208 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) **CWP No. 14198 of 2018 (O&M)**
Date of Decision: 16.09.2019.

M/s Chetan Agro Foods

... Petitioner

Versus

State of Punjab and others ... Respondents

(2) **CWP No. 17432 of 2018 (O&M)**

Manjit Singh ... Petitioner

Versus

State of Punjab and others ... Respondents

3) **CWP No. 22738 of 2018 (O&M)**

M/s U.C. Fresh ... Petitioner

Versus

State of Punjab and others ... Respondents

4) **CWP No. 28916 of 2018 (O&M)**

Agro Dutch Industries Limited ... Petitioner

Versus

State of Punjab and others ... Respondents

5) **CWP No. 14708 of 2018 (O&M)**

Sanjiv Singh and others ... Petitioners

Versus

State of Punjab and others ... Respondents

6) **CWP No. 39 of 2019 (O&M)**

Nayyar Agrotech Limited ... Petitioner

Versus

State of Punjab and others ... Respondents

7) **CWP No. 19875 of 2018 (O&M)**

Harsunjit Singh ... Petitioner

Versus

State of Punjab and others ... Respondents

8) **CWP No. 16395 of 2018 (O&M)**

Unity of Man

... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM : **Hon'ble Mr. Justice Jitendra Chauhan**

Present : Mr. Karan Nehra, Advocate for the petitioner in CWP-14198-2018.

Mr. Bhanu Pratap Singh, Advocate for the petitioner(s) in CWP-14708, 17432, 19875-2018.

Mr. SS Sarwara, Advocate, for the petitioner in CWP-22738-2018.

Mr. Vibhu Saini, Advocate for Mr. Gaurav Bhaiyya, Advocate, for the petitioner(s) in CWP-39-2019.

None for the petitioner in CWP-28916-2018.

Mr. Aditya Dassaur, Advocate, for the petitioner(s) in CWP-16395-2018.

Mrs. Anju Arora, Addl.AG, Punjab.

Mr.Vikas Chatrath, Advocate, for respondent Nos. 2 to 4 in CWP-22738-2018.

Mr. Parminder Singh-I, Advocate for respondent Nos. 2 to 4 in CWP-19875-2018.

Mr. Sahil Sharma, Advocate, for respondent Nos. 2 to 4 in CWP-16395-2018 and for respondent Nos. 2 to 5 in CWP-39-2019.

Mr. Kirpal Singh, Advocate for Mr. Abhilaksh Grover, Advocate and Mr. Arman Midha, Advocate, for respondent Nos. 2 to 4 in CWP-14198-2018 & for respondent Nos. 2 to 5 in CWP-14708-2018.

Mr.Sunil Kumar, Advocate for

Ms. GK Mann, Advocate.
for respondent Nos. 2 to 4 in CWP-17432-2018.

Ms. Monica Chhibber Sharma, Advocate,
for respondent Nos. 2 to 4 in CWP-28916-2018.

JITENDRA CHAUHAN.J.(ORAL)

This judgment shall dispose of aforementioned eight civil writ petitions as common questions of law and facts are involved therein.

The facts are being taken from CWP No. 14198 of 2018. The petitioners have sought quashing of circular dated 13.02.2018 (Annexure P-10) issued by Punjab State Power Corporation Limited (for short “PSPCL”) vide which the subsidy on electricity granted to Mushroom cultivators was withdrawn with immediate effect. The petitioner(s) have also sought quashing of supplementary bill dated 11.05.2018 (Annexure P-11) raising demand of Rs. 26,09,621/- as a difference of tariff between AP connections and industrial/commercial connection from 10.03.2016 to 18.04.2017 retrospectively.

The petitioner(s) is a partnership firm. The petitioner(s) had applied for the electricity meter connection with PSPCL and electricity connection No. SN01/00146LS was sanctioned on 27.09.2013 to the petitioner(s). PSPCL is a government company and 100% of its share are owned by the Government of Punjab. The Government of Punjab took a conscious decision on 06.02.2016 to provide subsidy in electricity to the mushroom farmers so as to promote mushroom farming in the State of Punjab and to uplift the lives of the farmers. The said decision dated 07.02.2016 (Annexure P-4) was communicated to Chairman PSPCL and Secretary Power Department to ensure power supply to mushroom farmers/cultivators at agriculture power tariff on the pattern of AP High Density Farming. In pursuance to order dated 07.02.2016, the PSPCL issued circular dated 09.02.2016 (Annexure P-7) vide which the mushroom farming consumers were to be billed as per AP Metered Tariff instead of Industrial/Commercial tariff. The difference between the Industrial Tariff and AP tariff was to be borne by the Government of Punjab as a part of subsidy. Thereafter another circular dated 03.08.2016 (Annexure P-8) was issued by PSPCL making a clarification that the benefit of AP Metered shall only be given for the load used for composing, spanning and production of mushroom. Thereafter, vide circular dated 18.04.2017 it was decided by PSPCL that the circular dated 09.02.2016 and circular dated 03.08.2016 (Annexure P-7 and P-8) be kept in abeyance till further orders. In pursuance to circular dated 18.04.2017 (Annexure P-9), the petitioner(s) have been paying all the electricity bills as per the industrial tariff. Vide impugned commercial circular dated 13.02.2018 (Annexure P-10), the circulars Annexures P-7 and P-8 were withdrawn with immediate effect. Vide impugned circular, it has been decided to recover the amount of rebate already allowed to mushroom farming consumers.

The issue with regard to recovery of benefit already granted to mushroom cultivators has already been decided by this

Court in ***CWP No. 22426 of 2018 decided on 30.08.2019 titled as M/s R.S. Mushroom Udyog vs. State of Punjab and others***. The relevant paragraphs are reproduced as under:-

> *"The sole question to be determined in the instant case is whether the State or its agencies are within their rights to issue recovery of a benefit already granted retrospectively. It is a well settled principle that the doctrine of promissory estoppel applies to the State and the State bodies/agencies. It is also not in dispute that all the administrative orders ordinarily are to be given effect to prospectively and any benefit granted cannot be taken away with retrospective effect. The recovery of the amount of subsidy would impose upon the petitioner a huge financial burden for no fault of the petitioner. It is also neither pleaded nor proved that the benefit in question had been obtained by the petitioner by some misrepresentation. Reliance in this regard can be placed on the Division Bench judgment of this Court, rendered in Goraya Rice Mills' case (Supra), wherein, it has been laid down as under: -*
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> > *8. Having heard learned counsel for the parties and keeping in view the fact that transactions have already been completed by accepting the norms incorporated in the instructions dated 20.12.2006, it is not possible to accept the contention raised by the appellants. The letter dated 27.8.2007 has to operate prospectively. The question is no longer res integra. In **Kusumam Hotels Private Limited v. Kerala State Electricity Board, (2008) 13 SCC 213**, it has been categorically laid down that the State is entitled to change its policy decision. However, all administrative orders ordinarily are to be considered prospective in nature. When a policy*

> *decision is required to be given a retrospective operation, it must be expressly stated in un-mistakable terms or it must flow from necessary intendment. In the present case, letter dated 27.8.2007 neither by express words nor by necessary intendment is to operate from an earlier date. It is often said that "yesterday's un-equals cannot be made equal today and vice-versa". Likewise, in the present case once the transaction has been completed in pursuance of the earlier relaxed specification, there is no possibility of reviewing the aforesaid transactions and apply on those transactions the new policy decision dated 27.8.2007. Accordingly, we find that the view taken by the learned Single Judge is unexceptionable and the same deserves to be upheld. The appeals are wholly without merit and do not merit admission.*

In view of the above discussion, impugned circular dated 13.02.2018 (Annexure P-7) is set aside to the extent it provides for recovery of the amount of concession/rebate already allowed to mushroom farming consumers by charging AP metered tariff instead of industrial/commercial tariff. Consequently, impugned demand notice dated 24.08.2018 (Annexure P-8) for recovery of an amount of `10,31,408/- is hereby quashed."

Mr. Chatrath states that the petitioner(s) had given an undertaking that he will pay as per the commercial rates. It is contended that the petitioner(s) once submits to the jurisdiction, he cannot be allowed to change stance. The Court does not find any merit in the submission made by Mr. Chatrath as the petitioner is a farmer and to save his crop from imminent perish, such a statement was made.

The subsidy allowed to the petitioner(s) is a promise by the respondent(s)/State, the effect of which cannot be diluted by the statement made by the petitioner(s).

In view of the above, the present batch of writ petitions are disposed of. The impugned circular dated 13.02.2018 (Annexure P-10) is hereby set aside to the extent of calling upon the petitioner(s) to pay the difference in the tariff with effect from 09.02.2016 to 18.04.2017. In other words, the petitioner(s) are liable to make payment of electricity under AP Meter Tariff w.e.f. 09.02.2016 when circular (Annexure P-7) was issued till 18.04.2017 when circular (Annexure P-9) was issued. However the petitioner(s) are liable to pay the electricity bill as per Industrial/Commercial Tariff w.e.f. 19.04.2017.

Photocopy of this order be placed on the file(s) of other connected case(s).

16.09.2019. **(JITENDRA CHAUHAN)**
SN **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No