

HIGH COURT OF MADHYA PRADESH : JABALPUR**WRIT PETITION No.1719/2013**

Sunpetpack Jabalpur Pvt. Ltd. Company

Vs.

State of Madhya Pradesh & others

Shri G.N. Purohit, learned senior Counsel assisted by Shri Abhishek Oswal, learned Counsel for the petitioner.

Shri Purushendra Kaurav, learned Additional Advocate General and Smt. Nirmala Nayak, learned Govt. Advocate for the respondents-State.

Present : Hon'ble Shri Justice K.K. Trivedi

O R D E R**(12/02/2015)**

The singular question raised by learned senior Counsel for the petitioner is that since in terms of the scheme made by the State Government subsidy was being paid to the small industries and the petitioner was admitted to the benefit of the said scheme, if any amendment during the currency of the scheme is made in the same, the petitioner would be entitled to all the benefits. However, since instead of giving full benefit, only the rate of subsidy has been extended to the petitioner for a period of three years and it has been directed that instead of 2%, from the date of amendment in the said scheme, the petitioner would get subsidy at the rate of 5% on the interest amount and the period of the said amended scheme would not be made available to the petitioner, the present writ petition has been filed.

2. It is claimed by the petitioner that petitioner is a body corporate registered under the Companies Act as Private

Limited Company and is engaged in manufacture of molded containers and items indicated in the writ petition. The petitioner is registered as a small scale industry with the District Industry Center. For the purposes of promoting the small scale industries and their activities in the backward area, the State Government made a scheme granting subsidy towards interest at the rate of 2% per annum on term loan dues up to maximum of Rs.25,000/- per year. This subsidy was payable for a period of 3 years from the date of disbursement of the first installment of the term loan. An amendment in the said scheme was done by the State Government on 26.03.2002, according to which interest subsidy was enhanced to 5% of interest on the term loan for a period of seven years in Backward 'C' category of district and maximum limit under the scheme of interest subsidy applicable to small sector, to which petitioner belong, was enhanced to Rs.40 lacs from Rs.25,000/- per year.

3. A communication was made by the Commerce and Industries Department of Government of Madhya Pradesh on 25.09.2003 clarifying that the industries, which were already availing benefit of the interest subsidy under the scheme, shall be entitled to take benefit of amendment made in the scheme. However, only the benefit of revised rate of subsidy on interest was extended and the benefit of extended period for payment of such subsidy was not made applicable. It is contended that in case the amended scheme was made applicable to those industries, which were already receiving the benefit under the unamended scheme, as a whole the industries should have been extended the benefit of extension of period for grant of such subsidy as if the industries like petitioner were admitted to the privilege of amended scheme and their application for extension of such benefit was to be treated one made under the amended scheme. It is contended that since the

amendment in the scheme was made when the beneficiary period was continued, all those amended benefits were to be made available to the petitioner in full and not in part. The representation made by the petitioner was sent to the State Government, which was duly referred for final decision, but the same has been rejected vide order dated 16.07.2009, therefore, this writ petition was required to be filed.

4. The following reliefs are claimed by the petitioner in this petition :

- “(i) To call for the records for the satisfaction of this Hon'ble Court.
- (ii) It may please be held that the petitioner is entitled for benefit of extended period of interest subsidy as per notification dated 26.03.2002 and 25.09.2003 and a writ of mandamus be issued to the respondents to grant benefit of interest subsidy for the remaining period i.e. from 27.09.2003 to 26.09.2007 totaling to Rs.2060104 to the petitioner.
- (iii) Any other relief which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be issued in favour of the petitioner along with cost of the petition.”

5. Upon service of the notices of the writ petition, the respondents have come forward saying that time and again schemes were made and there were rules framed by the State Government for disbursement of the interest subsidy. All the conditions are mentioned in the said rules and in accordance to the rules, the benefit is made available in the subsidy on enhanced rate and the enhanced period. However, in the return the statement is made that the benefit of extended time limit after adjusting time and amount of interest subsidy already availed would be made applicable to the industries like petitioner. Facing such a situation that the averments made in the return would be

treated as an admission of the respondents, learned Additional Advocate General has taken time to produce certain documents and a clarification of the stand taken by the respondents. It is contended that on a perusal of the scheme placed on record as Annexure R-1, it would be clear that the scheme which was initially made on 13.12.1979 was amended and new scheme was made. The definitions were prescribed in the said new scheme. The eligibility of the industries for getting the benefit of the scheme was also specifically mentioned. In fact the benefit was extended to the petitioner under the scheme, which was in vogue on the date when the application was made by the petitioner for grant of such benefit. These aspects have been further clarified by the respondents by filing certain documents on record along with a memo of further clarification. The original note-sheets have also been placed before the Court for perusal.

6. Learned senior Counsel for the petitioner has contended that if the interpretation of the amendment made in the scheme is done, it would be clear that the amendment was made applicable to all those industries, which were already getting the benefit of subsidy scheme. It is, thus, contended that the amendment cannot be treated to be one made with prospective effect and it would be applicable to those industries also, which were already admitted to the privilege of subsidy scheme. It is further contended by learned senior Counsel for the petitioner that even otherwise the respondents have discriminated, the petitioner, as in respect of some other industries, the calculation was done and not only the rate of subsidy on interest but the benefit of time extended by amendment for grant of such benefit was also made available. It is, thus, contended that arbitrarily the benefit is denied to the petitioner by the respondents in the garb that the amendment is applicable with prospective effect.

7. Per contra learned Additional Advocate General has contended that such submissions are misconceived. Since the scheme was made with a particular purpose, certain benefits were extended to the industries already admitted to the privilege of such scheme, amendment would be applicable in case of those who are to be admitted to the privilege of the scheme after the amendment made in the scheme. However, since the percentage of grant of subsidy was enhanced, considering these aspects, for the remaining period of benefit of scheme available to the earlier grantee, the subsidy is paid on revised rates. This itself will not mean that the amendment in the scheme was made with retrospective effect. Therefore, the benefit of the time extended under the amendment for grant of such benefit would not be available to the petitioner.

8. Heard learned Counsel for the parties at length and perused the record.

9. True it is that by amendment dated 26.03.2002 a classification was added in the scheme. As has been stated herein above, at the initial stage when the scheme was made in the year 1979 or even in the year 1985, classification of the industries was not done. The fact further remains that industries have not been classified but only the backward districts have been categorized by such prescription. This fact is clear from the provisions of the rules.

10. The Rules prescribe certain conditions, fulfillment of which would make a small industry entitled to receive the subsidy from the State Government. However, no time limit is prescribed in the said Rules as to up to what period the subsidy would be payable. For the first time in the year 1994, industrial policy and action plan was made by the

State Government and a specific provision was made under the said plan for interest subsidy by formulating a scheme. The quantum of subsidy was fixed and the duration of grant of such interest subsidy was also fixed. An amendment in this scheme was made in the year 2002 as is clear from the document placed on record as Annexure P-1, on 26.03.2002. Though there was no categorization on earlier occasion in respect of the industries, which were entitled to receive any benefit under the Scheme but the said provision was inserted for the first time in the year 2002. The tribal districts were categorized as 'A', 'B' and 'C' and the districts without any industry. Similarly, the quantum of loan was made the basis for grant of subsidy for the particular period, which was indicated in the said amendment in the following manner :

“क्रमांक	जिले का वर्गीकरण	कुल अधिकतम प्रतिपूर्ति राशि लाख रूपये में	पात्रतावधि वर्ष
1.	अ श्रेणी	10	5
2.	ब श्रेणी	20	6
3.	स श्रेणी	39	7
4.	उद्योग बिहीन जिले	40	7”

11. In view of this in case earlier the category of the district was not made when the benefit of subsidy scheme was extended to the petitioner, it cannot be said that the petitioner would automatically be classified. Precisely this was the reason when the decision was taken by the State Government to extend the benefit of enhanced rate of subsidy on interest to the industries like petitioner. This was the reason the orders were passed on 25.09.2003 saying that the petitioner would be entitled to the enhanced rate of subsidy on interest for the remaining period of such grant after 26.03.2002 but the subsidy which was already paid prior to coming into force of the amendment was not required to be enhanced. It is also not in dispute that the enhanced subsidy in terms of the amended provisions of the

scheme was made applicable to the petitioner and the said amount is paid to the petitioner.

12. Much is said about the words used in the amendment and the clarificatory memo dated 25.09.2003. A plain and simple meaning of such a letter would be nothing but extension of the revised rate or enhanced rate of subsidy on interest to every such entry, which was admitted to the privilege of the subsidy scheme and which was still entitled to receive the benefit of subsidy after coming into force of the amendment. However, there was nothing in this amendment that the period already agreed upon by the State Government in the initial grant of subsidy benefit to the industries like petitioner would automatically be enhanced in terms of the amendment made in the scheme. If the scheme is read in that context, it would mean nothing but that the amendment in the scheme was made with retrospective effect, which was not the intention of the State Government while making the amendment. The rule of interpretation do not permit such an interpretation as from the simple language of the provisions if the intention of rule maker is available, nothing can be added in the same. In none than the specific words the State Government has made the amendment with prospective effect vide order dated 26.03.2002, which reads thus :

“मध्यप्रदेश शासन
वाणिज्य एवं उद्योग विभाग
मंत्रालय

क्रमांक एफ-20/26/22/बा/2002 भोपाल, दिनांक 26.03.2002

प्रति,
उद्योग आयुक्त,
मध्यप्रदेश,
भोपाल ।

विषय : ब्याज अनुदान योजना में संशोधन ।

मध्यप्रदेश की आर्थिक विकास नीति के परिप्रेक्ष्य में राज्य शासन के ज्ञापन क्रमांक एफ-1/78/11/ब दिनांक 1.10.1985 एवं एफ 16/2/94/2/बी भोपाल, दिनांक 20.7.1994 द्वारा जारी ब्याज अनुदान नियमों में एतद् द्वारा निम्नानुसार संशोधन करता है।

नियमों के पैरा 5 अनुदान की मात्रा में निम्नानुसार संशोधन किया जाता है:-

समस्त औद्योगिक इकाइयों को वित्तीय संस्थाओं/बैंको द्वारा प्रदत्त मियादी ऋण टर्मलोन जो कि स्थायी पूंजी निवेश हेतु दिया गया हो, पर 5 प्रतिशत प्रति वर्ष दन पर लघु, बृहद एवं मध्यम उद्योगों की निम्नानुसार सुविधा दी जाये :-

क्रमांक	जिले का वर्गीकरण	कुल अधिकतम प्रतिपूर्ति राशि लाख रूपये में	पात्रतावधि वर्ष
1.	अ श्रेणी	10	5
2.	ब श्रेणी	20	6
3.	स श्रेणी	39	7
4.	उद्योग बिहीन जिले	40	7

अनुसूचित जाति एवं जनजाति के उद्यमियों को उसके ज्ञापन क्रमांक एफ 16/2/94/11/बी भोपाल, दिनांक 20.7.1994 से प्रभावशील निर्देश यथावत् लागू रहेंगे।

इस प्रयोजन के लिये वित्त विभाग, म.प्र. शासन, भोपाल द्वारा उनके प्र. क्र.109/5-18/2002/बी-8/IV दिनांक 20.3.2002 से स्वीकृत प्रदान की गई है।

मध्यप्रदेश के राज्यपाल के नाम से
तथा आदेशानुसार
सही/-
(एम.एस. गंगोत्रा)
अवर सचिव
मध्यप्रदेश शासन
वाणिज्य एवं उद्योग विभाग"

13. In view of the aforesaid analysis, such a submission made by the learned senior Counsel for the petitioner is not acceptable. Yet another reason not to accept such a submission is that in the note-sheet all these aspects were deeply considered. In none of the note-sheets, barring for one written by the Minister, opinion was expressed that the

amendment is to be made applicable with retrospective effect. The opinion expressed by the Minister was simply on the analysis that the benefit is to be extended to all including those who were already admitted to the privilege of the unamended scheme. However, this fact was lost note of by the Minister that the scheme as was available on the date when the application of the petitioner was considered, specifically prescribed a time limit for grant of such benefit. In none than the specific words the provision was made in the scheme of 1985 in the following manner :

“The subsidy towards interest will be 2% per annum of the term loan due. For Harijans and Adivasis it shall be 4% per annum. Interest Subsidy shall be payable **for a period of 3 years** from the date of disbursement of 1st installment of the term loan.”

Even if the amendment made in Clause (5) of the scheme vide Annexure P-1 dated 26.03.2002 is considered, the particular provision fixing time limit for grant of benefit made in the original scheme was not deleted and, therefore, if the benefit of scheme was made applicable to the petitioner only for a period of three years, by amendment in Clause (5) prescribing any specific period for the category of the districts and the industries, it would not automatically become applicable in case of the petitioner.

14. Learned senior Counsel for the petitioner has placed his reliance in certain cases and has contended that in terms of the law laid-down by the Court, interpretation as made by the respondents, is not permissible. In the case of ***Narsingh Extraction & Allied Products Pvt. Ltd. vs. State of M.P. & others, (2010) 16 STJ 11 (MP)***, the question before the Court was totally different. The interpretation of the clause and whether the amendment was prospective or retrospective or whether it would be applicable to all or not including the previous grantee, was not before the Court, therefore, the analogy as drawn by the

Court in that case would not be attracted in the case of the petitioner. Similarly, in the case of ***Collector of Central Excise, Bombay-I & another vs. Parle Exports (P.) Ltd., (2010) 17 STJ 304 (SC)***, the interpretation of the entry already existing in the statute on the date of grant or extension of benefit was the subject matter considered by the Apex Court. Again interpretation of amendment whether it is prospective or retrospective was not before the Court and, therefore, the said analogy would again not be applicable in the case of the petitioner. Lastly learned senior Counsel for the petitioner has placed reliance in the case of ***Assistant Commissioner (CT) LTU & another vs. Amara Raja Batteries Ltd., 2009 AIR SCW 5481***, and tried to emphasize that incentive or exemption are to be made applicable for those who are invited to make investment in undeveloped area and, therefore, making application of the equality clause, the amendment made in the scheme is to be treated as made with retrospective effect and the benefit is required to be extended to the petitioner.

15. For the aforesaid simple reason that amendment, whether is made with retrospective effect or prospective effect in any scheme or act, was not the subject matter before the Apex Court in the aforesaid case and, therefore, denial of any such opportunity to the petitioner in that case or violation of the equality clause was not before the Apex Court for consideration. Of course if the amendment is made in the scheme with an intention to extend the benefit to those who have already accepted the incentive and have started their industries, the State Government was required to make amendment with retrospective effect. However, it was not the intention of the State Government as inference in that respect can easily be drawn from the wordings in the amendment made in the scheme, therefore, it cannot be said that equality clause under Article 14 of the Constitution

of India was violated by the act of the respondents-State. The petitioner was granted the benefit of enhanced rate of subsidy on interest for the remaining period for which the petitioner was to be paid the subsidy by the State Government. In this manner, in fact the petitioner was equally treated. The petitioner has accepted the grant for a limited period and, therefore, it is not open to the petitioner to claim that even the extended period prescribed under the categorization made in Clause (5) of the original scheme by way of amendment, would be available to it.

16. In view of the aforesaid analysis, there is no merit in the writ petition, which deserves to be and is hereby dismissed. However, there shall be no order as to costs.

(K.K. Trivedi)
Judge

Skc