

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(DIVISION BENCH: HON. MR. JUSTICE S.K. SETH &
HON. MR. JUSTICE PRAKASH SHRIVASTAVA)

W.P. No.13289/2010

Rajshree Plastiwood

.... Petitioner

Vs.

Appellate Authority for Industrial
and Financial Reconstruction (AAIFR)
and others.

.... Respondents

 Shri Shekhar Bhargava, learned senior counsel with Shri
 Romesh Dave Adv., for the petitioner.

Shri Girish Desai, learned Dy. A.G. for the respondent.

Whether approved for reporting:-

ORDER

(Delivered on 7/5/2011)

Per Prakash Shrivastava, J :-

1/ This Writ Petition under Article 227 of the
 constitution of India is directed against the order dated 16.8.2010
 passed by the Appellate Authority for Industrial and Financial
 Reconstruction (AAIFR), New Delhi, allowing the Appeal
 No.46/08 filed by the Commissioner, Commercial Tax

Department, GOMP and remanding the matter to the BIFR for passing fresh order after hearing all the concerned parties.

2/ In brief, the petitioner which was earlier setup as a company by the name and style of Rajshree Forex Limited, was granted tax concession for a period of 9 years from 2.9.1994 to 1.9.2003 under the Madhya Pradesh General Sales Tax Act, 1958 (MPGST Act) and Central Sales Tax Act, 1956. The Company was declared sick by BIFR vide order dated 5.12.1997, hence it could not avail the tax concession. The draft rehabilitation/revival scheme (SS 2002) of the Company was sanctioned on 20.5.2002. As per the scheme the State Government was to extend sales tax and purchase tax concession for a period of 9 years from the date of sanction of the scheme. The MPGST Act was repealed by M.P. Vanijya Kar Adhiniyam, 1994 and that act was also repealed by the Madhya Pradesh VAT Act, 2002 which came into force w.e.f. 1.4.2006. By the notifications issued under the VAT Act, the earlier exemption notification granting tax concession to the petitioner was not continued. The petitioner, therefore, filed W.P. No.5616/06 before this Court challenging the denial of continuation of tax

concession on the coming into force of the Madhya Pradesh VAT Act and the said writ petition is stated to be pending for final hearing. In the said background the respondent no.3, Commissioner - Commercial Tax Department through his counsel had sent the communication dated 4.8.2007 contending that on coming into force of VAT Act, 2002 w.e.f. 1.4.2006, the exemption from sales tax and other taxes, as contained in Clauses (3) and (4) of Para 4.7 of the Sanctioned Scheme 2002, will cease to have effect, and further that M/s Rajshree Plastiwood had merged with M/s Rajshree Products Pvt. Ltd (RPPL) and the net worth of RPPL had turned positive, therefore, the said company was no longer a sick industrial company, hence not eligible for reliefs and concession granted under Sanctioned Scheme 2002. It was also objected that before sanctioning the rehabilitation scheme neither a copy of the draft rehabilitation scheme was circulated to respondent no.3 nor any opportunity of hearing was given to him. Accordingly a prayer was made to review the Sanctioned Scheme 2002 and to modify the terms of relief and concession to be granted by the State Government.

3/ The review hearing took place before the BIFR in the

absence of the respondent no.3 or his counsel when the BIFR passed the order dated 5.11.2007 and discharged the petitioner-company from purview of SICA and directed inter alia to grant the relief envisaged in terms of Sanctioned Scheme 2002. The respondent no.3, Commissioner - Commercial Tax Department, filed appeal before the AAIFR raising several grounds including the ground that the order dated 5.11.2007 was passed by the BIFR ex parte without hearing the respondent no.3 or his representative. By the impugned order the AAIFR has found that the BIFR had passed the order dated 5.11.2007 without issuing notice to the respondent no.3 and also without hearing him, therefore, the AAIFR has allowed the appeal and directed the BIFR to pass a fresh order after hearing the concerned parties.

4/ Leaned counsel appearing for the petitioner submitted that the AAIFR has committed an error in setting aside the order of the BIFR since the said order not only relates to the relief relating to tax concession but it also contains the other reliefs. He further submitted that the Commissioner, Commercial Tax Department, had due notice of the proceedings before the BIFR, therefore, the order dated 5.11.2007 passed by the BIFR can not

be said to be an *ex parte* order passed without giving an opportunity of hearing. He has further submitted that by the said order no prejudice is caused to the Commissioner, Commercial Tax Department since his review application was not decided by the said order.

5/ After hearing the learned counsel for the petitioner at length and on the perusal of the impugned order passed by the AAIFR, we find that the AAIFR has not expressed any opinion on the merits of the controversy but it has set aside the order of the BIFR because before passing the said order neither any notice of hearing was issued to the respondent no.3, Commissioner - Commercial Tax Department nor any opportunity of hearing was given to him. It is not in dispute before us that before the BIFR the principles of natural justice are required to be complied with. The AAIFR relying upon one of the judgment of the Supreme Court has recorded that the Rules of natural justice are applicable to the BIFR in the proceedings under SICA. The fact that the AAIFR has not set aside the order of BIFR on merit but only on the short ground of non compliance of principles of natural justice, is apparent from para 7 of the order of AAIFR quoted

below :-

“We have heard the ld. counsels for the parties and perused the impugned order as well as records of the BIFR and have also considered the rival contentions of the ld. counsels for the parties. In this appeal, we have only considered the question whether any opportunity of hearing was provided to the appellant department, while passing the impugned order dated 5.11.07 and whether the impugned order was passed ex parte. Shri R.D. Makheeja, Advocate has submitted that no notice was given to the appellant for the hearing dated 5.11.07 nor was the appellant heard on its letter/application dated 4.8.07 which was filed by the appellant Department for review of the orders sanctioning the rehabilitation scheme (SS-02). In this connection, we have perused the impugned order. In the impugned order, presence of any Counsel or representative of Commissioner, Commercial Tax Department, Government of Madhya Pradesh has not been marked which shows that nobody was present on behalf of the appellant Department when the BIFR was considering the letter dated 4.8.07 filed by the appellant before the BIFR. In para 9 of the impugned order, the BIFR has clearly mentioned that it has considered the submissions made by the concerned agencies 'present in today's hearing' which shows that the order has been passed by the BIFR on the basis of the submissions made by the parties present in the hearing held on 5.11.07. As no notice was issued to the appellant, no one appeared for the Commissioner, Commercial Tax Department on that day and consequently no submissions could be made by the appellant before the BIFR. From para 9 of the impugned order, it is apparent that at the time of declaring and discharging the company from the purview of SICA, the appellant Department was neither heard nor their objections considered. Therefore, it is clear that

the impugned order is an ex parte order, passed without issuing any notice to the appellant Department and also without hearing them.”

6/ It is worth noting that the respondent no.3, vide communication dated 4.8.07 (para 9), had sought review of the Sanctioned Scheme 2002 on the ground that the tax concession can not be extended after 1.4.2006 on coming into force of the Madhya Pradesh VAT Act, 2002. It is also not in dispute that against the said denial of continuance of tax exemption, another writ petition no.5616/06 preferred by the petitioner is pending before this Court for hearing. Thus the petitioner's entitlement for the tax concession after 1.4.2006 under the M.P. VAT Act is in dispute.

7/ Learned counsel for the petitioner has failed to point out any material showing that the respondent no.3 was given notice of hearing, which took place on 5.11.2007 or the respondent no.3 or his representative was heard at the time of passing of the order dated 5.11.2007. The AAIFR has not committed any error in reaching to the conclusion that the said order was passed by BIFR without notice and without giving opportunity of hearing to the respondent no.3.

8/ On the perusal of the order dated 5.11.2007, it is also noticed that the said order was passed in the review proceedings, therefore, it was all the more necessary for the BIFR to give notice and hear the respondent no.3, who had sought the review of the Sanctioned Scheme 2002. Therefore, it can not be said that no prejudice is caused to the respondent no.3 by the said order.

9/ By the order dated 5.11.2007 the BIFR has discharged M/s Rajshree Plastiwood Ltd. (RBL) from the purview of SICA, therefore, before passing the said order the BIFR ought to have given opportunity of hearing to the respondent no.3 on his objections. The objections of the respondent no.3 may have a bearing on the reliefs, which have been granted to the petitioner in the said order.

10/ That apart we also do not find any jurisdictional error or illegality in the exercise of jurisdiction by the AAIFR requiring interference by this Court under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed *in limine*.

(S.K. SETH)
J u d g e

Trilok/-

(PRAKASH SHRIVASTAVA)
J u d g e