Supreme Court of India
M/S. Orissa Soonge Iron Ltd. & Anr vs The State Of Orissa Ad Others on 9 December, 1997
Author: M J Rao
Bench: S.C. Sen, M. Jagannadha Rao.

PETITIONER:
M/S. ORISSA SOONGE IRON LTD. & ANR.

Vs.

RESPONDENT:
THE STATE OF ORISSA AD OTHERS

DATE OF JUDGMENT: 09/12/1997

BENCH:
S.C. SEN, M. JAGANNADHA RAO.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T M. JAGANNADHA RAO, J.

Leave granted.

This Civil Appeal is directed against the judgment of the Orissa High Court in O.J.C. No. 4056\1995 dated May 14. 1996, dismissing the writ petition filed by the appellants. The appellants are aggrieved by the Industrial Policy Resolution of 1959 of the State of Orissa which came into force from 1.12.1989 insofar as it restricted the benefit of deferment/exemption of sales-tax to industries which had gone into commercial production after 1.4.1986 and denied such benefit to those which had gone into production before 1.4.1986. The industrial policy of 1989 in this behalf was notified by the Orissa Government under S.R.O No. 790/90 (Finance) dated 16.8.1990 issued under Section 7 of the Orissa Sales Tax Act w.e.f 1.12.1989 to which we shall refer in detail later. We are concerned with medium and large - Scale Industrial units.

The appellant-Company was incorporated an 9.4.1979 for manufacture of Sponge Iron in the District of ********* in the State of Orissa. The land was acquired and purchased on 4.4.1980 and the appellant proceeded to construct the factory. It went into commercial production w.e.f. 1.4.1954. The Industrial Policies in the State of Orissa with which we are concerned in this appeal area three

policies, (1) the Policy of 1980. (ii) the Policy of 1986 and (iii) the Policy of 1989.

(I) 1980 POLICY : Interest-free load for Sales tax paid.

In the Industrial Policy of 1980 which came into effect from 1.2.1980 it was stated that Large and Medium industries would be entitled to reimbursement of entire cost of preparation of project/feasibility report subject to a certain maximum if a 25% cost is initially deposited and if the reports are obtained from approved agencies. Otherwise reimbursement would be after implementation of project. These industries, whether new or intending to expand or diversity shall be eligible for interest-free Sales-tax loan equivalent to the Sales-tax said within the State by the units during the first five year subject to an annual maximum limit of 10 per cent of the capital invested out not exceeding Rs. 20 lakhs per year. The loan shall be repaid after 10 years of each year's drawl. The Policy deals with various other benefits given to Large and Medium Industries not only in regard to Sales-tax out in regard to electricity charges. etc. The appellant availed of the above-said Sales-tax incentives when it went into commercial production with effect from 1.4.1984. In other words, the appellant was entitled to an interest-free Sales-tax loan as per the 1980 Policy for a period of 5 years subject to an annual maximum limit of 10 per cant of the capital invested by not exceeding Rs. 20 lakhs per year and the said loan could be repaid after 10 years each year a drawl.

(II) 1986 POLICY : Deferment of Sales Tax/Exemption.

Government of Orissa came forward with a new Policy in 1986. Under definition A. the State is divided into Zones A. S and C w.e.f. 1.4.1986. The effective date as per definition (D) under the said Policy was 1.4.1986. being the date from which the incentives available under the Industrial Policy Resolution of 1980 and other relevant Policy Resolutions would cease to be ******** except for the continuing industries to which the 1980 Policy applied. It was further stated that continuing industries of 1980 policy are those which have made any kind of investment before the effective case or have availed themselves of any incentive or facility under the Industrial Policy of 1980.

Part D deals with concessions relating to Sales-tax. Sub-para (i) thereof deals with exemption of Sales-tax on raw-materials. While sub-para (11) deals with exemptions of Sales-tax on finished products produced by all existing and new khadi, village and cottage industries.

So far as medium and large industrial units are concerned, sub-clause (iii) of part D deals with Sales-tax deferment scheme while sub-clause (iv) deals with exemption of Sales-tax on finished products in lieu of deferment. The two sub-paras read as follows:-

> " (iii) Sales tax Deferment Scheme: New medium and large industrial units will be eligible to defer payment of Sales Tax collected on their finished products for a period of 5 years in Zones B and C and 7 years in Zone A from the cate of their commercial production Deferred amount in respect of each year would be aid in full after the expiry of the period of deferment, annually."

(iv) Exemption of Sales-Tax on finished products in lieu of deferment:

In lieu of the Sales-tax Deferment Scheme, new medium and large industrial units can opt fro exemption of Sales Tax on their finished products for a period of 3 years if located in Zones B and C and for a period of 5 years if located in Zone A from the date of their commercial production. But in view of exclusion of Continuing units of 1980 -

units have either had investment or availed of incentives/ facilities of 1980 policy from the 1986 policy, the continuing units of 1980 policy could not avail of the 1986 policy regarding deferment/exemption whether they went into production before 1.4.1986 or after 1.4.1986. It was only in the 1989 policy, that the units of 1980 policy which went into production after 1.4.1986 were granted benefit of deferment/exemption of sales tax, as shown below. (III) 1989 POLICY : Deferment of Sales Tax/Exemption.

We than come to 1929 Policy Resolution for which the effective date is 1.4.1989. Para 2.7 defines New Industrial Unit as Industrial Units there fixed capital investment has been made only on or after 1.4.1989 Para 2.9 defines Pioneer units and Special Class Entrepreneur, in para 2.11.

(a) Para 2.17 defines Continuing Units of 1986 Policy as follows:-

"Continuing Units of 1986 Policy means any industrial unit where fixed capital investment commenced on or after the Ist April, 1986 and prior to the effective date and, the unit has gone or goes into commercial production after the Ist April, 1986."

(b) Para 2.18 defines "Continuing Units of 1980 Policy" as follows :

"Continuing units of 1980 Policy" means any industrial unit, where fixed capital investment commenced on or after the Ist August, 1980 and prior to the Ist April 1986 and the unit has gone or goes into commercial product after the Ist April, 1986.

The offending part is the underlines portion above and the main prievance of the appellant is that in the abovesaid Para 2.18 while defining "Continuing Units of 1980 Policy". the State ought not to have restricted Sales-tax benefit to units which had gone into production after 1.4.1986 and should not have denied the same to those units which had gone into production before 1.4.1986. The appellant is aggrieved decease the appellants unit has gone into production before 1.4.1986 i.e. on 1.4.1984.

We shall refer to the incentives granted under the 1989 policy. The scheme of 1989 divides the incentives into three Parts as part I. II and III.

(a) Part I deals with incentives of deferment/exemption from dales tax in respects of new industries established after 1.12.1989. Provision is made for deferment of payment of Sales tax upto 9 years or 7 years depending on whether they were located in different geographical areas Zones A.B. & C. If one opts for the benefit of deferment. It will be for 9/7 years as the case may be while if one pots for

exemption it will be for 7/5 years.

(b) Part II of the 1929 Policy deals with incentives granted in favour of the Continuing units of the 1986 Policy. i.e. as stated in para 2.17, where investment has been made after 1.4.1986 and price to 2.12.1989 and where production stated after 1.4.1986. They get the same sales tax incentives as in part I. applicable to new industries of 1985 Policy.

(c) Part III of the 1989 Policy deals with incentives granted in favour of the Continuing units of the 1980 Policy i.e. as stated in para 2.18. Where investment has been after 1.8.1980 and prior to 1.4.1986 but where prosecution started after 1.4.1986. They are again given the same sales-tax incentives as in Part-I, applicable to new industries of 1989 policy, subject however to the provision relating to surrender of loan or other benefits received under the 1980 Policy. This is mentioned in para 7.3.2 as follows:

> 7.3.2 Exemption\Deferment of Sales Tax on finished products. The sales Tax incentive on finished products as is applicable to new industrial units under Part I shall be applicable to continuing units of 1980 Policy, after the effective date. provided that Sales Tax Loan, if any. availed of under the Orissa Sales Tax Loan Scheme Rules, 1980 is surrendered within the time limit prescribed in the operational guidelines/instructions.

Then it is stated in Para 7.3.3 that similar benefits are extended to units of the 1980 Policy to the extent of increased production over and above the installed capacity of an existing industrial unit which has taken up expansion/modernisation/diversification after 1.8.1980 and before 31.3.1986 and which has gone into production after 1.4.1986.

The grievance of the appellant before the High Court: The appellant's grievance was that the definition of continuing units of 1980 (para 2.19) got incorporated into para 7.3.2 and precluded units such as the appellant which made investment under the 1980 policy out which went into production before 1.4.1986 - from surrendering the benefits of interest free loan and obtaining the sales tax deferment/exemption benefits of the 1989 scheme. If the discriminatory pat of the definition in para 2.18 of the 1929 policy is struck down, then the appellant could avail the benefit of para 7.3.2 and surrender and loan. and then claim deferment/exemption of sales tax as per the 1989 policy.

The High Court's decision:

The appellant therefore approached the High Court of Orissa contending that the definition of Continuing units of 1980 in para 2.18 was violative of Article 14 of the Constitution and was arbitrary and unreasonable. This contention was rejected by the High Court on the ground that while granting exemption from sales tax the Government must have taken into account a variety of circumstances and that the Government has a great latitude in taxation matters and the same could not be interfered with in writ jurisdiction. Contentions in this Court:

In this appeal, it is contended by Shri Shanti Bhushan, the learned counsel for the appellant that the words in clause 2.19 of the 1989 policy "after the Ist April 1986" must be a crafting mistake and the Government must have meant "after Ist August 1980". It was also contended that in view of the decision in Nakara vs. U.O.I (1923 (1) SCC 305), the cut off cate 1.4.1926 in para 2.18 of the 1989 policy must be declared as pad because the 1989 scheme could not be treated as a new scheme, out was s continuation of the 1980 scheme. In any event, even treating the 1929 scheme as a new scheme, it was discriminatory inasmuch as the classification of units into two groups, those which went into prosecution before 1.4.1986 and those which went into production after 1.4.1986 was violative of Article 14. Finally, Sr. Shanti Bhushan contended that this was the only unit which was before us and we should grant relief under Article 142 of the Constitution of India.

On the other hand, Shri Harish Salve contended that the above submissions are not correct and the learned counsel supported the view taken by the High Court. Is there a draftsman mistake :

So far as the first contention that there was mistake in Para 2.18 of the 1989 policy by the draftsman in using the words after the Ist April 1986 is concerned, this contention, in our opinion. has absolutely no basis. We cannot presume any such mistake. Further, para 7.3.3 which deals with expansion of units of 1980 Policy also refers to the same cut off date. Moreover the Gazette notification (Fiance) dated 16.8.1990 in S.R.O. 790/90 (referred to below) issued under Section 7 of the Act to reflect the 1989 policies again contains the same date 1.4.1986 under item 3 and item 6. It is, therefore, absolutely clear that there is no question whatsoever of any mistake. On the otherhand, we shall also show, in the further discussion below, that there is not only no mistake put there is good reason for stipulating that said cut off date.

Does Nakara apply ?

The other contention based on Nakara's case [1923 (1) SC 305] is also not tenable. This argument is based on the theory that the 1989 policy is a continuation of the 1980 policy. A reading of the 1989 policy shows that it is a new policy and not a continuation of the 1980. It is clearly stated in para 7.32. that unless a unit of 1980 policy which had taken advantage of the said 1980 policy surrenders the interest free loan received by it the said unit can not opt to come under the 1986 policy. Further, while the 1980 policy was for granting "interest free loan" as per the provisions of the Orissa Sales Tax Loan Scheme Rules, 1980 - to cover sales tax already paid, the 1989 policy dealt with grant of "deferment/exemption" of sales tax duties as specified in the notification under section 7, Inasmuch as the 1989 policy is a new scheme. In our opinion Nakara [1983 (1) SCC 305] cannot apply. In Nakara case certain rules conferred a particular benefit on members of a particular class and subsequently, by another order, the said benefit was denied to a section of that class based on a cut off date. It was held that such withdrawal of an existing right was pad since the cut off date had not nexus with the object of the scheme. This court in that case clearly stated at several claces that what they were laying down would not be applicable if a cut off date was introduce in a new scheme for the first time. It was stated that (at *.333).

> "And beware that it is not a new scheme it is only a revision of existing scheme. It is not a new retrial benefit. It is an upward revision of an existing benefit. If it was a

> wholly new concept, a new retrial benefit. One could have appreciated an argument that those who had already retired could not expect it."

This because whenever any financial benefit is intended to be conferred on persons or units etc. for the first time from an anterior date, the State has to fix some cut off date and could not be compelled to do back into the past without time limit. If the State should confer financial benefits retrospectively without any time limit. It might indeed be impossible for the State to come forward with any beneficial scheme. Every such beneficial scheme which is introduced by the State will depend for its implementation upon considerable sacrifice of the finances of the State. In view of our finding that the 1989 scheme is a new one. as distinct from the 1920 scheme, the appellant cannot rely on Nakara [1983 (1) SCC 305].

Is the classification in para 2.16 of 1984 policy or the corresponding provision of SRO 790 of 1990 dated 16.8.1990 violative of Article 14?

We then come to the main point which was strongly urged by the learned counsel for the appellant, namely, that para 2.12 of the new policy of 1989 was violative of Article 14 insofar as it denied the benefits of the sales tax deferment/exemption to those units which went to production before 1.4.1986. The Learned counsel explained that among those units which made investments after 1.8.1980 under this 1980 policy some, like the appellant, were managed efficiently and could go into production before 1.4.1986 while some others, which were managed badly, could not go to production either before 1.4.1986 (when the 1986 policy came into being) on before or after 1.12.1989 (when the 1989 policy came into being). It was not open to the State to confer sales tax benefits on those units which, by reason of pad management or inefficiency, could not go into production before 1.4.1986. To reward the less efficient and to depart the efficient from the benefits of 1989 Policy was, according to the appellant's counsel. clearly discriminatory and violative. Article 14.

The above argument is attractive out does not stand close scrutiny.

We shall presently divide the units which have come under the 1980 policy into three types, we will show that, for good reasons, only two types of such units were given benefits of the 1989 policy, while excluding one particular type (like the appellant), from the benefits of the 1989 Policy.

Before we do so, we shall refer to the relevant portion of the statutory notification dated 16.8.1990 (finance) Orissa Publication in the gazette which reflects the 1989 policy which came into force w.e.f 1.12.1989. This notification was issued under Section 7 of the Orissa Sales Tax Act. 1947. in relation to medium and Large-sized industries, to reflect the 1929 Policy. Para 1(a) thereof deals with deferment of sales tax and para 1 (b) with exemption. Those who upto for deferment would get, as per Column 4, a benefit of deferment of 9 years of 7 years time for payment of sales tax in different zones. Those who opted for exempting would get benefit for a period which was less than the period mentioned in Col.4. by two years. In other words those who opt for deferment would get benefit for 2 more years as compared to those who got for exemption.

The gist of the deferment/exemption notification classifies the medium and large-scale units of the 1989 Policy (entitled to deferment) as follows :

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1 2 3 4

Sl.No. Class of Industrial Effective Period Unit date

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1. New medium/large Where fixed 9 yrs. in some industrial units capital inve- Distt. of 7 year (of 1989 policy) stment has in some Distt.

		been made only on or after 1.12.1989	
2.	Continuing medium/ large Industrial set up on or after 1.4.1986 (after 1986 policy)	where fixed capital invest- ment has been made on or after 1.4.1986 but before 1.12.1989 and the unit had gone into commercial produc- tion after 1.4.1986.	-do-
3.	Continuing medium/ large industrial units set up on or after 1.8.1980 (after 1980 policy)	where fixed capital investments commenc- ed on or after 1.8.1980 and prior to 1.4.1986 and the units had gone into commercial production after 1.4.86.	-do-

[Note: Serial Nos. 4 to 6 peal with similar concessing to expanding all industries and there also Sl. No.6 deals with 1980 policy units.]

We are concerned in the case before us with Serial No. 3 above relating to the Continuing units of 1980 and the alleged discrimination thereunder denying benefit of the 1989 Policy to such units of the 1980 policy which went into production before, 1.4.1986.

Under the 1980 Policy, where units have made investments after 1.8.1980. there could be three types of units : firstly, those which made investment after 1.8.1980 put which, like the appellant,

went into production before 1.4.1986: secondly, those units which made investment after 1.8.1980 and before 1.4.86 put had gone into production after 1.4.1986 and before 1.12.1989; thirdly, those units which made investments after 1.8.1980 and before 1.4.1986 but when had gone into production after 1.12.1989, Now, out of these three types, only the second and third, were made eligible to take benefits of column 3 of the Serial No.3 and not the first type. Units of type two and three along were permitted to surrender benefits of 1980 policy and come under the 1989 policy as per para 7.3.3 of the 1989 policy.

We shall be comparing Serial Nos. 2 (relating to units of 1986 policy) and Serial Nos. 3 (relating to units of 1980 policy) in the above said notification for finding out if there was any justification for conferring benefit of 1989 policy on units of types two and three of 1980 and excluding type one of 1980 Policy from the benefits of the 1989 Policy.

Firstly, So far as the 1989 policy is concerned, it extended the benefit of deferment/exemption of sales tax under serial No.2 to the new units of the 1986 policy which went into production after 1.4.1986. Then the 1989 policy extended its benefits under Serial No.3 to the second and third type of units of the 1980 policy where the investment was made after 1.5.80 and before 1.4.1986 provided the units have gone into production after 1.4.1986. Obviously, the Government which is the delegated authority, felt that in all these cases, i.e. those falling under the 1986 Policy and type two and three of the 1980 Policy, the common factor was the factum of production after 1.4.1986, Such as common treatment, in fact, ought to have been brought into being even when the 1986 policy was introduce. The State realised, when it come to the 1989 policy, that so far as types two and three of the 1980 after 1.4.1986, those units were entitled to the same benefits of deferment/exemption as the new 1986 units, Obviously, the first type of unit under the 1980 policy where even though the unit made investment after 1.8.1980 and before 1.4.1986 the unit had gone into production before 1.4.1986, could not and would not fit into such a scheme. At the same time, if the benefit of deferment/exemption which came into being for the new units under the 1986 policy was not extended to the second and third type of units of the 1980 policy, both of which went into production after 1.4.1986, then perhaps there was a good case for a plea by the second and third type of units of 1980 policy to contence that they were being discriminated as compared to the new units of 1986 Policy. It could perhaps be legitimately contended by them that the fact that investment was made by the between 1.8.1980 and 1.4.1986 and the fact that so far the new units of 1986 scheme were concerned, they made investment after 1.4.1986,- was irrelevant and what was relevant was the date of production. So far as the first type of unit of the 1980 Policy, where the investment was between 1.8.1980 and 1.4.1986 but where the unit (like the appellant) had gone into production before 1.4.1986, those units could not therefore stand comparison with the new units of 1986 policy, or the second and third type units of 1980 policy - for the date of production by latter units was a date on or after 1.4.1986. After all, the principle of deferment/exemption was introduced only under the 1986 policy and was continued under the 1989 policy and there was nothing wrong in extending benefits to type two and three of the 1980 policy so as to avoid discrimination as far as possible, between them and the new units of 1986 policy. In that context, there was good reason for leaving but the first type of units of the 1980 policy. In addition, as stated by us earlier the scheme of interest free loan and deferment/exemption were different concepts, what was done under the 1989 Policy was to bring uniformity of approach in the deferment/exemption scheme and avoid

discrimination between units which were similarly circumstance, as far as possible. For the aforesaid reasons, we find that the cut off date of 1.4.1986 has amble significance and the exclusion of type one of the 1980 scheme to which category the appellant belonged and the inclusion of the second and third type of units of the 1980 scheme into the 1989 scheme was for good and valid reasons. The appellant's contention is therefore not acceptable.

A similar distinction between new units and old units while granting exemption from sales-tax was upheld by this Court in M/s. Bharat General and Textile Industries Ltd. vs. State of Maharashtra 1989 Suppl. (1). SCC 153, One of the arguments was that (see p.159) the result of the 1985 amendment to Sec. 41-4 was that while the old unit had to pay Purchase-tax, Sales-tax, turnover tax etc. totalling Rs. 1650/- per metric ton, the new units producing the same washed cotton-seed oil got away scot-free without paying any tax and these stood placed in a very advantageous position.

It was held that in that case that the exemption granted in favour of the new units has a sound economic and policy underlying it". After referring to what was stated by the Government in the Counter, this Court observed :

> "It cannot, therefore, be contended that the old units should also have been granted the same benefits as new units since both the units and engaged in the manufacture of the same type of products. In fact, such a policy, if followed by the Government, would not only fail to provide incentive to the new industries put wold also place the new units at a comparative disadvantage in being made to face stiff competition with older units which have been established at lesser cost and which have stapilised themselves in the field by successfully running the units number of years'.
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> Again in Mohd. Jappan Malik Lasjan vs. State of J.K.

1994 Suppl. (3) SCC 24 (to which one of us. S.C.Sen, I. was a party) It was held that though initially exemption from Sales-tax was granted for a specified period to certain industries by placing them under a common heading, a subsequent denial of extension of the exemption to some only of such industries was not an arbitrary exercise of power, more so when the industry granted further exemption was a comparatively new one. This Court observed:

> "The Government, in exercise of its power given by Section 5 of the Act, can decide the exemption of any gods from taxation. The power may be exercised having regard to social, economic administrative and fiscal conservations."

Therefore, it was for the policy-maker to consider whether he should not allow the older units to get benefits of sales-tax which they were producing to give the new units. If they felt that units which were already established at lesser cost and which got well stabilised, should not be allowed to have any advantages over new industries, then such a classification would be perfectly which.

Nor can arguments that units of the second and third type under the 1980 policy did not go into production before 1.4.1986 only on account of pad planning or inefficiency, be accepted. There could

be a variety of factors like - increase in cost of construction, machinery, the comparative backwardness of the area, administrative delays or labour problems - as to why some units could not go into production before 1.4.1986.

It is again well settled that the State has greater latitude in taxation matters and in particular, in the grant of sales tax exemptions Verma J (as he then was) observed in Kerala Hotel and Restaurant Associations vs. State of Kerala [1990 (2) SCC 502] as follows:

> "The scode for classification permitted in taxation is greater and unless the classification made can be termed to be palpably arbitrary. It must be left to the legislative wisdom to choose the yardstick for classification, in the background of the fiscal riding of the State....." (p. 512) Venketachaliah J. (as he then was) stated in P.M.Ashwathanaravana Setty vs. State of Karnataka [1929 Suppl. (1) SCC 696] as follows:
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> ".....the State enjoys the widest lastitude where measures of economic regulations are concerned. These measures for fiscal and economic regulation involve and evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of various conflicting social and economic values and interests. It is for the State to decide what economic and social policy it should pursue and what discriminations advance those social and economic policies."
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> We, therefore, hold that para 2.18 of the 1989 policy and the corresponding provisions of the notification SRO 790/90 (Finance) dated 16.8.1990, insofar as they extended the benefit of the 1989 policy only to the continuing units of 1980 policy with had gone into production after 1.4.19986, the said classification is valid and was not hid by Art.14 of the Constitution of India.

Article 142 :

The last arguments of Shri Shanti Bhushan was that the appellant was the only industry which made come upto this Court seeking benefit of 1989 policy and therefore in the interests of justice, this court should exercise powers under Art.142 of the Constitution of India. We are of the view that appellant has no case on merits and even otherwise, this is not a fit case for grant of any relief under Article 142.

For all the above reasons, the appeal is dismissed.