M/s. Jindal Industries Ltd.

Vs

State of Haryana and Another

Civil Appeal No. 549 of 1978

(P.B. Sawant, Smt. M.S. Fathima Beevi JJ)

04.12.1990

ORDER

1. By an order of this Court dated March 1, 1978 this appeal was directed to be listed with Civil Appeal No. 357 of 1971. Both these appeals, therefore, were to be heard together. However, it appears that Civil Appeal No. 357 of 1971 alone was heard and dismissed by an order dated January 16, 1985.

2. The questions which are raised in this appeal and which were common to Civil Appeal No. 357 of 1971 having been concluded by the decision in that appeal, are rightly not pressed before us by Mr E.C. Agarwala, Advocate for the appellant. However, he submits that there is one question, namely, the mala fides involved in withdrawing the notification of January 24, 1969 by another notification of August 23, 1977 and this point is distinct to the present appeal.

3. In support of his contention of mala fides he pointed out to us that in the writ petition which was filed by the appellants in the High Court in paragraph 15, it was averred as follows :

> "That in June 1977, General Elections were held to the Haryana State legislature. The Congress Party was defeated and the Janata Party formed the Government in Haryana."

4. It is his contention that when the industry was first established the appellants were granted exemption from payment of octroi duty by notification of April 23, 1965 up to February 27, 1971. This exemption was withdrawn by notification of June 19, 1966. It was this withdrawal which was challenged earlier by writ petition filed in the High Court which writ petition was dismissed on September 24, 1970. It is against the said order of dismissal, that the present appeal was filed so also was the Civil Appeal No. 357 of 1971 as stated earlier. The said Civil Appeal No. 357 of 1971 was dismissed on January 16, 1985 as stated earlier.

5. However, in the meanwhile, by another notification of September 1968, a fresh exemption was granted up to the originally fixed date, namely, February 27, 1971. Nevertheless, the matters were pursued because for the interregnum, namely, the period from January 1967 till September 7, 1968 there was no exemption. As stated earlier, even this grievance with regard to the absence of exemption for the said interregnum has been concluded by the decision in Civil Appeal No. 357 of 1971.

6. Thereafter the events which are relevant to the present appeal and to the present point urged before us, occurred. On January 24, 1969, by a notification the exemption was extended up to

September 7, 1978. However, before the expiry of the said period, by a notification of August 23, 1977 the exemption was withdrawn for the remaining period, viz., from August 23, 1977 till September 7, 1978. The contention is that it is this withdrawal of exemption which is mala fide since the new government, viz., the Janata government which came to power in the General Elections of June 1977 did it to undo what the earlier Congress Government had done.

7. Although in the special leave petition, a specific allegation is made that the withdrawal of the exemption by the notification of August 23, 1977 was a mala fide act on the part of the new government, there is no such averment made admittedly in the writ petition which was filed before the High Court. Except a bare statement of the event in paragraph 15 which we have reproduced verbatim above, we do not find any averment with regard to the mala fides or any contention on that behalf in the petition. The mala fides are essentially questions of fact and they have not only to be alleged but have also to be supported by the relevant material. Since not even an averment was made in that behalf in the writ petition, the point cannot be permitted to be taken up for the first time in this appeal.

8. Shri Agrawala referred us to the decision of the Privy Council in R.T. Rangachari v. Secretary of State [AIR 1937 PC 27 : 1937 All LJ 220 : 64 IA 40]. That was a case where a Sub-Inspector of Police was granted an invalid pension by a competent authority. However, thereafter the officer who succeeded the authority granting the pension, reconsidered the matter and ordered the removal of the officer from service. It was on these facts that the Privy Council held there that the servant had suffered a wrong and, therefore, he had every right to complain of the stoppage of the pension as a breach of rules relating to pensions. While coming to that conclusion, the Privy Council observed that in a case in which after government officials duly competent and duly authorised in that behalf have arrived honestly at one decision, their successors in office, after the decision has been acted upon and is in effective operation, cannot purport to enter upon a reconsideration of the matter and to arrive at another and totally different decision.

9. It will thus be apparent that this was a case where a successor officer had sat in appeal over the decision of his predecessor which was already acted upon. The successor had no such power. A new government or even the same government has power to revise the earlier industrial or fiscal policy in the light of the view that it takes of the situation and of the measures required to deal with it, from time to time. Hence, if the new government had taken the decision in question to withdraw the exemption at a later date, it cannot be said that it has done so mala fide. It must be remembered in this connection that when the exemption was granted initially, no assurance was given that the appellant would get it for a longer period than the period mentioned in the then notification.

10. Since this was the only contention raised in the appeal, we find no substance in the appeal and it is dismissed with costs.

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