

A THE STATE OF MADHYA PRADESH AND ORS.  
v.  
M/S. BINDAL AGRO CHEMICAL LTD. AND ANR.

JULY 19, 1996

B [KULDIP SINGH AND S. SAGHIR AHMAD, JJ.]

*Industrial and Development Regulation Act, 1956 :*

C *Industrial development—Madhya Pradesh State Government Notification dated 16.10.1986—Para XIII E—Incentives to entrepreneurs—Not available to new industrial units set up by transferring, shifting, closing an existing unit—Held, the new unit set up by respondent was by transferring/shifting the existing unit, and as such it was not entitled to the subsidy under the Notification.*

D The respondent-Company purchased a vanaspati factory, which was granted an industrial licence by the Central Government under the Industrial (Development and Regulation) Act, 1956. Later, the respondent applied for and was granted permission by the Government to change the location of the factory from Dewas to Mandideep against the original industrial licence dated 18.1.1981.

E  
F The State Government of Madhya Pradesh in order to help industrialisation of backward areas, by Notification dated 16.10.1986 announced various incentives to the entrepreneurs. However, para XIII E of the Notification provided that the incentives would not be available to a new industrial unit set up by transferring, shifting or dismantling or closing an existing unit within the State. The respondent, after setting up the unit at Mandideep, applied for an eligibility certificate under the 1986 Notification, which was declined by the State Government on the ground that the respondent had shifted the unit from Dewas to Mandideep.

G The respondent filed a writ petition before the High Court contending that plant/machinery of Dewas Unit was not shifted to Mandideep but after acquiring land at Mandideep the totality of the plant and machinery were newly purchased and as such the unit set up at Mandideep was a new industrial unit entitled to the subsidy under the Notification. It was  
H contended for the State that under the Act a vanaspati manufacturing unit

could not be set up without obtaining licence from the Central Government; no licence was obtained for setting up a new industrial unit at Mandideep which was operating under the licence granted for Dewas unit; since the Mandideep unit was set up by transferring/shifting the existing unit at Dewas, the respondent was not eligible for grant of subsidy in terms of pars XIII E of the Notification. The High Court allowed the writ petition. Aggrieved, the State Government filed the appeal.

Allowing the appeal, this Court

HELD : 1. The High Court was not justified in holding that a new unit was set up at Mandideep. The Central Government permitted the respondent to change the location from Dewas to Mandideep. The correspondence between the respondent and the two governments clearly shows 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. No new licence was granted to the respondent for the unit at Mandideep. The process of Manufacture of vanaspati at Dewas stopped with the transfer of the licence to the unit at Mandideep. 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. [758-C; 759-C-E]

2. In case any subsidy has been availed by the respondent as a result of the High Court judgment the same may be recovered from the respondent in instalments. [759-F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9384-85 of 1996.

From the Judgment and Order dated 9.10.90 of the Madhya Pradesh High Court in M.P. No. 1/88 and 4348 of 1989.

A.K. Chitale , Sakesh Kumar and S.K. Agnihotri for the Appellants.

Kapil Sibal, Rajiv Dutta and Vipin Nair for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Special leave granted.

- A 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
- B Madhya Pradesh is against the judgment of the division bench of the High Court dated October 9, 1990. we may briefly notice the facts. One Nand Vanaspati Indore was granted and industrial licence dated January 18, 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
- C Vanaspati installed the factory at village Balgarh, Tehsil Dewas. Subsequently, the Central Government by the order dated July 17, 1980 permitted the transfer of the said license 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
- D 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 license dated January 18, 1981. The respondent never applied and obtained a new license for its Mandideep Unit.

- E In order to help industrialisation of backward areas the State Government by the notification dated October 16, 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 :

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

.....

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

- After setting up the unit at Mandideep the respondent applied for an eligibility certificate, under the exemption notification, before the State
- H Government. The respondent was informed by the State Government by

the letter dated August 1, 1987 that the industry was not eligible for the central investment subsidy. Operative part of the Communication is as under " A

"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." B

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. C

The State of Madhya Pradesh resisted the claim of the respondent before the High Court. It was contended that no license was obtained for setting up a new industrial unit as 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 license from the Central Government. The unit at Mandideep was operating under the same license which was granted for the Dewas unit. Once the Central Government granted permission to shift the unit under the same license 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). D E

The High Court allowed the writ petitions on the following reasons : F

"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 the respondent No. 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 G H

A 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  
 B 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  
 wayback in 1971 by the Central Government, the Unit set up at  
 Mandideep should be deered to be an old unit. We are constrained  
 to hold that the notification issued by the state Government does  
 C not permit such interpretation...."

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 con-  
 clusion that a new unit was set up at Mandideep. The respondent in the  
 application gave following reasons for changing the location.

D "The present plant being obsolete is to be discarded at its present  
 location and new plant under the licence is to be set up at  
 Mandideep Dist. Raisen (M.P.) having a status of industrially  
 backward area."

E The Government of Madhya Pradesh by the letter dated March 3,  
 1987 communicated to the respondent as under :

F "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  
 concessions due to a new unit because this would be transfer of  
 capacity and not creation of capacity."

The respondent by its letter dated March 6, 1987 replied as under:

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

H In view of what has been stated in your 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 permis-

sion for change of location of our vanaspati unit from Dewas to Mandideep." A

On the basis of the above commitment of the respondent the Government of Madhya Pradesh recommended the appellation 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 April 22, 1987 permitted the respondent to change the location from Dewas to Mandideep. The licence granted for Dewas was amended to be operative at Mandideep. B

It is obvious from the correspondence between the respondent and the two government 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 license from the Central Government under the Act. No new license was granted to the respondent for the unit at Mandideep. The licence was only one pertaining Dewas unit. The respondent could either manufacture vanaspati at Dewas or at Mandideep. They sought the permission to shift the unit alongwith the license 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. C D E

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 as Rupees 20,000. F

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

R.P.

Appeals allowed.