.03.2006. The findings of the Additional Chief Secretary in his order dated 14.02.2019, suffer from perversity.
36. This Court also had the occasion to deal with a Special Package of Incentives for a Mega Project containing more or less identical terms and conditions, in **MAT 1965 of 2022** in the case of **State of West Bengal and Another vs. Birla Corporation Ltd. & Others** delivered on 09.04.2024. In the said decision it was held that there is no financial cap of IPA.
37. Now this Court shall proceed to deal with the contention of the State that a direction to release IPA over and above FCI would be against public interest.
38. Clause 18 of the WBIS, 2000 provides for granting special package of incentives under the said scheme to a Mega project. Special Package of Incentives was granted to ACL by order dated 02.03.2006. The terms and conditions of special package have been specifically mentioned in the said Order. It is not in dispute that ACL commenced commercial production from May 31, 2007. Admittedly IPA for certain periods has been released in favour of ACL. The dispute relates to non-disbursal of IPA for subsequent periods.
39. The learned Advocate General would contend that grant of IPA over and above FCI would be opposed to public interest in the light of Section 23 of the Indian Contract Act, 1872.
40. Section 23 of the Indian Contract Act, 1872 speaks of what consideration and objects are lawful and what not.

“23. What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless—

it is forbidden by law ;

or is of such a nature that if permitted, it would defeat the provisions of any law; or is fraudulent ; or involves or implies injury to the person or

property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.”

41. Therefore, if the consideration or object of an agreement is opposed to public policy, the same is unlawful and is void.
42. The State Government felt that there is a strong need for fiscal support for the promotion of industry in the State for which the State Government decided to introduce the WBIS, 2000.
43. In **Brojonath Ganguly** (supra) it was held that contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the Court, are opposed to public policy and require to be adjudged void. The terms of the Special Package in the case on hand does not appear to this Court to be unreasonable and unfair so as to shock the conscience of this Court.
44. In the case on hand, the State upon being satisfied that ACL is entitled to Special Package of Incentives as a Mega Project, issued the order dated 02.03.2006. Admittedly, IPA was released in favour of ACL for a considerable length of time. The State thereafter did not disburse IPA of the subsequent period(s), which prompted ACL to approach this Court. The stand of the State that IPA has a financial cap as reflected in the order of the Additional Chief Secretary, has not been accepted by this court as will be evident from the observation made herein before. ACL approached the writ court seeking to enforce the order dated 02.03.2006. The said action cannot be said to be tainted with illegality. It is for the State to satisfy the court that the said order contains certain terms and conditions which are so unfair and unreasonable that they shock the conscience of the Court. There is no pleading in support of the stand of the State that certain terms are opposed to public policy. Except the submission advanced at the Bar, no materials in support thereof have been produced before this Court. The Additional Chief Secretary, in his

order dated 14.02.2019, only stated that the interpretation should not be contrary to the public policy of the State without disclosing as to how release of IPA over and above FCI limit would be opposed to public policy.

45. For the reasons as aforesaid, this court is not inclined to accept the argument of the learned Advocate General that release of IPA over and above the FCI limit would be opposed to public policy and that the same is against public interest.
46. State extended the Special Package of Incentives in favour of ACL. ACL claimed the benefits under the said package including IPA and the State released IPA for a considerable period of time. To the mind of this Court, the State, after acting upon the order dated 02.03.2006 should not be allowed to resile from its commitments under the said order unilaterally.
47. There is no quarrel to the proposition of law laid down in Gherulal Parakh (supra) that the primary duty of a Court of Law is to enforce a promise which the parties have made and to uphold the sanctity of contracts which forms the basis of society, but in some cases, the Court may relieve them of their duty on the doctrine of public policy. In the case on hand, the State has miserably failed to make out any ground to be relieved by the Court from fulfilling its commitments as already observed hereinbefore.
48. The learned Single Judge was right in holding that the attempt of the authorities of the State was mala fide and arbitrary and designed to defeat ACL's legitimate claim for the balance amount under Special Package.
49. For all the reasons as aforesaid, the appeal stands dismissed. The applications stand disposed of accordingly. There shall be, however, no order as to cost.
50. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, C.J.)

(Hiranmay Bhattacharyya, J.)