

RAJASTHAN HIGH COURT

Bhiwati Metal Rollwell (P) Ltd.

Vs.

State of Rajasthan

Civil W.P. No. 10175 of 2005 and 1568 of 2003

(K.S. Rathore, J.)

13.06.2006

ORDER

K.S. Rathore, J.

1. Since both the writ petitions involves similar controversy, the same are decided by this common order.

(SB Civil Writ Petition No. 1568/03)

2. The petitioner applied for subsidy under the State Capital Investment Subsidy Scheme, 1990 and same was granted vide letter dated 31-3-1994 by the State Level Committee in its 28th Meeting held on 28-3-1994. Total amount of subsidy was sanctioned to the tune of Rs. 17, 82,070/-.

3. It is not disputed that the factory was not in operation on account of electric disconnection and same was restored on 30-1-1997. Since the subsidy amount is not disbursed, the petitioner requested through several letters to release the amount of subsidy of Rs. 17,82,070/- and it was learnt that the RIICO has retained the subsidy as being the disbursing agency. And subsidy amount to the tune of Rs. 8,91,000/- has been disbursed on 24-9-1994.

4. It is also not disputed that the interest and installment demanded by the RIICO has not been paid in time and defaulted to make the payment of loan amount and interest amount. Therefore, the respondent RIICO moved before the Collector to recover the amount under the Rajasthan Public Demands Recovery Act, 1952 (for short, the Act of 1952) and the Additional Collector issued a notice dated 27-11-2002 informing the petitioner-company that a certificate against the petitioner-company for Rs.

18,95,755/- had been filed in the office under Section 4 of the Act of 1952. And demand also raised by the RIICO vide letters dated 4-10-2001, 26-11-2001 and 11-1-2002.

5. Aggrieved and dissatisfied with the order dated 4-10-2001 and subsequent orders dated 26-11-2001 and 11-1-2002 by which the petitioner was called upon to refund the entire amount of subsidy disbursed to the petitioner along with interest @ 15% per annum by invoking clause 14 of the State Capital Investment Subsidy Scheme, 1990, this writ petition is preferred.

6. The petitioner's main challenge is to the competence of the RIICO to recall the subsidy on the ground that the RIICO is not competent to recall the subsidy granted by the State Level Committee and placed reliance on the judgments reported in 1995 (5) SCC 482 : (AIR 1995 Supreme Court 1811) and 1990 (4) SCC 113 : (AIR 1990 Supreme Court 1814).

7. The petitioner raised several disputed facts in the writ petition and further submits that clause 14 of the Scheme is not mandatory in nature and confers only a discretion in the sanctioning authority i.e. the Industries Department/SLC to withdraw the subsidy after considering the overall facts of the case. Clause 14 of the Scheme is reproduced hereunder:-

"The cash subsidy sanctioned and disbursed under this scheme will be subject to the following conditions. Breach of any of these conditions will make the subsidy liable to be recovered as arrears of land revenue along with interest @ 15% per annum.

(a) The industrial unit availing of subsidy under this scheme shall install and effectively operate and maintain pollution control measures as per the standards prescribed and scheme approved by the competent authority, viz. Rajasthan State Pollution Control Board.

(b) The industrial unit will remain in production continuously for at least five years after it is commissioned except in cases when it remains out of production for short periods extending upto six months due to reasons beyond its control such as shortage of raw material etc.

(c) The industrial unit availing of subsidy under this scheme will follow and maintain any other condition laid down by this scheme or by procedure

instructions, clarifications or amendments issued under this scheme."

8. After referring clause 14 of the Scheme, the petitioner further submitted that the controlling words in clause 14 are that breach of any of these conditions will make the subsidy "liable to be recovered" and further submitted that the word "liable" has been considered by Hon'ble the Supreme Court occurring in many statutes and he relied upon the judgment of Hon'ble Supreme Court in the case "*Superintendent and Remembrancer of Legal Affairs to Government of West Bengal v. Abani Matty, reported* ¹ in wherein Hon'ble Supreme Court has interpreted the word "liable" in many statutes and held that (para 17) –

"As not conveying the sense of an absolute obligation or penalty but merely importing a possibility of attracting such obligation, or penalty, every where this word "liable" is used along with words "shall be" which are missing from Clause 14 of the Scheme.

9. The submissions made on behalf of the petitioner is strongly denied by the learned counsel appearing on behalf of the RIICO and has categorically stated that the loan of Rs. 87,00,000/- was sanctioned to the petitioner for manufacturing Cold Rolled Stainless Steel Strips at Bhiwadi on 8-12-1993. A subsidy of Rs. 17,82,070/- was also sanctioned to the petitioner-company by the State Level Committee in its 28th Meeting held on 28-3-1994. Being 20% of the fixed capital investment of the proposed unit and sanction letter to this effect came to be issued by the Directorate of Industries, Government of Rajasthan, Jaipur on 31-3-94. It is also not disputed that the disbursing authority under the State Capital Investment Subsidy Scheme, an advance of Rs. 8,91,000/- was disbursed to the petitioner- company on 24-9-1994.

10. The petitioner unit started commercial production w.e.f. 19-8-1995 as per the Certificate issued by the Director of Industries, Government of Rajasthan, Bhiwadi. The petitioner unit did not remain in production for the period from 15-3-1996 to 1-5-1997; 3-5-1997 to 13-6-1997, 21-6-1997 to 27-7-1997 and 2-10-1997 to 11-11-1997.

11. It is also not disputed that the petitioner-company approached the RIICO for approval in the change of Management which was accorded on 6-11-1996.

12. Learned counsel for the RIICO also referred Clause 14 reproduced hereinabove.

And after referring Clause 14, learned counsel for the respondents submitted that only an industrial unit which remains in production continuously for at least five years after it is commissioned is entitled to the benefit of State subsidy except in cases when it remains out of production for short period upto six months due to reason beyond its control such as shortage of raw material and power. The petitioner unit had not remained in production continuously for at least five years and it had admittedly out of production for a period of almost 18 months and that too not on account of shortage of raw material and power etc. Therefore, the petitioner unit was rightly asked to refund the amount of subsidy along with interest at the rate of 15% per annum on account of breach of the conditions contained in sub- clause (b) of clause 14 of the scheme.

13. It is also strongly refuted that the RIICO has asked for withdrawal of the Scheme at its own whereas the decision has been taken by the State Level Committee. As it is not disputed that the RIICO is disbursing agency and also the recovery agency for recover of the amount of subsidy.

14. Having heard the rival submissions of the respective parties and perused the judgments referred by the petitioner and the respondents and relevant clause of the subsidy scheme referred by the respective parties as well as the factual aspect of the matter, as stated by the respondents that the petitioner-company remain closed for a period of at least 18 months as mentioned hereinabove and as per the requisite requirement of the Scheme, the petitioner-company is not in production continuously for at least five years and undoubtedly remained closed for 18 months and only six months can only be extended in case due to reasons beyond its control such as shortage of raw materials and power etc. Thus, as per the provisions of the subsidy scheme, the petitioner is not entitled for subsidy. This Court and Hon'ble the Supreme Court also held in various judgments that the subsidy is not a right and it is only an incentive and the benefit of the subsidy scheme can only be availed as per the conditions of subsidy scheme and as the petitioner has violated the provisions of sub-clause (b) of clause 14 of the Scheme, therefore, the respondents have rightly asked to refund subsidy.

15. I am not convinced with the submissions made on behalf of the petitioner that even if the petitioner-industry remained closed for a period of 18 months is entitled to get the subsidy and I am also not convinced with the submission made that the RIICO is not competent to withdraw the subsidy which has been disbursed in favor of the

petitioner therefore, no case of any interference is made out and consequently, this writ petition is hereby dismissed.

16. With regard to connected writ petition No. 10175/05, the petitioner prayed for release of the original papers pertaining to plot No. A-1131, Industrial Area, Phase-III, Bhiwadi. Since the papers are pledged with the RIICO at this stage, I do not think it proper to issue writ of mandamus directing the respondents to release the original papers pertaining to aforesaid plot.

17. Accordingly, this writ petition also deserves to be dismissed and same is hereby dismissed.

Petition dismissed.

Cases Referred.

1. 1979 (4) SCC 85 : (AIR 1979 SC 1029)