



GAHC010226002017

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8249/2017

M/S. BIVA BAKERS A UNIT OF BIVA FOOD PRODUCTS PVT. LTD.
REP. BY ITS DIRECTOR SRI RAJU BANIK, S/O LATE GOBARDHAN BANIK,
C/O IID CENTRE, MALINIBEEL, SILCHAR, PO- TARAPUR, PS-SILCHAR,
DIST. CACHAR, ASSAM

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE SECRETARY, MINISTRY OF FOOD PROCESSING INDUSTRIES,
GOVT. OF INDIA, PANCHSHEEL BHAWAN, AUGUST KRANTI MARG, NEW
DELHI

2:THE COMMISSIONER
DEPTT. OF INDUSTRIES and COMMERCE
GOVT. OF ASSAM
UDYOG BHAWAN
BAMUNIMAIDAM
GUWAHATI-21

4:THE STATE MISSION DIRECTOR
NATIONAL MISSION FOR FOOD PROCESSING GOVT. OF ASSAM
BAMUNIMAIDAM
GUWAHATI-21

5:THE GENREAL MANAGER
DISTRICT INDUSTRIES and COMMERCE DEPTT.
SILCHAR
DIST. CACHAR

Advocate for the Petitioner : MS.L BORGOHAIN

Advocate for the Respondent : DR.B AHMED

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 16.08.2022.

Date of judgment : 16.08.2022.

JUDGMENT & ORDER (Oral)

Heard Mrs. N. Saikia, learned counsel for the petitioner. I have also heard Mr. R. K. D. Choudhury, learned Assistant Solicitor General of India appearing for the respondent No.1 and Mr. A. Kalita, learned Standing Counsel, Industries & Commerce Department, Assam appearing on behalf of respondent Nos.2, 4 and 5. The name of respondent No.3 has been struck off from the array of parties.

2. The petitioner herein is a company registered under the Companies Act, 1956 having registered office at Silchar. The petitioner's bakery unit is engaged in manufacturing of breads, biscuits, cakes, cream buns and variety of other bakery items. The National Mission for Food Processing (NMFP) had earlier floated a scheme for providing financial assistance to the food processing units. The objective of the scheme was to increase the level of food processing by reducing wastage and value addition as well as enhancing the income of farmers as well as to increase exports thereby promoting overall development of food processing sector. As per the guidelines issued by the National Mission for Food Processing (in short NMFP) the eligible units were entitled to apply for financial assistance under the scheme. As



such, being a food processing unit, the writ petitioner herein had also submitted an application on 26.03.2014 seeking financial assistance in the form of grant in aid. The total amount claimed by the petitioner was to the tune of Rs.57,24,400/-. According to the writ petitioner, the aforesaid expenditure had been incurred as part of expenses incurred towards expansion and modernization of its existing unit by constructing new building and purchasing new machineries with the financial assistance from the Punjab National Bank.

3. The application submitted by the writ petitioner on 26.03.2014 was verified by the Enquiry Officer pursuant to a unit visit conducted by him and thereafter the same was also found to be in order. Accordingly, the application for grant-in-aid for an amount of Rs.57,24,400/- was recommended by the Enquiry Officer. Based on the report of the Enquiry Officer, the General Manager, District Industries and Commerce Center, Cachar, Silchar had also forwarded the application of the writ petitioner, by his letter dated 29.03.2014 addressed to the respondent No.4 by observing that the application was submitted by enclosing the required documents as per the guidelines of NMFP. That apart, the claim had also been duly verified by the Functional Manager of District Industries and Commerce Center, Cachar. The application of the petitioner was also duly supported by a certificate of the Chartered Accountant establishing the fact that the petitioner's unit had, in fact, incurred expenditure towards expansion of its bakery unit.

4. As per the guidelines under the scheme, the application of the petitioner was required to be placed before the State Level Committee for processing the same.



However, the grievance of the petitioner is that although the application was submitted during the period when the scheme viz., "Scheme of Technology Upgradation/Establishment/ Modernisation of Food Processing Industries during the remainder of 12th Plan (2013-17) under NMFP" was in vogue, the departmental authorities deliberately sat over the matter until such time, the scheme was withdrawn thereby denying relief to the petitioner under the scheme.

5. Responding to the above, the respondent Nos.2, 4 and 5 have submitted a joint affidavit inter-alia contending that the application submitted by the petitioner fell in the category of 25 lakhs to 50 lakhs. In the meeting of the committee held on 19.08.2015 the application of the petitioner could not be placed as it came to the notice of the authorities that the petitioner had already availed two other grants under the Ministry of Food Processing Industries against the same unit and therefore, another application seeking financial grant was not permissible under the NMFP Scheme. Subsequently, the respondent Nos.2, 4 and 5 have also submitted another affidavit stating that the application submitted by the petitioner was incomplete and by the time the necessary documents including the affidavit in support of the application was submitted by it, the scheme had been withdrawn. Situated thus, the application of the petitioner could not be considered.

6. The stand of the Union of India canvassed through the learned Assistant Solicitor General of India Mr. R. K. D. Choudhury is that after the scheme has been withdrawn, the Central Govt. does not have any role to play in the matter as on date.

7. Mrs. Saikia submits that the stand that the petitioner's application was

incomplete is incorrect and the same is an afterthought in as much as the aforesaid stand of the department is belied by the letter of the General Manager, District Industries and Commerce Center, Cachar, Silchar dated 29.03.2014 wherein it has been clearly mentioned that the petitioner's application was complete in all respect along with the documents required as per the guidelines of NMFP. It is also the submission of Mrs. Saikia that the petitioner had earlier availed financial assistance from the NMFP for the same unit but those were not with regard to the same machinery and therefore, the bar proposed by the departmental authorities would not be applicable in case of the writ petitioner.

8. By referring and relying upon a decision of the Division Bench of the High Court of Judicature at Meghalaya, rendered in the case of **Union of India & Ors. Vs. Vision Ispat Pvt. Ltd. & Ors** reported in **2009 (1) GLGT 557** Mrs. Saikia has argued that a similar stand taken by the departmental authorities was rejected by the Division Bench of the Meghalaya High Court and the said order has also been upheld by the Hon'ble Supreme Court. Once there is a promise made which had induced the petitioner to alter its position by making additional expenditure, it would not be permissible for the respondents to deny the claim of the petitioner merely on the plea that the scheme has since been withdrawn. By referring to another decision of this Court rendered in the case of **Ever Assam Tea Pvt. Ltd. -vs. State of Assam & Ors.** reported in **2018 (2) GLT 516** Mrs. Saikia has further submitted that the petitioner is neither an institution nor an organization but it is a company and therefore, strict application of the norms pertaining to grant of subsidy would not be applicable in its case.



9. Responding to the above, Mr. Kalita, learned Standing Counsel, Industries and Commerce, submits that the decision cited at the bar pertains to grant of subsidy but in the present case the issue involved pertains to prayer for grant-in-aid which stands on a different footing. According to Mr. Kalita, unless a proper application, complete in all respect, is submitted by the applicant within the period of validity of the scheme and the same is found to be not barred under any condition laid down by guidelines, the question of considering such a request would not arise in the eye of law.

10. I have considered the submissions made by the learned counsel for the rival parties and have also gone through the materials available on record.

11. There is no dispute about the fact that the writ petitioner had in fact submitted an application seeking grant-in-aid to the tune of Rs.57,24,400/- under the NMFP scheme. The application submitted by the writ petitioner was duly processed at the District level authority and was forwarded to the State level agencies for placing the same before the State Level Committee. It is also the admitted position of fact that the application of the writ petitioner was not placed before the State Level Committee nor is there any official communication issued to the petitioner informing the reasons for not doing so. Subsequently, the departmental authorities have taken a stand by filing affidavit before this Court that the petitioner was ineligible to avail the grant in aid due to the earlier financial assistance availed by it from the same Ministry. The petitioner has, however, disputed such a stand.

12. The rival contentions of the parties would require an enquiry into disputed questions of facts, which would not be possible in a writ petition. However, this Court is

also of the opinion that once the petitioner had submitted an application, the same ought to be considered by the departmental authorities in accordance with law and be disposed of by a reasoned order, which has evidently not been done in this case. Merely on the basis of the pleadings brought on record, this Court cannot decide the fate of an application submitted by the petitioner seeking financial assistance under a scheme of NMFP.

13. Since the petitioner is aggrieved by non-consideration of its application for grant-in-aid by the appropriate Committee i.e. the State Level Committee, notwithstanding the fact that the scheme has since been withdrawn, this Court is of the opinion that the matter requires proper enquiry at the hands of the concerned departmental authority, who must consider as to what relief, if any, can be granted to the petitioner under the law even at this point of time if it is found that the application submitted by the writ petitioner, complete in all respect, was received during the currency of the scheme.

14. For the reasons noted herein above, I am of the view that the application submitted by the writ petitioner seeking financial assistance deserves to be considered on merit by the appropriate authority. As such, this writ petition is being disposed of by providing that within four weeks from today the writ petitioner may submit a detail representation, enclosing a certified copy of this order, before the Additional Chief Secretary to the Government of Assam, in-charge of Industries and Commerce Department, ventilating its grievance in the matter. If such a representation is filed within the prescribed period, the same may be considered on



merit and disposed of in the light of the observations made herein above as well as in the decision rendered in **Vision Ispat Pvt. Ltd. & Ors** (supra), within a further period of six months.

15. It is made clear that if on examination of the representation submitted by the petitioner, the departmental authorities are of the view that the application submitted by the writ petitioner was a genuine one and the same was complete in all respect and was also submitted within the period of validity of the scheme in question, in that event, appropriate steps may be taken for redressal of grievance of the petitioner, as may be permissible under the law. Whatever be the decision, the same be intimated to the petitioner through a written communication.

With the above observation, the writ petition stands disposed of.

JUDGE

T U Choudhury/Sr PS

Comparing Assistant