

State of M.P. and Others

Vs

Bindal Agro Chemical Ltd. and Another

Civil Appeals Nos. 9384-85 of 1996

(S. Saghir Ahmed, Kuldeep Singh JJ)

19.07.1996

JUDGMENT

KULDIP SINGH, J. -

1. Special leave granted.

2. The question for consideration before the High Court was whether M/s. Bindal Agro Chemical Ltd., respondent in the appeals herein, was eligible and entitled to various incentives announced by the State Government to the entrepreneurs setting up new industries in the Raisen District of the State of Madhya Pradesh. The High Court decided the question in the affirmative and against the appellant. This appeal by the State of Madhya Pradesh is against the judgment of the Division Bench of the High Court dated 9-10-1990. We may briefly notice the facts. One Nand Vanaspati, Indore was granted an industrial licence dated 18-1-1971 under the Industrial (Development and Regulation) Act, 1956 (the Act) for setting up a vanaspati factory with a capacity of 50 tonnes per day. Nand Vanaspati installed the factory at Village Balgarh, Tehsil Dewas. Subsequently, the Central Government by the order dated 17-7-1980 permitted the transfer of the said licence in favour of 5-S Ltd., Calcutta. Bindal Agro Chemical Ltd. (the respondent) purchased the factory from 5-S Ltd. in the year 1986 under the same licence granted by the Central Government. The respondent further sought permission from the Central Government for the change of location of the factory from Dewas to Mandideep against the original industrial licence dated 18-1-1971. The respondent never applied and obtained a new licence for its Mandideep Unit.

3. In order to help industrialisation of backward areas the State Government by the notification dated 16-10-1986 announced various incentives to the entrepreneurs. The incentives included the exemption from payment of sales tax, entry tax and grant of power subsidy and investment subsidy etc. The incentives were, however, subject to certain conditions. Para XIII-E of the Notification is as under :

"The exemption under this notification shall not be available to the following industrial units.

* * *##

A new industrial unit set up by transferring, shifting or dismantling or closing an existing unit within the State of Madhya Pradesh."

4. After setting up the unit at Mandideep the respondent applied for an eligibility certificate, under

the exemption notification, before the State Government. The respondent was informed by the State Government by a letter dated 1-8-1987 that the industry was not eligible for the Central investment subsidy. Operative part of the communication is as under :

"You have shifted your unit from Dewas to Mandideep. Therefore, as per decision communicated by the Commissioner of Industries you are not eligible for Central investment subsidy. The case is returned herewith."

5. The stand taken before the High Court was that the plant or machinery of Dewas unit was not shifted to Mandideep. After acquiring land at Mandideep the totality of the plant and machinery were newly purchased. It was claimed that the unit set up at Mandideep was a new industrial unit and as such was entitled to the grant of subsidy.

6. The State of Madhya Pradesh resisted the claim of the respondent before the High Court. It was contended that no licence was obtained for setting up a new industrial unit at Mandideep. The old unit from Dewas was shifted to Mandideep after obtaining permission from the Central Government. Under the Act a vanaspati-manufacturing unit could not be set up without obtaining licence from the Central Government. The unit at Mandideep was operating under the same licence which was granted for the Dewas unit. Once the Central Government granted permission to shift the unit under the same licence, the unit at Dewas could not manufacture vanaspati and it could be manufactured only at Mandideep. Since the Mandideep unit was set up by transferring/shifting the existing unit at Dewas, it was contended, the respondent was not eligible for grant of subsidy in terms of para XIII-E of the notification (quoted above).

7. The High Court allowed the writ petitions on the following reasons :

"After carefully considering the submissions made on behalf of both the parties, we find substantial force in the contentions made on behalf of the petitioners. Admittedly the reasons assigned by Respondent 3 in his communications to the petitioners, as contained in Annexures R, S, T and U, is only the alleged shifting of the unit of the petitioners from Dewas to Mandideep. Even the counsel for the respondents have not disputed the fact that the unit at Dewas is existing and has not been shifted to Mandideep. Although the counsel for the respondents made a half-hearted attempt to dispute the claim of the petitioners that the unit set up at Mandideep is a completely new unit, it must be said in all fairness to the counsel for the respondents that ultimately he conceded that the unit set up by the petitioners at Mandideep was on a plot of land newly allotted to the petitioners by the State Government and the plant and machineries put up by the petitioners were not by way of shifting the same from Dewas to Mandideep. The learned counsel for the State, however, contended that on account of the licence for the unit being an old one, issued way back in 1971 by the Central Government, the unit set up at Mandideep should be deemed to be an old unit. We are constrained to hold that the notification issued by the State Government does not permit such interpretation ..."

8. We are of the view that the High Court fell into patent error. In the facts of this case the High Court was not justified in reaching the conclusion that a new unit was set up at Mandideep. The respondent in the application gave the following reasons for changing the location.

"The present plant being obsolete is to be discarded at its present location and a new

plant under the licence is to be set up at Mandideep, Distt. Raisen (M.P.) having a status of industrially backward area."

9. The Government of Madhya Pradesh by the letter dated 3-3-1987 communicated to the respondent as under :

"With reference to your proposal for change of location of Vanaspati Unit from Dewas to Mandideep in Raisen District it may be pointed out that this transferred unit will not be allowed to avail of concessions due to a new unit because this would be transfer of capacity and not creation of capacity."

10. The respondent by its letter dated 6-3-1987 replied as under :

"We acknowledge receipt of your letter No. F-17/172/86/XI/B dated 3-3-1987.

In view of what has been stated in our letter we agree that we shall not claim concession, in case the same is not allowed, because this would be transfer of capacity and not creation of capacity. In view of this, we would request you to grant us permission for change of location of our vanaspati unit from Dewas to Mandideep."

11. On the basis of the above commitment of the respondent the Government of Madhya Pradesh recommended the application of the respondent to the Government of India for change of location of the vanaspati unit from Dewas to Mandideep. The Government of India, thereafter, by the communication dated 22-4-1987 permitted the respondent to change the location from Dewas to Mandideep. The licence granted for Dewas was amended to be operative at Mandideep.

12. It is obvious from the correspondence between the respondent and the two Governments that the respondent was fully aware that it would not be entitled to the subsidy in respect of the unit at Mandideep. The respondent could not have set up the unit at Mandideep without obtaining licence from the Central Government under the Act. No new licence was granted to the respondent for the unit at Mandideep. The licence was only one pertaining to Dewas unit. The respondent could either manufacture vanaspati at Dewas or at Mandideep. They sought the permission to shift the unit along with the licence to Mandideep which was granted. The obvious result is that the process of manufacture of vanaspati at Dewas stopped with the transfer of the licence to the unit at Mandideep. We have no hesitation in holding that the new unit set-up at Mandideep was by transferring/shifting the unit at Dewas. The unit at Dewas was closed so far as the manufacture of vanaspati was concerned.

13. We allow the appeals with cost and set aside the impugned judgment of the High Court. The writ petitions filed by the respondent before the High Court shall stand dismissed. We quantify the costs at rupees 20,000.

14. In case any subsidy has been availed of by the respondent as a result of the High Court judgment the same may be recovered from the respondent by way of instalments. The State Government may consider and effect the recovery by instalments.