

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT JAMMU**

Reserved on : 28.09.2022  
Pronounced on : .12.2022

OWP No. 1992/2015

M/s Shree Guru Kripa Alloys Pvt. Ltd.

..... Applicant/Petitioner(s)

Through: Mr. Pranav Kohli, Sr. Advocate with  
Mr. Rajat Gupta, Advocate

**Vs**

State of J&K and others

..... Respondent(s)

Through: Mr. Amit Gupta, AAG

**Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE**

**JUDGMENT**

**Brief Facts:-**

1. The petitioner has filed the present writ petition seeking quashment of recommendations issued by the respondent no. 4 vide its communication No. DC/PD/To-II/42/1138-41 dated 28.12.2015, whereby the earlier recommendations of the then Designate Committee for Power have been unilaterally withdrawn. Besides, the petitioner has prayed a writ, order or direction commanding respondent No. 3 not to cancel the order/permission granted vide order dated 22.03.2022 to the petitioner for change of arc furnace to induction furnace after the Designate Committee for Power allowed the said permission.
2. Briefly stated the facts leading to filing of the instant petition are that the petitioner is a Company incorporated under the Companies Act which is running a Casting Unit situated at Bari Brahmana, Jammu. It manufactures M.S Ingots and allied products. It was the specific case of the petitioner that because of the quality of the product manufactured by it, the products of the

petitioner company are finding market in the State of J&K and in the neighboring States. The petitioner has been sanctioned power load of 2250 KVA for manufactures of Ferro Alloys vide Government Order no. 422-PDD of 1995 dated 18.10.1995.

3. The unit of the petitioner started manufacturing process since the year 1996. However, from the year 2007-08, the working of the unit became erratic due to non availability of chromite ore from the State of Orissa. As a result of which the unit of the petitioner remained closed for long periods. Since the arc furnace required chromite ore as an input for manufacture of Ferro chrome which was not available on the regular basis, the petitioner approached the Power Development Department seeking requisite permission for replacing the existing arc furnace with induction furnace. The further case of the petitioner is that the induction furnace as compared to arc furnace uses much modern technology which was not only environment friendly but also is less burdening on the power supply system.
4. It has further been contended that in order to overcome this difficulty, a request was made to the Power Development Department to permit the petitioner to install induction furnace instead of arc furnace. The case for the said purpose was processed at the departmental level and vide letter dated 30.06.2010, Executive Engineer, EM&RE Division-II Jammu, submitted its report to the Superintending Engineer, EM&RE Circle-I Jammu, and vide letter dated 02.07.2010, the Chief Engineer, EM&RE Wing Jammu submitted a detailed report to the Development Commissioner (Power), Power Development Department, J&K.

5. The brief case of the petitioner is that the petitioner has never applied for fresh power connection as the power connection was already sanctioned in his favour way back in 1995 itself. Rather the case of the petitioner was for seeking permission for change of arc furnace to induction furnace.
6. The Government of Jammu and Kashmir through Power Development Department issued order No. 72-PDD of 2010 dated 03.03.2010, by virtue of which, it was ordered that henceforth no power connection be provided to industrial units engaged in Iron and Steel Manufacturing through the use of electric induction and arc furnaces. By virtue of the aforesaid order, a complete ban was imposed on power connections for electric induction and arc furnace by the industrial units.

**Arguments on behalf of the petitioner:**

7. Mr. Pranav Kohli, learned senior counsel appearing on behalf of the petitioner vehemently argued that the aforesaid Government Order whereby the erstwhile State of Jammu and Kashmir had imposed ban on power connections cannot be made applicable to the case of the petitioner, inasmuch as, it was not the case of the petitioner for providing fresh power connection to the petitioner unit.
8. The further case of the petitioner is that the representation for change of machinery of the petitioner was placed before Designated Committee for Power which, after due deliberations, approved the request of the petitioner for the requisite change vide its meeting dated 16.02.2012. A perusal of the serial No. 21 of the minutes of meeting reveals that the case of the petitioner

was allowed by the said Committee. The relevant portion of the minutes of meeting is reproduced as under:-

***“Grant of permission for change of Arc furnace to Induction furnace in favour of M/S. Shree Guru Kirpa Alloys Pvt. Ltd. Bari-Brahmana for a sanctioned power load of 2250 KVA.***

***The case for grant of permission of change of Arc furnace to Induction furnace was decided to be allowed by the committee. The unit at present is being supplied power through 33 KV Narbada Feeder from 2x50 MVA + 31.5 MVA Grid Station at Bari-Brahmana. Already sanctioned load, activity, premises of the installation and power infrastructure shall remain the same. The change proposal in respect of Arc furnace to Induction furnace in any case should not alter loading position of 33 KV Narbada line as well as Grid Station feeding the unit as there is no change in respect of sanctioned load. Further the unit holder shall liquidate all upto date arrears in the first instance.”***

9. It is further contended in the petition that the Development Commissioner (Power), J&K PDD, Jammu, vide its letter dated 16.03.2012 authorized the Chief Engineer, EM&RE Wing, Jammu, for grant of permission for change of arc furnace to induction furnace in favour of the petitioner unit.
10. Learned senior counsel further argued that while granting the permission to replace arc furnace with induction furnace, the petitioner's sanctioned load, manufacturing activity, premises of the installation and power infrastructure would remain the same as the same would not have any impact on the load position of the feeder.
11. It is the specific case of the petitioner that the concerned Chief Engineer, after the decision taken by the Designate Committee for Power Jammu and thereafter duly authorized by the DCP Jammu, issued an order

dated 22.03.2012 in favour of the unit of the petitioner for grant of permission for change of arc furnace to induction furnace.

12. The brief case which has been put forth by the petitioner is that respondent No. 4 is taking the case of the petitioner of change from arc to induction furnace as if a new power connection has been granted or sanctioned in its favour by the respondent no. 3. However, the fact of the matter is that the Chief Engineer has only granted permission for change of machinery

after it was duly authorized by the Designate Committee for Power. Thus, there is no reason, whatsoever, available with the respondents for either withdrawing the order of the then Designate Committee and further cancelling the order dated 22.03.2012 passed by respondent no. 3. Thus, the recommendations issued by the respondent No. 4 cannot sustain the test of law and are liable to be quashed.

13. The learned counsel further argued that the change of arc to induction furnace was granted way back in 2012 by the concerned Chief Engineer after due authorization granted by the Designate Committee for Power. The petitioner not only dismantled its old arc furnace along with its infrastructure but also made huge investments by purchasing and installing the induction furnace. The total expenditure incurred by the petitioner after the permission is about 4.5 crores, out of which 2.5 crores has been obtained as loan from the Bank.

14. The case of the petitioner is that if the said permission is withdrawn or power supplied to the unit of the petitioner is disconnected, the unit will not

only become non-functional but will also suffer huge financial loss without any fault on the part of the petitioner.

15. Learned counsel for the petitioner further argues that on the basis of the said approval and sanction, the Development Commissioner, (Power), J&K, duly authorized the respondent no. 3 to issue the order for the same. The permission, which was accorded in favour of the petitioner, has been accorded on earlier occasions also by the respondents in favour of the similarly situated units like Narbada Steel, R. B. Jodhamal Industries, Tawi Chemical Industries and K.C. Minerals and, recently, in case of J.K. Alloys Pvt. Ltd. Thus, as per the counsel for the petitioner, respondents, by no stretch of imagination, can discriminate with the petitioner.
16. Learned counsel appearing for the petitioner has vehemently argued that the ban imposed by the Government by virtue of order dated 03.03.2010 does not cover the case of the petitioner as it is not a case of grant of fresh connection, rather the case of the petitioner relates to grant of permission of change of arc furnace to induction furnace, which was allowed in pursuant to the recommendation of the Committee with the rider that the already sanctioned load, activity, premises of the installation and power infrastructure shall remain the same.
17. Learned counsel for the petitioner has referred to the minutes of meeting of the Designate Committee held on 10.12.2015 in the Office of Development Commissioner, Jammu wherein the Committee deliberated the recommendation of the then Designate Committee issued vide no. DC/PD/To-II/42/3884-87 dated 16.03.2012 and it was decided as under:-

*(i) No consideration can be accorded to any issue/application in violation to Govt order No. 72 PDD of 2010 dated 03-03-2010.*

*(ii) Recommendations were not strictly in line with the Govt. Order No. 72 FDD of 2010 dated 03-03-2010. Though the Government order was silent about change of type of furnace from arc to induction or vice versa for industrial unit already having sanction for use of such furnace prior to issuance of Govt order, yet it was noted by the Committee that allowing change from one banned type of furnace to another banned type of furnace tantamounts to violation of Government order by implication.*

*Accordingly it was decided to withdraw the recommendation of the then Designate Committee, issued vide no. DC/PD/To-II/42/3884-87 dated 16.03.2012 for this item at S.No. 21 and Chief Engineer, EM&RE Wing Jammu is advised to cancel the already issued order in the year 2012 in this regard.*

*(iii) Consequently, Committee also decided to take up the issue with the Govt. for getting clarification regarding as to how to proceed in case of such application wherein the sanction for use of arc/induction furnaces stands already accorded prior to issuance of banning order by the Govt in the year 2010 where no power sanction or enhancement of load in power sanction by such applicants is involved.*

18. Learned counsel for the petitioner has vehemently argued that the findings of the subsequent Committee which is impugned in the present petition to withdraw the recommendation of the earlier Committee by issuing a direction to the Chief Engineer to cancel the order issued in 2012 is not applicable to the case of the petitioner as the case of the petitioner does not fall within the ambit of the new connection, rather it was a case of change of type of furnace from arc to induction for which, there was no change in the load and it was not a new connection rather, it was the change of activity and, accordingly, outside the purview of the ban imposed by the Government vide Order no. 72-PDD of 2010 dated 03.03.2010.

19. Learned senior counsel has further taken this Court to the minutes of the meeting dated 16.03.2012 in which the Development Commissioner (Power), Chief Engineer, S&O Wing, Jammu, Chief Engineer, EM&RE Wing, Jammu and Chief Engineer, Planning & Design Wing, J&K, were present and permission was granted in favour of the petitioner for change of arc furnace to induction furnace for a sanction power load of 2250 KVA. Pursuant to the decision of the aforesaid Committee, office order dated 22.03.2012 came to be issued by the concerned Chief Engineer, wherein permission was granted in favour of the petitioner for the change of arc furnace to induction furnace with the rider that the already sanctioned load, activity, premises of the installation and power infrastructure shall remain the same.

20. Learned senior counsel for the petitioner has referred to the latest order issued vide Government Order No. 57-PDD of 2022 dated 20.05.2022 (copy whereof has been taken on record), by virtue of which, the Government of Jammu & Kashmir through the Power Development Department has lifted the ban on Electric Arc and Induction Furnaces in Union Territory of Jammu and Kashmir. From a perusal of the aforesaid order, it is manifestly clear that the ban imposed on new connections (including enhancement of load) vide Government order no. 72 PDD of 2010 dated 03.03.2010) was lifted on the following terms and conditions:-

- a) "The power quality shall be maintained by installation of automatic capacitor banks and harmonic filters as per JERC (for UTs of J&K and Ladakh), regulations.
- b) No subsidy shall be provided to the HT Industrial Supply for Power Intensive Category of consumers, as per Schedule-10 of JERC Tariff Order for 2016-17, presently in vogue, which include arc/induction furnaces as well.



c) The new connections or enhancement of load shall be sanctioned subject to availability of upstream infrastructure at transmission and distribution level.

d) Other JERC (for UTs of J&K and Ladakh), regulations related to Arc/Induction Furnaces shall be strictly adhered to.”

21. Learned counsel for the petitioner has vehemently argued that the ban was lifted only vis-a-vis the new connections and including the connections where there was enhancement of load and he further argues that his case does not fall within the ambit of new connection or second condition i.e. enhancement of load.

22. All along, learned counsel has argued that the ban imposed initially by virtue of order No. 72-PDD of 2010 dated 03.03.2010 relates to the fact that it is applicable to the use of electric induction and arc furnaces by the industrial units to the new units including the units where the load was enhanced, but insofar as the case of the petitioner is concerned, it was not a case of new connection nor the load was enhanced in his case and, thus, his plea that his case was outside the purview of the ban stood vindicated when the Government, by lifting the ban, specifically imposed the condition while lifting the ban on new connections including enhancement of load with certain riders.

23. Even otherwise also, the petitioner has argued that during the intervening period, when the order of Chief Engineer was in vogue, the petitioner availed the said benefit.

**Arguments on behalf of the respondents:-**

24. *Per contra*, Mr. Amit Gupta, learned AAG appearing on behalf of respondents, vehemently argued that the order of ban covers all the cases

including change of activity from arc furnace to induction furnace and, hence, the case of the petitioner falls within the ambit of the Government Order dated 03.03.2010.

25. Learned counsel has further argued that the recommendations of the earlier Committee dated 16.02.2012 was in direct conflict with the aforesaid order and the policy framed by the Government and, accordingly, the same was rectified by the subsequent Designate Committee comprising of the Development Commissioner (Power), Chief Engineer, Planning & Design Wing, J&K, Jammu, Chief Engineer, Electric M&RE Wing, Jammu and Superintending Engineer, S&O Circle-II, Jammu.

26. Learned counsel appearing on behalf of official respondents has further argued that the Committee deliberated the recommendations of the earlier Designate Committee and, accordingly, the recommendations were made whereby it was recommended that allowing change from one banned type of furnace to another banned type of furnace tantamounts to violation of Government Order by implication and, accordingly, it was decided to withdraw the recommendations of the earlier Designate Committee and the order passed by the Chief Engineer, and, this was precisely the reason that the Chief Engineer was advised to cancel the order issued in 2012 in this regard.

27. The further stand of the respondents is that the Chief Engineer or the Committee, by no stretch of imagination, can alter or substitute its opinion which is in direct conflict with the policy already framed by the Government in the Administrative Department.

28. Learned AAG further contends that since the findings of the earlier Committee were in direct conflict with the aforesaid policy and, accordingly, it was thought expedient to constitute another Committee which gave its recommendation and, accordingly, a direction was issued to the concerned Chief Engineer to cancel the order issued in favour of the petitioner.

29. Mr. Amit, learned AAG has argued that the wrong which was earlier committed by the Committee was rectified by the subsequent Committee and, accordingly, projected that the recommendations of the subsequent Committee dated 28.12.2015 was in tune with the policy framed by the Government. The order issued by the concerned Chief Engineer dated 22.03.2012 was in direct conflict with the policy framed by the Government and, accordingly, the Committee recommended to cancel the aforesaid order.

**Legal analysis:-**

30. Heard learned counsel for the parties at length and perused the record.

31. Although, the order which granted power connection to the petitioner was issued way back in 1995 for running the arc furnace. But subsequently, the Government has come with a ban on power connections for use of electric induction furnace or arc furnace in **supersession of all previous circulars/orders under** which the petitioner was granted permission to run his arc furnace. Once, the Government order specifically provides that **it is in supersession of all the previous circulars/orders**, then the connection which was granted earlier loses its significance and the subsequent ban

comes into force, which covers both the cases for the use of electric induction furnace and arc furnace.

32. Accordingly, I hold that shifting of the connection from the use of arc furnace to electric induction furnace or vice versa also falls within the ambit of granting new power connection which was banned and falls within the ambit of the aforesaid Government order as the said order imposing complete ban specifically provides that it is in supersession of all previous circulars/orders.

33. Once ban has been imposed, then it covers both the cases i.e. no power connection shall be provided to the industrial unit engaged in the iron and steel manufacturing through the use of electric induction and arc furnace or even shifting from arc furnace to electric induction furnace, **which also tantamounts to granting new power connection**, which was banned. Shifting also falls within the ambit of granting new connections, which was prohibited by the said order imposing ban. Thus, allowing change from one banned type of furnace to another banned type of furnace tantamounts to violation of the Government Order No. 72 of PDD of 2010 dated 03.03.2010.

34. I am fortified by the observation of the Hon'ble Supreme Court in **Kanta Goel v B. P. Pathak, 1977 SCR(3) 412**, wherein it was held that when the words are capable of bearing two or more constructions, they should be construed in light of the object and purpose of the enactment. The purposive construction of the provision must be **"illuminated by the goal, though guided by the word"**.

35. The interpretation, which has been drawn by the learned counsel for the petitioner that the ban is imposed only on new connection including enhancement of the load vide Government order dated 03.03.2010, was lifted vide order dated 20.05.2022 and since the petitioner had not applied for new connection and thus, his case will not be covered in the aforesaid ban, is an interpretation which is contrary to the spirit and mandate of the Government order dated 03.03.2010 by applying the **purposive interpretation which prohibits that no power connection shall henceforth be provided which includes even the case of the petitioner as much emphasis has been laid down in the language which explicitly provides that it is in supersession of all the previous circulars/orders and ban covers all new connections which include enhancement of load or for that matter shifting from arc furnace to electric induction furnace.**

36. I draw support from the decision taken by the recommendation issued by the respondent No. 4 that is the designated committee, who are experts in the field of power. The said committee after due deliberations has taken a conscious decision vide communication dated 28.12.2015, whereby, the earlier recommendations of the then designate committee for power has been withdrawn. The decision of the said designated committee which is impugned in the present writ petition is perfectly legal and justified and in consonance with the spirit and mandate of aforesaid Government order which imposes a complete ban on the industrial units engaged in iron and steel manufacturing through the use of electric induction furnace and arc furnace. Subsequently, by virtue of Government order dated 20.05.2022,

the aforesaid Government order imposing ban has been further interpreted, while lifting the ban, whereby, much emphasis has been laid down that the ban covers with respect to the granting of new connections and also enhancement of load.

37. Thus, in light of what has been stated hereinabove coupled with the decision of the designated committee dated 28.12.2015, I hold that shifting from arc furnace to electric induction furnace would also tantamount to granting fresh power connection which will be in direct conflict with the ban imposed vide Government order dated 03.03.2010 and the earlier connection which was granted to the petitioner for running the arc furnace lost its validity in light of the language used in the Government order dated 03.03.2010 imposing ban by specifying that the said Government order is **in supersession of all previous circulars/orders.**

38. Once, the ban imposed in 2010 is in supersession of all previous circulars/orders, then in that eventuality, the connection which was already granted to the petitioner for running arc furnace also loses its validity and significance. In that eventuality, the petitioner has to apply afresh for new power connection which was banned by the Government from the intervening period commencing from 03.03.2010 to 20.05.2022 and during that intervening period even shifting of the connection from arc furnace to electric induction furnace would also fall within the ambit of granting new power connection which was strictly banned.

39. Since the ban has now been lifted by virtue of subsequent order, the Government is not precluded from taking a decision afresh in light of the aforesaid Government order No. 57-PDD of 2022 dated 20.05.2022(which

is taken on record) for according consideration to the case of the petitioner. The interpretation drawn by the learned counsel for the petitioner cannot sustain the test of law and is liable to be rejected on the ground that if the interpretation as projected by the petitioner is taken to be true then, it will tantamount to draw a different interpretation than what was the import of the Government order and in a way, it would tantamount to interpret a Government order imposing ban retrospectively for 12 years in a different way.

40. The retrospective operation of a Government Order cannot be permitted particularly where it is merely an executive order, and not a legislation. Even if this interpretation has to be taken as a true interpretation, even then, the petitioner cannot improve his case as it can in no way be applied retrospectively as every Government/executive order by virtue of a policy has prospective operation and it can in no way be applied retrospective by infusing life in a Government order and interpreting differently, when the explicit language leads to an irresistible conclusion that the ban covers all. I am fortified by the view of the Hon'ble Supreme Court in **Bhart Sanchar Nigam Ltd. and others v Tata Communications Ltd, 2022 SCC Online 1280**, the relevant portion is reproduced as under:

*“30. The power to make retrospective legations enables the Legislatures to obliterate an amending Act completely and restore the law as it existed before the amending Act, but at the same time, administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence cannot be made applicable with the retrospective effect. Only law could be made retrospectively if it was expressly provided by the Legislature in the Statute. Keeping in mind the afore-stated principles of law on the subject, we are of the view that applicability of the circular dated 12<sup>th</sup> June, 2012 to be effective retrospectively from 1<sup>st</sup> April,*

*2009, in revising the infrastructure charges, is not legally sustainable and to this extent, we are in agreement with the view expressed by the Tribunal under the impugned judgment.”*

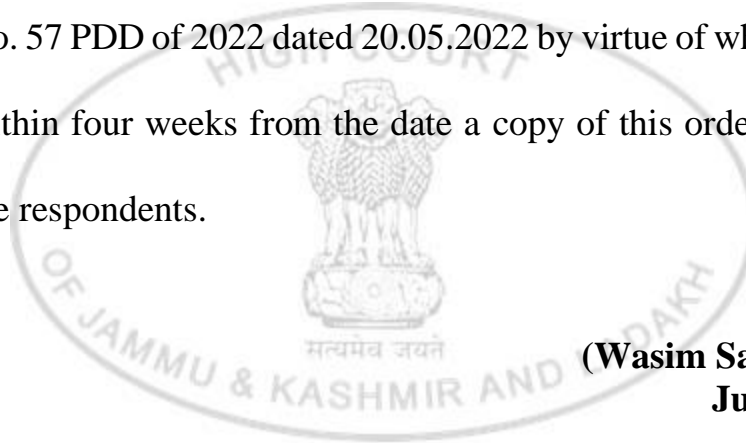
41. Having accepted the aforesaid Government order imposing ban for 12 years, it does not lie in the mouth of the petitioner to agitate now, at this belated stage that his case is not covered by the said ban or petitioner can draw different interpretation after 12 years, when the plain reading of the language used in the aforesaid Government order leads to irresistible conclusion that ban covers all cases including the case of the petitioner.
42. It is also pertinent to mention here that the petitioner has not called in question the order dated 03.03.2010 (supra) for more than 12 twelve years and accepted the same gladly and voluntarily. The petitioner, as such, is estopped under law to question the same at this belated stage by drawing different interpretation than what it connotes/conveys.
43. Even otherwise also, the present writ petition is not maintainable and liable to be dismissed in absence of any specific challenge to the aforesaid Government order No. 72 PDD of 2010 dated 03.03.2010 imposing ban, which was gladly and voluntarily accepted by the petitioner for all along these 12 years.
44. The judgment relied by the counsel for the petitioner in Civil Appeal No. 5802/2022 arising out of SLP(C) No. 12612/2022 in case titled, X vs Principal Secretary Health and Family Welfare Department is not applicable to the case in hand as the rule of purposive interpretation relied by the petitioner deals with principle of construction of statute/the intention of legislature and its intent. It is settled proposition of law that only law could be made applicable retrospectively if it was provided by the



legislature in the statute, but at the same time, administrative/executive order or circular in absence of any legislative competence cannot be made applicable with retrospective effect.

45. For all what has been discussed hereinabove, the interpretation drawn by the petitioner cannot be accepted at this stage and the same is not sustainable in the eyes of law and is liable to be rejected and consequently, the present writ petition fails and the same is dismissed along with all connected applications.

46. However, the Government is not precluded from taking a decision in case of petitioner afresh, strictly in conformity with the Government order No. 57 PDD of 2022 dated 20.05.2022 by virtue of which the ban was lifted, within four weeks from the date a copy of this order is made available to the respondents.



**(Wasim Sadiq Nargal)**  
**Judge**

**Jammu**  
.12.2022  
Rakesh

Whether the order is speaking: Yes  
Whether the order is reportable: Yes