



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2024

PRONOUNCED ON : 21.12.2024

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 18741 of 2024

And

W.M.P.No. 20553 of 2024

M/s. K H Exports India Private Limited
Rep. By its Director
Mr.M.Ashraf Ali
having their registered office at
KH Centre 15/2, College Road,
Nungambakkam, Chennai – 600 006.

... Petitioner

..Vs..

1. Government of India
Rep. By its under Secretary
Ministry of Commerce and Industry
Department for Promotion of Industry and Internal Trade (DPIT)
Formerly known as Department of Industrial Policy and
Promotion (Leather Section)
Udyog Bhawan, New Delhi – 110 011.
2. The Managing Director
Footwear Design and Development Institute (FDDI)
A-10/A Sector -24, Noida – 201 301.
3. The Director
Central Leather Research Institute (CSIR-CLRI)
Adyar, Chennai – 600 020. ... Respondents



PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records on the files of the first respondent namely, the order File No.27018/2018-LEATHER-Part-1 dated 29.04.2024 rejecting the request for granting subsidy submitted under unique registration Nos. FD2K190300, CL2K180099 and quash the same and consequently direct the respondents to approve the same in the Steering Committee Meeting for release of the subsidy of Rs.54,21,761/- as per unique registration No. FD2K190300 and Rs.76,79,897/- as per unique registration No. CL2K180099.

For Petitioner :: Mr.Jayesh B. Dolia
Senior Counsel
for M/s. Aiyar and Dolia

For RR 1 &3 :: Mr. K.Ramanamoorthy
Central Government Counsel

ORDER

The Writ Petition has been filed in the nature of a Certiorarified Mandamus calling for the records of the order dated 29.04.2024 of the first respondent whereby the request for grant of subsidy under unique registration Nos. FD2K190300 and CL2K180099 were rejected and quash the same and direct the respondents to approve the same in the Steering Committee Meeting for release of the subsidy of Rs.54,21,761/- for the unique registration No. FD2K190300 and Rs.76,79,897/- for the unique registration No. CL2K180099.



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2. In the affidavit filed in support of the Writ Petition, it had been stated that the petitioner is in the business of tanning, finished leather and manufacturing footwear from 1985.

3. A scheme was introduced called the Integrated Development of Leather Sector (IDLS) scheme for grant of subsidy for development of leather industries. It was extended for modernisation and upgradation of leather industrial units.

4. The second respondent was appointed as Project Implementation Unit (PIU) / Nodal Agency for footwear. The third respondent was appointed as Project Implementation Unit (PIU) / Nodal Agency for tanneries. The scheme stipulated investment of money either through self finance or bank finance and installation of machineries and modernisation of the factory and thereafter apply to the Project Implementation Unit (PIU), who after scrutinising the application can recommend to the first respondent for grant of sanction of subsidy.

5. The petitioner claimed that they were eligible for benefit under the scheme for both their footwear and tannery divisions.



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6. With respect to the foot wear division, it had been stated that the petitioner had incurred cost of modernisation of machineries to an extent of Rs.2,71,08,806.87 through self finance and sought IDLS assistance for Rs.54,21,761/-. They had forwarded their application online and unique registration No. FD2K190300 was generated on 03.11.2020. The inspection by the bankers was on 12.11.2020. A report was submitted to the second respondent on 23.11.2020. A clarification was raised on 07.12.2020 and it was replied on 18.12.2020. The Officials of the second respondent visited the factory on 29.01.2021 and a clarification raised on 15.02.2021 and was replied by the petitioner on the same day.

7. With respect to the tannery division, it had been stated that the petitioner had incurred cost of modernisation of machineries to an extent of Rs.4,17,43,828/-. They sought assistance under the scheme to a sum of Rs.83,48,765/- and restricted it to Rs.76,79,897/-. They had also submitted application online and unique registration No. CL2K180099 was generated on 27.01.2021. The bank had conducted financial appraisal on 21.10.2020 and the inspection by the third respondent was on 18.11.2020. The application was uploaded on 30.01.2021 and accepted by the third respondent on 26.02.2021.



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8. It was contended that the petitioner reasonably expected the first respondent to approve grant of subsidy. But however, an E-mail was received on 01.10.2021 from the second respondent that the applications had been returned and that the applications can be re-submitted under the new scheme. The third respondent also issued a similar E-mail on 30.09.2021 that the applications are returned.

9. The petitioner had sent further representation on 31.10.2022 to consider their request and grant subsidy. The first respondent sent a reply on 20.12.2022 that the scheme for the period of 2017-2020 had been closed and that the issue is subjudice in W.P.No. 25067 of 2021. The petitioner again gave a representation on 07.11.2023 that the scheme was for the period 2017-2020 and the first respondent was referring to the scheme for the period 2021-2026 for which the petitioner cannot claim subsidy. The first respondent then issued the impugned reply on 29.04.2024 that the scheme is closed. The said order has been challenged in the present Writ Petition.

10. A counter affidavit had been filed on behalf of the respondent wherein it had been stated that there was a mismatch in



the scrap / resale value for the financial year 2015-2016, 2016-2017 and 2017-2018 for the old machines and as mentioned in the Chartered Accountant certificate dated 30.10.2018 and 17.12.2020. With respect to the other application, it had been stated that the resale /scrap value did not match with the Chartered Accountant certificate attached with the application. It was therefore stated that the department decided not to consider the applications. It was also stated that the Steering Committee meeting was held on 26.03.2021 and since the scheme was to end on 31.03.2021. It was decided to inform that the scheme had lapsed.

11. It had been further stated that to the representation given by the petitioner, a reply was given on 20.12.2022 and again on 29.04.2024 that there were some discrepancies and that there was another Writ Petition which was pending. The petitioner was advised to apply for the scheme introduced for the year 2021-2026. It had been stated that therefore, the respondents had rejected the applications only on grounds which were legally tenable. It was sought that the Writ Petition should be dismissed.

12. A rejoinder was filed by the petitioner contesting the claim of the respondents. It was stated that under the scheme, the new



machineries had to replace the old machineries. Therefore, when the new machineries were purchased the old machineries were treated as scrap. It was therefore contended that there was no mismatch in the value of the machineries. It was contended that the applications of the petitioner had been correctly uploaded and that the benefit of the scheme should have been extended to the petitioner for both the footwear and tannery division.

13. Heard arguments advanced by Mr. Jayesh B.Dolia, learned Senior counsel for the petitioner and Mr. K.Ramanamoorthy, learned Central Government Standing Counsel on behalf of the respondents.

14. The learned Senior Counsel appearing on behalf of the petitioner took the Court through the facts of the case and urged that the petitioner had applied for the benefit of the scheme under both their divisions, namely, foot wear and tannery division. The learned Senior Counsel pointed out that the petitioner had to modernise their machineries to be eligible for the subsidy offered by the respondents and that therefore, they had purchased new machineries. When they had purchased new machineries, the old machineries would certainly have to be treated as scrap and they will have to be valued independently. The Chartered Accountant can only certify with



respect to purchase. It was contended that the petitioner had complied with all the requirements to be eligible for subsidy under the scheme. The learned Senior Counsel pointed out that the reasons given in the impugned order, who cannot withstand the scrutiny of the Court particularly since the only reason given was that the application had been returned and that the petitioner could apply for a similar scheme in the ensuing scheme for the years 2021-2026. The learned Senior Counsel stated that the machineries had been purchased at the time when the scheme was in force for the years 2017-2020 and therefore, the petitioner cannot apply for subsidy for the years 2021-2026. The learned Senior counsel therefore urged that the Writ Petition should be allowed and the impugned order should be set aside and the petitioner should be granted the benefit of the subsidy scheme.

15. Mr.K.Ramanamoorthy, learned Central Government Standing Counsel however refuted and disputed the contentions raised. According to the learned Standing Counsel, the petitioner had forwarded certificates from the Chartered Accountant and on perusal and scrutiny of the same, it was found that there was a mismatch over the value of the machineries and more particularly with the old machineries which was treated as scrap. It was therefore stated that



queries were raised regarding the same. It was also contended that the petitioner could always apply for subsidy for the period 2021-2026 as stated in the impugned order. The learned Central Government Standing Counsel justified the order rejecting the applications of the petitioner herein.

16. I have carefully considered the arguments advanced.

17. The petitioner is engaged in the business of tanning, finished leather and manufacturing footwear. They had two separate divisions, one was the footwear division and the other was the tannery division.

18. The first respondent had introduced a scheme called the Integrated Development of Leather Sector (IDLS) scheme for grant of assistance for development of leather industries. The scheme promoted modernisation and upgradation of leather industrial units with latest technology and equipments.

19. If machineries were purchased then subsidy would be extended towards a portion of the cost of the machineries. If machineries are purchased then units like the petitioner can apply for



the scheme by uploading their applications in the portal of the second and third respondents. The second respondent had been appointed as the Project Implementation Unit for foot wear division. The third respondent had been appointed as the Project Implementation Unit for tannery division. The petitioner claims that they were eligible to avail the scheme under both the foot wear division and tannery division.

20. With respect to the footwear division, it is the case of the petitioner that they had purchased machineries towards modernisation for a sum of Rs.2,71,08,806.87 under the self finance scheme. They sought subsidy of Rs.54,21,761/-. They had submitted their application online and a unique registration No. FD2K190300 was generated on 03.11.2020.

21. With respect to the tannery division, it is the case of the petitioner that towards modernisation of the machineries, they had incurred an expenditure of Rs.4,17,43,828/-. They were eligible for assistance to a sum of Rs.83,48,765/-. They had however restricted that to Rs.76,79,897/-. The petitioner had uploaded their application seeking assistance under the scheme online and unique registration No. CL2K180099 was generated on 27.01.2021.



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22. The procedure for examination and scrutinisation of the applications involved an appraisal by the bankers and later, an inspection and verification of the machineries purchased by the second and third respondents.

23. With respect to the applications submitted under the footwear scheme, the appraisal by the bankers was done on 23.11.2020 and a report was submitted to the second respondent on 23.11.2020. A clarification was raised on 07.12.2020 and it was replied on 08.12.2020. The officials from the second respondent visited the factory of the petitioner on 29.01.2021. They again raised a clarification on 15.02.2021 which was replied on the same day by the petitioner.

24. With respect to the tannery division, the petitioner had submitted their application online and a Registration No. CL2K180099 was generated was 27.01.2021. The finance appraisal was done on 21.10.2020. The Officials of the third respondent inspected the unit on 18.11.2020. The application was accepted by the Technology and Financial Appraisal on 30.01.2021 and also accepted by the third respondent on 26.02.201.



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25. Since the two applications had been deemed to be accepted, there was a legitimate expectations on the part of the petitioner that subsidy would be released. The impugned order was dated 24.04.2024. This was issued after a series of representations were given by the petitioner herein seeking clarification as to the reason for the pendency of the applications.

26. In the impugned order, it had been stated that the incomplete applications had been returned to the Project Implementation Units with a direction to submit the applications to the units and asking them to apply afresh under the new scheme.

27. But however, the petitioner had incurred the expenditure when the scheme was in force for the years 2017-2020. They would be eligible to seek assistance under the new scheme which was for the years 2021-2026 if only they had incurred expenditure during that particular period. They cannot claim subsidy in the scheme for the period 2021-2026 for an expenditure which they had incurred in the year 2017-2020. If they so apply their applications would be rejected.



28. One of the conditions for applications to be made in the new scheme for the years 2021-2026 is that the expenditure towards modernisation should have been incurred in that period, namely, between the years 2021-2026. Therefore, the contention of the respondents that the petitioner could apply under the new scheme for the years 2021-2026, is held to be only a ruse to reject the applications of the petitioner herein.

29. In the impugned order, it had been further stated that there was a parallel writ petition in W.P.No. 25067 of 2021 was pending and therefore, the application of the petitioner could not be considered. This reason by the respondent defies logic.

30. The application of the petitioner is independent of that Writ Petition. The petitioner had applied for the footwear and tannery divisions. They had purchased machineries. They had modernised their factory. These are facts which should have been examined by the respondent. It had to be examined whether the petitioner was eligible for grant of subsidy under the scheme.

31. The criteria for such examination is well defined. The petitioner should have purchased machineries within that particular



period, namely, 2017-2020. The Officials of the second and third respondents had visited and inspected the factory premises of the petitioner. There is no denial or dispute of the fact that the petitioner actually purchased the machineries. A Query was raised relating to the value of the old machineries which was treated as scrap but not with respect to the machineries which were purchased afresh. Therefore, the contention of the respondent that merely because another writ petition was pending and therefore, the applications of the petitioner could not be considered has to be rejected. No other reason was given for rejection of the application of the petitioner herein.

32. In the counter affidavit, the respondents had widened the scope of examination of the impugned order and had stated about the alleged mismatch in the value of the machineries. It is trite in law to point out that any order issued without reasons would be subject to judicial review by the Court. Reasons cannot be added in a counter affidavit.

33. In ***Mohinder Singh Gill V. The Chief Election Commissioner, New Delhi***, reported in ***AIR 1978 SC 851 : (1978) 1 SCC 405*** wherein it had been held as follows:-



“8. The second equally relevant mater is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out Orders are not like old wine becoming better as they grow older.”

34. The respondent therefore cannot improve the case by the counter affidavit filed by them before this Court. Even otherwise a careful perusal of the dates would show that the delay was actually on the part of the second /third respondents.

35. In the first instance, with respect to the foot wear division, the clarification raised by the second respondent was replied by the petitioner on 08.12.2020. The Officials of the second respondent inspected the factory only on 29.01.2021 more than 50 days after the clarification was issued by the petitioner herein. No explanation had been given for the delay in such inspection.

36. Again when a further clarification was sought and replied



by the petitioner on 12.06.2021, the letter from the DIPP was issued only on 20.09.2021 after more than three months. Again there is no explanation for the delay. The petitioner cannot be faulted on any ground whatsoever.

37. With respect to the tannery division, the application was submitted on 04.11.2020 and the Officials of the third respondent visited the factory on 18.11.2020 after about 14 days. No explanation had been given for the delay.

38. The flow of dates show that there has been no delay on the part of the petitioner. The reasons stated in the impugned order does not withstand the scrutiny of the Court and cannot be sustained.

39. In view of these reasons, I hold that the impugned order must be struck down. The Writ Petition stands allowed. A direction is issued to the first respondent to process the application of the petitioner and release the subsidy within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition stands closed. No order as to costs.

21.12.2024

vsg
Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking Order



To

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1. The Secretary
Government of India
Ministry of Commerce and Industry
Department for Promotion of Industry and Internal Trade (DPIT)
Formerly known as Department of Industrial Policy and
Promotion (Leather Section)
Udyog Bhawan, New Delhi – 110 011.
2. The Managing Director
Footwear Design and Development Institute (FDDI)
A-10/A Sector -24, Noida – 201 301.
3. The Director
Central Leather Research Institute (CSIR-CLRI)
Adyar, Chennai – 600 020.

C.V.KARTHIKEYAN, J.,



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18



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Pre-Delivery Order made in

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And

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