APHC010163142023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3310]**
(Special Original Jurisdiction)

FRIDAY ,THE TENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT PETITION NO: 8457/2023

Between:

Smt.k.sandhyarani **...PETITIONER**

AND

The State Of Andhra Pradesh and Others **...RESPONDENT(S)**

Counsel for the Petitioner:

1. V ESWARAIAH CHOWDARY

Counsel for the Respondent(S):

1. G R SUDHAKAR
2. GP FOR INDUSTRIES COMMERCE

The Court made the following Order:

The Writ Petition is filed under Article 226 of the Constitution of India, seeking the following relief:

> ***".....to issue a writ in the nature of a writ of mandamus or any other appropriate writ direction order or orders declaring the action of the 2nd respondent herein in issued the demand notice vide Ref.No.AFC/A/c.No.68025002&3/2022-23/2933, dt.16-02-2023 under sec 29 of SFC Act, 1951 demanding her to clear the dues of Rs.70.14 lacks which is contrary to letter***

No.303413-39/1/2017/853995/Chaitanya Aqua Industries, dt.28-11-2022 sent by the 5th respondent herein to the 2nd respondent as wholly arbitrary, illegal and without jurisdiction and void and violated the principles of natural justice and affected her rights guaranteed under article 14, 19(1)(g), 21 and 300-A of the Constitution of India and consequently set aside the impugned notice dt.1602.2023 issued under sec. 29 of the SFC Act as contrary to the conditions 6.4.4, 6.4.10 and 6.4.11 of G.O.Ms.No.108, Industries and Commerce Department, dt.14-11-2015 as well as 5th respondent's 303413-39/1/2017/853995/Chaitanya Aqua Industries, dt.28-11-2022 with reference to the M/s Chaitanya Aqua Industry, Sy.No.380/4, d.No.1-16, Alluru village, Kothapatnam Mandal, Prakasam District ……."

2. Brief facts of the case are that the Government issued G.O.Ms.No.108 framing certain operational guidelines for implementation of incentives for establishment of industrial enterprises in AP under new/expansion/ diversification categories within the frame work of industrial development policy during the period of 2015-2020, sectoral policies i.e., automobile and automobile component police 2015-2020, textile and apparel policy 2015-2020, bio-technology policy 2015-2020, MSME policy 2015-2020, aerospace and defence manufacturing policy 2015-2020 and further stated in the GO that all other industries commencing production after issue of operational guidelines, the claim applications shall be submitted as per the time limit prescribed in the operational guidelines. The petitioner applied for the establishment of aqua industries by name and the style of M/s.Chaitanya Aqua Industries established in Survey No.380/4, D.No.1-16, Alluru Village, Kothapatnam Mandal, Prakasam district and the same was approved by the

government and issued license vide Form-C license No.10122008000402 valid till 15.07.2023. Initially the unit was established in the year 2016 for total cost of unit at Rs.124.49 lakhs towards land, buildings, plant and machinery respectively. The investment subsidy prior to DCP (Date of Commencement of Commercial Production) will be sanctioned and released @ 35% and 45% of the eligible investment subsidy as 1 and 2 instalments respectively in "**paripassu**" mode along with term loan by the District and Chairman, DIPC (District Industries Promotion Committee), commissioner of industries &Chairman, SLC as the case may be subject to availability of budget under SCSP/TSP (Schedule Caste Sub plan/Tribal Sub Plan) as per condition NO.6.4.10 and The final 20% investment subsidy will be sanctioned and released by the DIPC/SLC as case may be after the commencement of commercial production. Further, prior to granting the term loan as well as release the investment subsidy, the petitioner has been started the production and supply of bottled and packaged drinking water from my unit from March 2022 only. But the subsidy amount not yet released even after recommendations made by the District Collector as well as the District Industries center rep. by its General Manager as well as the District Industries Officer Ongole, Prakasam District. But the petitioner was discriminated by the authorities without sanction and release of the subsidy amount which was already invested for the establishment of unit and the 2nd respondent

corporation released the amount for month wise and due to the said reason, she started the production in the month of March 2022 onwards and still the balance will be kept with the corporation without release the 3rdinstalments as per the conditions 6.4.11 of the GO MS N.108 of Industries and Commerce, dated 14.11.2015. While so, the 2nd respondent issued demand notice vide Ref.No.AFC/A/c.No.68025002&3/2022-23/2933, dated 16.02.2023 under Section 29 of SFC Act, 1951 demanding to clear dues of Rs.70.14 lakhs. Aggrieved by the same, the present writ petition has been filed.

3. The respondents 2 and 3 filed counter affidavit denying the allegations made in the writ petition and stated that the respondent Corporation sanctioned term loan (reappraisal) of Rs.62.28 lakhs for setting up of a Bottled and Packaged drinking water unit, in a leasehold premises at Sy.No.380/4, D.No.1-16, Main Road, Allur (V), Kothapatnam (M), Prakasam District. The said firm is a proprietary concern of which Smt.Kathi Sandhya Rani, W/o.M.PrasadaRao was the sole proprietrix. The DIC has released subsidy of Rs.56.04 lakhs on 29.06.2020, the Corporation released 1st & 2nd Instalments aggregating to Rs 44.825 Lakhs together with the Term Loan of Rs.67.03 Lakhs on paripasu mode. Thus the total amount released to the promoter including Term Loan and Investment subsidy is Rs 111.855 Lakhs and the same was taken to the notice of District Industries Centre (DIC). The letters addressed by the petitioner was duly replied by the respondent corporation,

duly intimating the rules and regulations to the petitioner, stating that the request of the petitioner is not acceptable in terms of the procedure in vogue. It is further stated that with regard to the Extension of moratorium for payment of EMI and overdue principal for One year, the request of the petitioner can only be considered if the propritrix is regular in payment of loan instalments and further there shall be no arrears in the loan account. The respondent Corporation advised the petitioner either to clear the total arrears in the loan account or to comply the norms of the Corporation to enable the 3rdrespondent to forward a detail note to the 2nd respondent to examine their request for extension of moratorium period for principal amount. It is further stated that through the alleged letter dated 28.11.2022 of the Joint Director, the Office of Director of Industries has requested to examine the requests made by the petitioner with regard to cancellation of interest arrears, release of working capital, extension of one year moratorium for payment of principal amount and stoppage of proceedings under Section 29 of State Financial Corporations' Act, 1951. On receipt of the letter, the Corporation has communicated several times to the petitioner stating that as per procedure in vogue, the requests of the petitioner is not acceptable and requested her to clear the arrears and upgrade the loan amount. But, the petitioner did not choose for payment of arrears and continuously forwarding similar letters which are not acceptable as per the procedural norms of the Corporation. As

such, the recovery action initiated by the Corporation is valid and justifiable and the Corporation is left with no other option except to proceed with the recovery action under Section 29 of SFC's Act, 1951 to recover its dues and issued demand notice under Section 29 of SFC's Act, 1951 on 30.05.2022 and later on due to appropriation of subsidy amount of Rs.11.20 Lakhs to the loan account, again granted time to petitioner to repay the arrears but the petitioner failed to repay the loan arrears to the Corporation, As such, a Demand Notice vide Ref.No.AFC/A/c.No.68025002&3/2022-23/2933was again issued on 16.02.2023 under Section 29 of SFC's Act, 1951 to recover its dues and the same is legal and justifiable. Therefore, prays to dismiss the writ petition.

4. The 6th respondent filed counter affidavit denying the allegations made in the writ petition and stated that due to dispute raised between promoter and APSFC regarding delay in project implementation and release of Advance Subsidy (1st& 2ndInstallment) and as per the directions of this Court in W.P.No.5588 of 2019,dated 20.01.2020, to reconsider the claims and ordered to sanction and release the 1stand 2ndinstallments of Advanced Subsidy (Prior to the Date of Commencement of the Production) and the 3rdand final installment would be release after Commencement of the Commercial Production in duly following the Operational Guidelines under IDP 2015-20 (Since expiry of IIPP 2010-15 Scheme) and procedure in vogue. Accordingly

the DIC has issued proceedings to release the subsidy of 56.04 lakhs on 24.06.2020 as per the DIEPC (District Industries and Export Promotion Committee) Meeting dated: 16.06.2020.After confirmation of Commencement of Production the 3rd&final Installment of subsidy @ Rs.11.195 lakhs were sanctioned and released as per the approval of the DIEPC Meeting Dated: 04.07.2022. Vide Proc.No.4630/A/2013, dated: 14.07.2022 and also the Committee has discussed the issue in detail and advised APSFC not to impose Section.29 and to give moratorium of one year and keep strict vigilance on the working status of the unit. Accordingly the 5threspondent addressed a letter dated 28.11.2022 to the 2ndrespondent (APSFC, Ongole) to consider for cancellation of interest arrears, to release working capital, To extend one year Moratorium for payment of Principal amount & stoppage of the proceedings under ACT 29 of SFC. Thereafter, the area officer has inspected unit on 25.05.2023 and found not working due to lack of working capital. Further the District Industries and Export Promotion Committee meeting dated 21.06.2023 and 26.07.2023 discussed the issue in detail and requested the 2ndrespondent to consider the issue. As the matter stood thus the 2ndrespondent submitted report dated 24.07.2023 to the District Collector & Chairman of the District Industries and Export Promotion Committee which stated that the APSFC, Ongole stating that as per the norms and procedure

existing in the vogue, the corporation is unable to provide “Relief Package” to the unit. Therefore, prays to dismiss the writ petition.

5. Heard Mr.V.Eswaraiah Chowdary, learned counsel for the petitioner and learned Government Pleader for Industries and Commerce appearing for respondent Nos.1, 4 to 6 as well as Mr.G.R.Sudhakar, learned Standing Counsel appearing for respondents 2 and 3.

6. On hearing, learned counsel for the petitioner while reiterating the contents urged in the writ petition, submits that, the District Industries and Export Promotion Committee held meeting under the Chairmanship-cum-District Collector, Ongole, Prakasam District on 04-07-2022 discussed and approved that the committee advised APSFC not to impose section 29 and to give moratorium of one year and keep strict vigilance on the working status of the unit and in the said committee the 2nd respondent is a one of the member. He further submits that the project sanctioned by the District Industries Promotion Committee (DIPC) by Chairmanship of District Collector, Ongole and Convenor is General Manager District Industries Center, Ongole, financed by APSFC Branch Manager and Member of DIPC Ongole. He further submits that the respondents herein violated the conditions stipulated in the GOMs.No.108 Industries and Commerce Department, dated 14.11.2015. Due to delayed occurred on the part the respondents, the petitioner has sustained

the loss of Rs.25 lakhs under central government as CLCSS (credit linked capital subsidy scheme and also working capital of Rs.14 lakhs and cancel the interest arrears and one year moratorium period. So, the issuance of the impugned notice by the 2nd respondent is illegal and contrary to the letter of the 5threspondent advising that on an humanitarian grounds to grant cancelation of the interest arrears, to extend one year for payment of principal amount and stoppage of the proceedings under sec. 29 of the Act. Therefore, learned counsel requests this Court to pass appropriate orders.

7. Per Contra, learned Standing Counsel while reiterating the contents made in the counter affidavit, submits that, the petitioner approached the DIPC (District Industries Promotion Committee/District Industries Centre) for release of advance subsidy in view of the Corporation has reappraised the project without considering eligible subsidy component in the means of finance. The DIPC in its meeting held on 07.12.2018 has sanctioned an amount of Rs.10.23 Lakhs (Rupees Ten Lakhs and Twenty Three Thousands Only) towards 1stinstallment amount INVESTMENT SUBSIDY prior to the Date of Commencement of production under IIPP 2015-20 scheme. Aggrieved by the same, the petitioner filed W.P.No.5588 of 2019 before this Court and this Court allowed the writ petition, vide order dated 20.01.2020. In view of the same, the DIPC has sanctioned 1st and 2ndinstallments based on the revised project cost. The Chairman of DIPC has agreed to release the 1st instalment

of Rs.19.615 lakhs to the unit through the respondent corporation and after proper utilization of this amount by the unit and after certification by the APSFC with regarding to the said utilization, the release of 2nd Instalment of Rs.25.210 Lakhs will be considered and the same was communicated to the writ petitioner vide Lr.No.DIC/ONG/DIPC/2020, dated 24.06.2020. He further submits that the petitioner has approached the Chairman of A.P. State Commission for Schedule Castes and the Corporation has received a letter from the said Chairman and upon receipt of the same, the Corporation has forwarded detailed reply by stating that the request of the petitioner has been considered on humanitarian grounds and the same is subject to payment of interest dues as per the norms of the Corporation. But the petitioner has not chosen to clear the arrears even though the Corporation requested through several letters and hence in such invariable situation the said amount has been appropriated to the loan account of the writ petitioner by the Corporation as per the norms. There is no delay on the part of the respondent Corporation at any point of time. Therefore, learned Standing Counsel prays to dismiss the writ petition.

8. Perused the record.

9. On a perusal of the material on record, this Court observed that, the respondents have directed the petitioner to clear the arrears and upgrade the

loan account, but the petitioner did not choose for payment of arrears. Hence, recovery action was initiated by the Corporation under Section 29 of SFC's Act, 1951. But the petitioner failed to repay the loan arrears to the corporation.

10. Having regard to the facts and circumstances of the case and on considering the submissions of both the learned counsels, this Court found no merit in the instant writ petition and devoid of merits and the same is liable to be dismissed.

11. Accordingly, the Writ Petition is dismissed. No costs.

12. As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. K. MANMADHA RAO, J

Date : 10-01-2025
BMS