IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-35893-2019
Date of decision: 06.03.2024

M/S GOLDEN CITY AGRO TECH ......Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS ....Respondents

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

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Present: - Mr. B.D. Sharma, Advocate
for the petitioner.

Ms. Niharika Sharma, Asstt. A.G. Punjab,

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VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present writ petition is for seeking issuance of directions to respondents to release the assured and sanctioned investment incentive/capital subsidy of Rs. 3,15,000/- conveyed vide letter No. 480 dated 17.01.2002 by respondent No.4 under the Industrial Policy, 1996 alongwith interest @ 8% per annum from the date of entitlement till actual release.

2. Learned counsel appearing on behalf of the petitioner contends that the petitioner industrial unit is a registered small scale industry situated at 148 Focal Point, Mehta Road, Amritsar. The unit is engaged in manufacturing of agricultural equipments and Tractor Accessories. The

same was registered as a small scale industry with the Industry Department vide Registration No. 03/02/27703/PMT/Tiny dated 02.11.2001. The petitioner submitted an application to the respondent No.5 for grant of investment incentive under the Industrial Policy, 1996 vide letter dated 05.11.2001. Vide notification No. 15/43/96-5 1B/2238 , the Government of Punjab had formulated the Industrial Policy, 1996 for offering fresh incentives for the development of industry in the State of Punjab. The above said industrial policy envisaged as under:-

> *(i) Attracting fresh investment to further boost the growth of industry in the State.*
>
> *(ii) State Govt. set before itself the following targets in Para III of the Notification.*
>
> *(i) Increase the annual industrial growth rate from the present 8% to 12% in the next two years.*
>
> *(ii) Increase the present share of industry in Gross Domestic Product (GDP) from 17% to 25% in the next five years.*
>
> *(iii) Divert 15% of the present rural population to manufacturing and related occupations through rapid industrialization.*

3. The petitioner submitted a detailed project report giving details of the various aspects/input required by the respondents. The said project report of the petitioner was accepted by the respondents and vide letter No. 480 dated 17.01.2002, the government approved grant of subsidy to the tune of Rs.3,15,000/-. It is contended that even though the above said capital subsidy was sanctioned in favour of the petitioner way back in the year 2002, however, the same has not been released. The sole proprietor/owner of the Industrial unit unfortunately died on 23.10.2012 and that his wife is now

the owner/proprietor of the said industrial unit. The respondents have not released the benefit whereupon the present writ petition has been filed.

4. Reply by way of counter affidavit of Balwinder Pal Singh, General Manager, District Industries Centre, Amritsar has been filed wherein the factual aspect as regards the sanction of the capital subsidy to the petitioner being the Sole Proprietorship unit vide letter No. 480 dated 17.01.2002 to the tune of Rs. 3,15,000/- has not been disputed. It is, however, submitted that the amount of subsidy was sanctioned to the industrial unit being a sole proprietorship and Amrik Singh was the owner of the petitioner-Industrial unit and he passed away on 23.10.2012. It is contended that as per the operational guidelines, the sole proprietorship terminates on death of sole proprietor and no longer remains a juristic entity in the eyes of law. Since the subsidy in question was sanctioned to the sole proprietorship, the same cannot be released in favour of the heirs as they acquired no right in law to claim such sanctioned capital subsidy. It is thus contended that as per Clause 1.1 of the Operational Guidelines, 2019, the sole proprietorship had come to an end on the death of the proprietor and they not being a juristic entity, the subsidy is not payable to the petitioner.

5. I have heard learned counsel appearing on behalf of the parties and have gone through the documents available alongwith the present petition.

6. Since the factual aspects noticed above as regards grant of sanction for the release of capital subsidy is not in dispute, hence, the said back ground is not being gone into. The respondents have placed reliance on the operational guidelines issued in the year 2019 to deny the claim to which the sole proprietorship became entitled in the year 2002. The Sole proprietor

Amrik Singh died in the year 2012. The deprivation of the claim is now being done on the basis of an operational guidelines which was issued in the year 2019 to apply against the claim raised by the petitioner sole proprietorship and thereby defeating an accrued right in favour of the proprietorship notwithstanding that the delay was exclusively on the part of the respondents-State in release of the capital subsidy. The sole proprietor died 10 year after sanction of the subsidy.

7. Even otherwise, the said operational guidelines having been issued in the year 2019 cannot be applied retrospectively to prescribe new terms and conditions so as to consider the claims of the persons who had an accrued right in their favour. The respondent-State cannot take benefit of its own lapse in delaying release of the capital subsidy and thereafter taking note of the subsequent developments as an excuse to deprive the persons of the rights (accured) in their favour. Even otherwise, the interpretation adopted by the respondents in the operational guidelines with respect to the stature of the sole proprietorship is based upon gross misappreciation and misinterpretation of the law and the status and entity of a sole proprietorship. It is well settled position in law that the sole proprietorship is not a separate juristic entity and it remains the alter ego of the individual himself. The said position having been well established by this Court in the judgment of ***"M/s Thapper Textiles Private Limited versus State of Punjab and others"*** passed in ***CWP-10230 of 2011 on 16.09.2014***. The operational guideline clearly violates the mandate of law and tries to create a juristic entity in a proprietorship which the law does not recognize and places it at par with other separate juristic entity(ies) whereas the entity of the sole proprietorship is that of the individual himself.

8. As per the law of succession, once a right is accrued in favour of an individual, such accrued right cannot be defeated merely on account of the subsequent developments and empower the respondents to contend that the benefits that had accrued in favour of an individual would not translate into an accrued right in favour of the heirs of such individual.

9. The respondent-State has been making repeated efforts at prescribing new conditions for release of the subsidy. Such an attempt has been deprecated earlier by this Court in the case of ***"M/s Balak Gases Oxygen Gas Plant and another versus State of Punjab and others"*** reported as ***AIR 2012 P&H 30***. It was held therein that State could not prescribe new terms and conditions to be fulfilled by an applicant for release of subsidy, beyond the conditions prescribed in the sanction letter. Notwithstanding that such attempt was held to be bad in the above case, the respondent State has issued fresh guidelines which again are liable to be hit by the law already laid down in the matters and which has already attained finality.

10. I find that the stand adopted by the respondents is ministerial and is reflective of the bureaucratic mind set of raising objections which are not only wholly frivolous but also based upon deliberate mis-reading and misinterpretation of the statute and precedent judgments of the Court. Introduction of such impediments by means of Circular/Guidelines issued to defeat accrued right in favour of petitioner is sternly deprecated.

11. The present writ petition is accordingly allowed and the respondents are directed to release the sanctioned capital subsidy to the tune of Rs. 3,15,000/- alongwith interest @ 6% per annum from the date of institution of the present writ petition till its final disbursement. An

additional cost of Rs. 50,000/- is imposed upon the respondents for compelling the petitioner into a litigation which was completely frivolous and was solely generated due to dishonest attempt by the respondents to deny the rightful dues. The petitioner has been denied the dues for more than 02 decades. The cost alongwith the entire amount as ordered today shall be released in favour of the petitioner within a period of 08 weeks of receipt of certified copy of this order failing which interest shall be 8% p.a. till its actual release.

Allowed in above terms accordingly.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 06, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No