

D. B. CIVIL SPECIAL APPEAL (w) NO. 796/2002
S. R. INDUSTRIES VS. STATE OF RAJASTHAN & ORS.

31. 1. 2006

HON'BLE JUSTICE MRS. GYAN SUDHA MISHRA
HON'BLE JUSTICE MR. CHATRA RAM

Mr. R. P. Garg, for the appellant.
Mr. Rahul Kanwar, for the respondent No. 3.
Mr. M. Rafiq, A. A. G., for the State.

This appeal has been preferred against the order dated 2.11.2001 passed by the Learned Single Judge, by which he had been pleased to dismiss the writ petition filed by the petitioner-appellant herein claiming subsidy for his industry. The order dated 24.2.1998 issued by the Department of Industry was under challenge by which the petitioner/appellant had been informed that his application for granting of subsidy had been rejected by the District Level Committee as he had set up the industry within the municipal limit of District Alwar which was a disqualification for such subsidy.

The petitioner-appellant herein had assailed this order before the Learned Single Judge wherein he had essentially contested the matter on the ground of discrimination and had submitted that although similarly situated industries had been granted the subsidy, the petitioner has been refused this benefit insisting the condition which had been waived in case of others.

The Learned Single Judge was pleased to reject

the writ petition holding therein that the industries could not be permitted to be set up and continue in the residential area as it would adversely affect the health of the residents in the area. The Learned Single Judge, thus, upheld the decision of the District Level Committee and was pleased to reject the writ petition, as already stated hereinabove.

The appellant-industry has assailed the judgment and order of the Learned Single Judge in support of which, his counsel Mr. Garg has tried to impress upon the Court that the petitioner-appellant should not be allowed to suffer discrimination at the instance of the respondent by denying it the subsidy since the appellant although had set up the industry within the municipal limit of District Alwar, the same was permissible within an area having a population of less than one lakh, meaning thereby that although the industries cannot be permitted to be set up within the municipal limit of a District, the same is applicable only if the population of that area is more than one lakh. It was, therefore, submitted that the decision of the District Level Committee denying subsidy to the appellant-industry was clearly arbitrary and discriminatory. These are the two principal grounds of challenge which has been raised on behalf of the appellant-industry while assailing the judgment and order of the Learned Single Judge.

A show cause notice was issued to the respondents, in response to which, it has been replied by the respondents that the appellant is not eligible to claim subsidy for an industry which has been set up on a residential plot for which the first and foremost condition was that the plot should first of all be converted into an industrial plot. The appellant did not take any step to get the residential plot converted for the use of industrial purpose and therefore, the Screening Committee held that the benefit of subsidy under the "expansion scheme" could be granted to the appellant-Unit only when it was established that the land was duly converted for industrial use. It has been contended that the decision taken by the District Level Committee was placed before the Screening Committee successively on different dates merely to reiterate that subsidy could not be provided to the appellant-industry because it has been set up on a residential plot.

It is apparent from the aforesaid averments that the appellant is claiming benefit of subsidy for an industrial purpose whose initiation itself is illegal and merely because an industry could be set up within the municipal limit of an area having the population of less than one lakh people, does not grant license to start using the same plot which is meant to be used for

residential purpose. The fact as to whether the other industries have been allowed to be set up on residential plots without their conversion is neither available before this Court nor the same has been substantiated. Assuming that certain concession might have been granted in favour of any Unit which has been allowed to be set up within the municipal limit of an area of having the population of less than one lakh, the basis condition that it should have been set up on an industrial plot and not on a residential plot, cannot be ignored. It is a well acknowledged legal position that an illegality cannot be permitted to be multiplied by permitting other illegalities on the plea of discrimination as discrimination is fit to be eliminated only if it is for a just cause and has a legal basis. Hence, the appellant-industry cannot be permitted to claim subsidy as a matter of right on the ground of discrimination especially when it is suffering from the legal flaw of setting up the industry on a plot, which has not been converted for industrial use.

The appeal, under the circumstance, has no substance and hence the same is dismissed at the admission stage itself.

(Chatra Ram), J.

(Misra), J.

(Gyan Sudha

Kuttan/PCG

UNCONDITIONAL APOLOGY

I, Pooran Chand Gupta son of Shri Govind Sharan Gupta, aged 32 years, working as PA-cum-Judgment-Writer, Rajasthan High Court, Jaipur Bench, resident of 90-Avadhpu -I, 80 ft. Road, Mahesh Nagar, Jaipur, do hereby take oath and state as under:

1. That on 27.6.06 Shri R. C. Palwal (Dy. Registrar, Admn.), Rajasthan High Court Bench, Jaipur had contacted Shri Teekam Khanchandani, PS and asked my Landline/Mobile Number to which Shri Teekam Khanchandani had given my Mobile Number to Shri R. C. Palwal.
2. That thereafter I had asked Shri Teekam Khanchandani that whether he gave my mobile number to Shri R. C. Palwal then he admitted about giving my mobile number.
3. That thereafter, I, upon losing my temperament, misbehaved with Shri Teekam Khanchandani and also used ill language, for which I pay my unconditional apology towards him.
4. That I further assure that I will never repeat the mistake in future.

Deponent

Verification:

I, Pooran Chand Gupta, the above named deponent, do hereby verify on oath that the contents of the above apology are true and correct to my personal knowledge. Nothing has been concealed therein and no part thereof is false and incorrect.

So help me God.

Deponent