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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA No. 1972/2006

Judgment Reserved on : December 10, 2013

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Judgment Pronounced on : January 17, 2014

M/S. LALKUAN STONE CRUSHERS LTD. ...APPELLANT
Through : Mr. J.C. Seth, Advocate.

VERSUS

UNION OF INDIA AND OTHERS ...RESPONDENTS
Through : Mr. S.K. Dubey,
Advocate for R-1/UOI.
None for R-2/
State of Uttaranchal.
Mr. Vinay Garg,
Advocate for R-3/SIDCUL.

CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN**

JUDGMENT

N.V. RAMANA, CHIEF JUSTICE:

1. The appellant, who was unsuccessful before the learned Single Judge in Writ Petition (Civil) No. 9460/2006, has filed the present appeal thereby assailing the impugned judgment dated 24.08.2006 on the ground that respondent No. 3 herein / State Industrial Development Corporation of Uttaranchal Ltd. (for short, 'SIDCUL') had no jurisdiction to scrutinize the claims of the appellant for Rs.2,24,57,589/- towards transport subsidy for the period October, 1993 to June, 1996 in respect of its unit at

Haldwani, after the claims had been approved by the State Level Committee (for short, 'SLC') and/or to ask for additional documents for the purpose of scrutiny and determination of eligibility and genuineness of the said claims.

2. The facts of the case are that the appellant set up a Stone Crusher Unit in Haldwani, District Nainital, which was entitled to the benefit of subsidy under Transport Subsidy Scheme, 1971 (for short, 'the Scheme of 1971') notified by the Government of India / respondent No. 1 on 23.07.1971. It is not in dispute that the Scheme of 1971 was extended and made applicable to the industrial units established in the hilly areas of the State of Uttar Pradesh vide notification dated 09.07.1978. The said scheme entitled the appellant for transport subsidy on transportation cost of raw materials and finished goods between the location of unit and the designated rail-head for a period of five years so as to off-set the increased transportation cost in hilly areas to enable the industries to compete with the industries located in the plains.
3. The appellant lodged quarterly claims of transport subsidy to the extent of Rs.2,24,57,589/- for the period October, 1993 to June, 1996 with the Directorate of Industries of the State of Uttaranchal / respondent No. 2 herein for the purpose of processing the same as per the Scheme of 1971.
4. Respondent No. 2 vide Govt. Order / Public Notice dated 29.12.2001 prescribed a simplified procedure in terms whereof a claim was to be scrutinized, apart from other things mentioned therein, mainly on the basis of certificate issued by the Chartered Accountant and affidavit of the claimant. In compliance of the said public notice dated 29.12.2001, the

appellant submitted additional documents vide its two communications dated 21.03.2002 and 27.04.2002 in respect of the pending claims of the appellant for the period in question.

5. It is the say of the appellant that after verification of the requisite documents and satisfying themselves with the relevant material placed on record, its claims were sanctioned on 31.03.2004 by the high-powered SLC comprising seven representatives of all the respondents herein. The said sanction, granted vide unanimous resolution dated 31.03.2004 by the SLC, was conveyed to respondent No. 1 by respondent No. 2 on 15.04.2004 and simultaneously, because of lack of funds, respondent No. 2 also requested respondent No. 1 to provide additional funds. In response thereto, on 03.02.2005, respondent No. 1 remitted an amount of Rs.4.41 crores to respondent No. 3 for disbursement of transport subsidy. The sanction of appellant's subsidy claim of Rs.2,24,57,589/- approved on 31.03.2004 by the SLC was conveyed by respondent No. 2 to the appellant on 22.03.2005.
6. During the interregnum period, the Scheme of 1971, which was extended to Uttaranchal vide Notification dated 19.07.1978, was amended and notified vide Notification dated 25.01.2005 (for short, 'the new Scheme of 2005') in terms whereof respondent No. 2 was to refer the claims approved by SLC to respondent No. 3 for the purpose of scrutiny at the second stage in accordance with fresh guidelines to be issued separately. The said guidelines were issued vide Notification dated 09.03.2005 envisaging that the transport subsidy claims, which have been duly approved by the SLC at the first stage of scrutiny, but are pending for disbursement, may be sent by respondent No. 2 to

respondent No. 3 for careful scrutiny of the claims at the second stage in accordance with the guidelines and the provisions of the transport subsidy scheme as amended from time to time for disbursement.

7. Vide its letter dated 05.11.2005, respondent No. 2 asked the appellant to make available to respondent No. 3 the following documents:-

- “1. Copy of the account of M/s. Lalkuan Stone Crushers in the books of M/s. Himgiri
2. Stock Register
3. Invoices for the sales
4. Invoices for the purchase
5. Freight Inward Bills
6. Bills of Electricity/Power”

The appellant vide its letter dated 09.11.2005 requested that since all the information and documents had already been made available to respondent No. 2, the amount of transport subsidy may be released. Surprisingly, the information that a fire took place in the record room of the appellant on 07.10.2004 and that all the old records had been destroyed in the said fire came on record vide communication dated 28.11.2005 written by the Additional Director of respondent No. 2 to the General Manager (Finance) of respondent No. 3.

8. In view of non-availability of additional documents sought for checking the veracity of subsidy claims of the appellant, inability of the Chartered Accountant to give an unqualified opinion on the basis of records available, and pendency of vigilance enquiry in respect of previous claims of the appellant, respondent No. 3 expressed its inability vide letter dated 27.03.2006 to accept the claims of the appellant, being against the spirit of the guidelines issued therefor. The said decision

was challenged by the appellant by way of writ petition, which was dismissed by the learned Single Judge vide impugned judgment dated 24.08.2006, against which the present appeal has been filed.

9. The main contention of learned counsel for the appellant is that the subsidy claims of the appellant for the period in question were processed by the SLC, which after being satisfied with the material on record placed before it sanctioned the same on 31.03.2004. However, in the guise of change in policy and subsequently the guidelines for verification of transport subsidy claims, the appellant's legitimate claims have been declined, which is illegal, especially in view of the sanction of the SLC conveyed to the appellant vide letter dated 22.03.2005 of respondent No. 2. It was contended that the action of respondent No. 3 is not only contrary to the instructions issued by the Government of India, but also against the doctrine of promissory estoppel.
10. Learned counsel for the appellant, while relying upon the Scheme of 1971, contended that even if there was any subsequent change in policy for verification of transport subsidy claims, it was only in the nature of further guidelines issued to implement the said Scheme of 1971. It was contended that respondent No. 3 could not have asked for additional documents, which were more than eleven years' old, more particularly when all the documents had already been submitted to respondent No. 2. Further, respondent No. 3 could not have once again asked the appellant to submit additional documents and that too to a private Chartered Accountant engaged by respondent No. 3 in the guise of new Scheme of 2005. It is the

submission of the learned counsel that since an incident of fire took place in the record room of the appellant on 07.10.2004 due to electric short-circuit, the documents, which were destroyed, could not be produced. To substantiate this, reliance was placed upon the FIR and the Inquest Report. Learned counsel also sought to rely upon Section 209(4A) of The Companies Act, 1956, in terms whereof the books of account of every company are required to be preserved for a period of eight years only.

11. Learned counsel for the appellant also contended that as per the guidelines, respondent No. 3 was obliged to give an opportunity of personal hearing before denying the subsidy and rejection of the said claims is in violation of the principles of natural justice.
12. The next submission of learned counsel for the appellant is that since respondent No. 3 herein / the Managing Director of SIDCUL is biased and hostile against the appellant, he has denied the determined amount to the appellant. It was also contended that one of the grounds of denial was pendency of vigilance enquiry in respect of previous claims of the appellant. It was submitted that the enquiry was held against the employees of respondent No. 3 and not against the appellant. Hence, there was no reason to rely upon such vigilance enquiry.
13. Lastly, it was contended that the learned Single Judge, without looking into the material placed before him, erroneously dismissed the writ petition on the ground that the appellant had not submitted the necessary documents as required under the guidelines for disbursement of the transport subsidy claim.
14. Learned counsel for the appellant, while relying upon the Notification dated 22.01.2013 issued by the Ministry of

Commerce and Industry, contended that the appellant is entitled to transport subsidy in view of the designated rail-heads mentioned in Annexure – I thereto.

15. Learned counsel for respondent No. 3 / SIDCUL contended that the Scheme of 1971 was extended to the State of Uttaranchal in the year 1978 and later on, taking into consideration the allegations of misuse of the said Scheme, it was amended by a Notification dated 25.01.2005. In view of the new Scheme of 2005, the approval of the subsidy claims by the SLC were to be referred by the respective Directorate of Industries to the designated Nodal Agencies, i.e., respondent No. 3 / SIDCUL. It was contended that upon such reference, the claims of transport subsidy have to be carefully scrutinized by the respective Nodal Agencies as per the provisions of the new Scheme of 2005 and the guidelines issued to them separately and then only, they were to disburse subsidy to the eligible units on receipt of funds from the Government of India. In the present case, even though the claims of the appellant were examined as per the existing guidelines under the Scheme, yet amendment to the Scheme added some more guidelines to the original Scheme of 1971, according to which, after the first scrutiny and approval of the transport subsidy claims by the SLC at the first stage, the claims have to be referred by the Directorate of Industries to the Nodal Agency, i.e., respondent No. 3 in the present case, who shall after careful scrutiny of the claims as per the guidelines issued to them separately on 09.03.2005 disburse the transport subsidy.
16. Learned counsel for respondent No. 3 contended that vide letter dated 05.11.2005, the appellant was directed to make available certain documents viz. copy of the account of the appellant in

the books of Himgiri, stock register, invoices for the sales, invoices for the purchase, freight inward bills, bills of electricity/ power, to substantiate the claim of the appellant at the second stage as per the Notification dated 25.01.2005, which the appellant admittedly failed to produce. It was also contended that the appellant has not challenged the said Notification dated 25.01.2005 and/or the guidelines issued in pursuance thereof vide Notification dated 09.03.2005 at any stage. Thus, having failed to substantiate its claims, the appellant cannot be permitted to seek any relief in the absence of the requisite documents.

17.Learned counsel for respondent No. 1 / UOI, while taking the same stand, contended that the communication dated 22.03.2005 of respondent No. 2 about sanction of the claims to the appellant does not confer any enforceable right for the reason that by that time, on 25.01.2005 itself, the new Scheme of 2005 was notified and subsequently the guidelines came into being w.e.f. 09.03.2005, which indicate that careful scrutiny by respondent No. 3 / SIDCUL, Nodal Agency in the present case, is necessary to determine the eligibility and genuineness of the claims. It was contended that a conjoint reading of the new Scheme of 2005 and subsequent guidelines makes it amply clear that after the first level scrutiny by the SLC, the matter has to be referred to respondent No. 3, who is obliged to carry out careful scrutiny at the second stage and at that point of time, the claimant has to produce the original records based on which the claims are to be settled.

18.Learned counsel for respondent No. 1 also contended that the appellant has taken contradictory stands – on the one hand, it

has stated that records were lying with the SLC; and on the other hand, it has claimed that all the original records were destroyed on 07.10.2004 due to fire. Thus, in the peculiar facts and circumstances of the present case, the claims of the appellant were rightly rejected and consequently, the impugned judgment of the learned Single Judge does not need any interference.

19. We have heard the learned counsel for the parties at length.

20. The main question for consideration before us is whether there is any reason to interfere with the judgment dated 24.08.2006 passed by the learned Single Judge rejecting the relief sought by the appellant for payment of its transport subsidy claims.

21. In order to examine the rival contentions of the parties, it is necessary to examine the Scheme(s) in respect of transport subsidy claims. It is apparent from the material on record that the Scheme of 1971 was notified on 23.07.1971 for grant of subsidy on the transport of raw materials and finished goods to and from certain selected areas with a view to promoting growth of all industrial units. This was extended vide Notification dated 09.07.1978 and made applicable to industrial units established in the hilly areas to claim transport subsidy for cost of transportation between the location of the unit and the designated rail-head for a period of five years so as to off-set the transport cost of such new industries in the hilly areas to enable them to compete with the industries located in the plain areas. On 29.12.2001, the Government of Uttaranchal prescribed a simplified procedure in terms whereof claims were to be scrutinized mainly on the basis of certificates of the Chartered Accountant and the affidavit of the claimants.

22.It is vide Notification dated 25.01.2005 that respondent No. 1 amended the Scheme of 1971 and the relevant portion of the same reads as under:

“In the case of Himachal Pradesh, Uttaranchal and Sikkim, after scrutiny and approval of the transport subsidy claims by the State Level Committee (SLC) / District Level Committee (DLC), the claims shall be referred by the respective Directorate of Industries to the designated agencies of these States, namely, Himachal Pradesh State Industrial Development Corporation (HPSIDC), State Industrial Development Corporation of Uttaranchal (SIDCUL) and North Eastern Development Finance Corporation Limited (NEDFi) respectively. Thereafter, HPSIDC, SIDCUL and NEDFi shall, after careful scrutiny of the transport subsidy claims in accordance with the provisions of the Scheme and the guidelines issued to them separately, disburse the transport subsidy to the eligible units out of the funds which will be released by the Department of Industrial Policy and Promotion to them and which will be maintained by these nodal agencies as revolving fund to be supplemented by the Department from time to time based on the requirements received from such nodal agencies.”

(emphasis supplied)

Thus, respondent No. 2, more particularly Directorate of Industries, was obliged to refer the claims of the appellant approved by SLC to respondent No. 3 herein / SIDCUL for careful scrutiny at the second stage in accordance with the Scheme and the guidelines issued for the same separately.

23.It would be appropriate to reproduce here the relevant portion of the guidelines issued vide Notification dated 09.03.2005, which is in the following terms:-

“2. Broad guidelines for scrutiny of claims which are to be followed before disbursement of transport subsidy are at Annexure–II.

3. All the transport subsidy claims which have been duly approved by the State Level Committee (SLC) / District Level Committee (DLC) at the first stage of scrutiny but are pending for disbursement may be sent by the State Governments concerned to the respective nodal agencies for disbursement after careful scrutiny of the claims by the nodal agency at the second stage, in accordance with the aforesaid guidelines and the provisions of Transport Subsidy Scheme as amended from time to time. Further claims will also be dealt with accordingly.”

(emphasis supplied)

24. It is not disputed that the claims of the appellant for transport subsidy for the period October, 1993 to June, 1996 were recommended by the SLC on 31.03.2004 on the basis of simplified procedure introduced w.e.f. 29.12.2001. Further, it is an admitted fact that when the new Scheme of 2005 as well as the subsequent guidelines issued on 09.03.2005 came into effect, the claims of the appellant for transport subsidy were pending disbursement. Consequently, the appellant's contention that further scrutiny by respondent No. 3 amounted to giving Scheme of 2005 and subsequent guidelines retrospective effect cannot be accepted.

25. Moreover, in view of the new guidelines, the transport subsidy claims of the appellant, approved by the SLC at the first stage of scrutiny were to be sent by respondent No. 2 to respondent No. 3 for disbursement after careful scrutiny of the claims at the second stage. In view thereof, the submission of learned counsel for the appellant that the action of respondent No. 3 / SIDCUL was contrary to the instructions issued by the Government of

India and/or against the doctrine of promissory estoppels, cannot be accepted.

26. Though the learned counsel for the appellant contended that the respondents are estopped from denying the claims of the appellant, there is no legal ground made out because the onus of satisfying the concerned authorities about the genuineness of its claims as per the procedure *in vogue*, was on the appellant. So long the appellant has no grievance about the practice or procedure, he cannot plead the applicability of estoppel.

27. We draw strength from the observations of the Apex Court in Sharma Transport represented by D.P. Sharma v. Government of A.P. & Ors., (2002) 2 SCC 188, which are as under:-

“24. It is equally settled law that the promissory estoppels cannot be used to compel the Government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the Government or the public authority to make. Doctrine of promissory estoppels being an equitable doctrine, it must yield place to the equity, if larger public interest so requires, and if it can be shown by the Government or public authority for having regard to the facts as they have transpired that it would be inequitable to hold the Government or public authority to the promise or representation made by it. The court on satisfaction would not, in those circumstances, raise the equity in favour of the persons to whom a promise or representation is made and enforce the promise or representation against the Government or the public authority. ...”

(emphasis supplied)

28. In our opinion, since the appellant has not challenged the new Scheme of 2005 and/or the subsequent guidelines issued to eradicate bogus claims of transport subsidy and, rightly so; even

the writ petition was confined only to the issues of the power, authority and procedure followed by respondent No. 3 / SIDCUL in scrutinizing the claims to determine eligibility and genuineness of the claims, its case cannot be stretched further as the claims of the appellant were to be considered on the basis of the said guidelines only.

29. We may also take note of the judgment of the Apex Court in India Cement Ltd. & Ors. v. Union of India & Ors., (1990) 4 SCC 356 where it was held that even if some persons are at a disadvantage and have suffered losses on account of the formulation and implementation of the government policy, that is not by itself sufficient ground for interference with the government action.

30. The plea raised by learned counsel for the appellant of violation of principles of natural justice, in our view, is unsustainable in the peculiar facts and circumstances of this case for the reason that the transport subsidy claims of the appellant were to be considered in view of the provisions of the Scheme of 1971, as amended from time to time, read with the guidelines issued on 09.03.2005.

31. Insofar as the allegation of the appellant that its transport subsidy claims were declined because the Managing Director of respondent No. 3 / SIDCUL was biased and hostile against the appellant, suffice it to say, the person alleging *mala fide* has to prove the same on the basis of facts that are either admitted or satisfactorily established and/or logical inferences deducible from the same. It is trite that whenever allegations of *mala fide* are leveled, it is necessary to give full particulars of such allegations and such a person needs to be impleaded personally.

The requirement of law, in our considered opinion, is not satisfied insofar as the pleadings in the present case are concerned.

32. We may also notice that though the learned counsel for the appellant tried to enlarge the scope of the appeal by filing additional material to show that no rail-head was created and the old rail head is existing there, we are not inclined to go into that issue as the rejection order does not deal with the said issue. It is only on the ground that the documents according to the guidelines were not produced, the claims of the appellant were rejected.

33. So far as the plea of the appellant that all the original documents were produced before the SLC is concerned, the same appears to be *ex facie* incorrect in view of the simplified procedure adopted by the SLC mainly on the basis of certificate issued by the Chartered Accountant and affidavit of the claimant. It is clear that the appellant tried to blow hot and cold in the same breath as on the one hand, a stand was taken that the requisite documents have already been submitted before the SLC; and on the other hand, a plea was taken that the same could not be produced as the said originals were burnt in a fire accident, which took place on 07.10.2004 in the premises of the appellant.

34. In view of the aforesaid, we are of the considered view that once the appellant has failed to produce relevant records, the claims of the appellant for transport subsidy for the period in question cannot be granted and, thus, the appellant is not entitled to any relief. Hence, there is no reason to interfere with

the impugned judgment dated 24.08.2006 passed by the learned Single Judge.

35.The appeal is accordingly dismissed leaving the parties to bear their own costs.

CM APPL. No. 15814/2007

In view of dismissal of the main appeal, the application does not survive for consideration.

Dismissed.

(CHIEF JUSTICE)

(MANMOHAN)
JUDGE

January 17, 2014
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