In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 192 of 2024

Electrosteel Castings Ltd.
Vs
The State of West Bengal and Ors.

For the petitioner	:	Mr. Abhrotosh Majumdar, Sr. Adv. Mr. Suddhasatva Banerjee, Adv. Mr. Arif Ali, Adv. Mr. Prabhat Kr. Srivastawa, Adv. Ms. Ankita Singh, Adv.
For the WBIDC	:	Mr. Tanoy Chakraborty, Adv. Mr. Suddhadev Adak, Adv.
Hearing concluded on	:	04.04.2024
Judgment on	:	08.04.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner-company is engaged in manufacture and sale of Ductile Iron Pipes, Pig Iron, Sponge Iron and Metallurgical Coke.

2. A Scheme was floated by the Government of West Bengal by the name of West Bengal Incentive Scheme (WBIS), 2000. Clause 18 of the same provided that notwithstanding anything contained anywhere in the Scheme, the State Government may consider grant of special package of incentives under the Scheme to Mega Projects having due regard to the characteristics of the project on a case by case basis in certain areas as mentioned therein.

3. Under Clause 18, the petitioner approached the Government and the proposal of the petitioner was approved *vide* Order No. 1215/JS/DC dated March 22, 2004, granting a package for expansion of the existing project of the petitioner by way of setting up three units at Khardah, North 24 Parganas, Haldia and Kurseong with an investment of Rs. 400 crores for the purpose of manufacturing Ductile Iron Pipes, Cast Iron Pipes, Pig Iron, Steel products, Sponge Iron, Slag (at Khardah), Foundry Coke and other items.

4. In Clause (i) of the Package, it was provided that Industrial Promotion Assistance (IPA) would be given at the rate of 75 per cent of the sales tax paid in the year previous to the year during which IPA would be released, subject to a maximum of 100 per cent of the Fixed Capital Investment (FCI) by way of adjustment against sales tax liability of that year. Capital Investment Subsidy, Industrial Promotional Assistance and Employment Generation Subsidy will be credited to the account of the promoter in advance as and when such claims are preferred and entertained.

5. The mode of calculation of IPA was detailed therein which, *inter alia*, provided in Clause 4 that the unit will make applications in the prescribed forms on commencement of commercial production and on investment of Rs. 25 crores to the Managing Director (MD), West Bengal Industrial Development Corporation (WBIDC) Limited (respondent no. 3), praying for release of incentives as detailed thereinabove.

6. In Clause 5, it was stipulated that on receipt of the application, the MD, WBIDC would intimate the Commissioner, Commercial Taxes (CCT) certifying that the unit has been duly registered with the

Director of Industries, West Bengal that is respondent no. 2, under WBIS, 2000 and Eligibility Certificate has been issued by the WBIDC under WBIS, 2000.

7. The mode of calculation also provided that the unit would apply to the CCT in the form enclosed separately, requesting certification of the total amount of tax paid during the year on sales and purchase in respect of which the application was made. Such application should be filed at the end of each year. Clause 11, importantly, stipulated that the unit would be eligible to all the benefits including IPA as discussed thereinbefore, only after the total investment crosses the limit of Rs. 25 crores and on starting commercial production.

8. The petitioner started commercial production and applied under the Scheme. Subsidies started being disbursed to the petitioner and were released up to the financial year 2010-11. Thereafter, although the petitioner continued furnishing certificates duly from the CCT as envisaged under the Scheme, no further disbursal was made.

9. It is submitted by learned senior counsel for the petitioner that the certificates issued by the CCT were considerably delayed, due to which the claim for the years 2011 to 2015 could only be made in the year 2020, when the last such certificate was given.

10. It is argued that despite all documents being furnished duly by the petitioner, the disbursals after 2011 did not see the light of day.

11. Despite service, the State consistently remains absent, for which the matter is decided *ex parte* against the State.

12. Learned counsel appearing for the respondent no. 3, the WBIDC, argues that the Scheme envisaged a promise on the part of the respondents subject to the petitioner making investment of Rs. 400 crores, out of which admittedly investment of only Rs. 144 crores has been made. That apart, no investment has been made in the District of Kurseong, contrary to the approval. Also, investment has not been made for all the products.

13. It is argued that the matter be relegated to the WBIDC to decide the claim of the petitioner, since the veracity of those are required to be gone into on facts.

14. It is next argued that the application was made only in the year 2020 whereas the claim is from 2011 to 2015. Thus, the claim is time-barred.

15. Learned counsel for the respondent no. 3 also submits that the Eligibility Certificate for certain products annexed to the writ petitioner shows that the same expired in the year 2012. In the absence of any extension, the petitioner was not eligible to get the amounts of subsidy as envisaged in the Scheme.

16. Learned counsel for the respondent no. 3 also places reliance on the last paragraph of Clause 17-A of WBIS, 2000 to argue that State capital investment subsidy is to be released only on completion of total work which has not been done in the present case.

17. In reply, learned senior counsel for the petitioner argues that the Eligibility Certificate was subsequently amended. The petitioner only claims subsidy for the products for which investment was made.

18. It is argued that investment of Rs. 400 crores was the upper limit and not the starting point. As per the IPA offered to the petitioner, the same was in terms of Clause 18 of the WBIS, 2000 but was not directly a part of the said Scheme. In terms of the said approval, investment to the tune of Rs. 25 crores and start of commercial production were the pre-conditions, which were made by the petitioner and disbursal started happening but was stopped after 2011.

19. Upon a comprehensive perusal of the materials and hearing learned counsel, it is evident that the State does not dispute the entitlement of the petitioner with regard to IPA for the relevant years.

20. Respondent no. 3, which was the instrumentality through which the Scheme was being operated, takes several objections which are not tenable in the eye of law.

21. Insofar as the claim of the petitioner is concerned, the same is merely in terms of Clause 18 of the WBIS, 2000 which itself provides that notwithstanding anything contained anywhere in the Scheme, the State Government may consider granting "special package of incentives" under the Scheme to a Mega Project on case to case basis. Thus, Clause 17-A regarding State capital investment subsidy being released on completion of total work does not apply.

22. The incentive package offered to the petitioner is comprised in Order No. 1215/JS/DC dated March 22, 2024, issued by the Government of West Bengal, Commerce and Industries Department, through the Joint Secretary.

23. As per Clause 11 of the Scheme, the unit would be eligible to all benefits including IPA after the total investment crosses Rs. 25 crores and on starting commercial production, both of each criteria were met long back by the petitioner. Only after such criteria being satisfied, the WBIDC started disbursal of the amounts from funds received from the State Government and continued to do so till 2011.

24. There is nothing on record to show that the respondents ever took any objection as to the petitioner not continuing to comply with the provisions of the package.

25. The argument that a minimum investment of Rs. 400 crores in all the districts and in respect of all the products was to be made, for which the offer was given, is palpably contrary to the approval dated March 22, 2004.

26. The said approval envisages Rs. 400 crores as the upper limit and not the minimum for the purpose of being eligible for the Scheme. It is the petitioner which had given such offer and the respondents agreed and approved such offer. In Clause (i) of the approval, it is stipulated that the offer would be available for a period of 15 years or till the financial cap is reached, whichever ends earlier. The financial cap referred to is Rs. 400 cores of investments, which has not yet been reached.

27. The petitioner has annexed certificates issued by the CCT within the contemplation of the approval, which entitles the petitioner to the benefits of the Scheme till the year 2015.

28. Hence, it cannot be said that the petitioner was ever disentitled from getting the benefits of the Scheme.

29. The argument as to limitation is unacceptable, since it is the CCT which took considerable time in issuing the relevant certificates and the petitioner, well within reasonable time, applied for the subsidy for the remaining period till 2015 in the year 2020 which is close after the issuance of the last certificate.

30. Moreover, the entitlement of the petitioner was continuous and not discrete. It was rather the liability of the respondents to disburse the subsidy amounts which they failed to do, necessitating the present writ petition. Hence, there does not arise any question of limitation for the claim.

31. The argument of the WBIDC that the matter should be relegated for decision to it is merely a ploy to stall the payment. Upon being satisfied on all counts, the disbursal had begun and continued till the year 2011. The petitioner has produced all relevant documents and annexed most of them to the writ petition to justify its claim for subsidy under the incentive package till the year 2015. Hence, there is no scope of any factual adjudication as such, since the terms of the approval dated March 22, 2004 are palpably clear.

32. Insofar as the number of products is concerned, the petitioner has had the Entitlement Certificate modified with regard to the products and has been claiming only within the confines of the permitted products under the approval.

33. Thus, I do not find any impediment or justified objection to the disbursal of the entire amount of subsidy till 2015 as claimed by the petitioner in the present writ petition.

34. In such view of the matter, WPO No. 192 of 2024 is allowed on contest, directing the respondent No. 1, the Department of Industries, Commerce and Enterprises of the State of West Bengal, through the Principal Secretary, to disburse to the respondent no. 3 the entire amount payable to the petitioner in terms of subsidy under the IPA offered vide Order No. 1215/JS/DC dated March 22, 2004, annexed at page 70 of the writ petition, for the period between the years 2011 and 2015 within two months from date. Immediately upon receipt of such amount, the respondent No. 3 shall make payment of the entire dues of the petitioner under the subsidy with regard to IPA as mentioned above from 2011 to 2015 within one month thereafter.

35. In the event the respondents fail to adhere to the above timelines, interest shall accrue at the rate of 12 per cent per annum on the total amount payable to the petitioner on and from the date immediately succeeding the expiry of the said 3 months till the date of payment of the amount to the petitioner, which interest shall be payable over and above the principal dues of the petitioner.

36. There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)