IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-22426-2018 (O&M)
Date of decision : 30.08.2019

M/s R S Mushroom Udyog

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gaurav Singla, Advocate for the petitioner.

Ms. Anju Arora, Addl.A.G., Punjab.

Ms. Meena Bansal, Advocate the respondent Nos.2 to 4.

JITENDRA CHAUHAN, J.

The petitioner, *inter alia,* is aggrieved against the impugned circular No.7/2018 dated 13.02.2018 (Annexure P-7), whereby, the grant of subsidy on electricity charges to mushroom cultivators has been withdrawn; and impugned notice dated 24.08.2018 (Annexure P-8), issued by respondent No.4, whereby, a demand of ₹10,31,408/- has been raised with regard to recovery of the amount of such subsidy already granted.

It is contended that the petitioner is a mushroom cultivator. The State of Punjab vide instructions dated 07.02.2016 (Annexure P-1), decided to provide subsidy in electricity charges to the mushroom farmers and issued instructions to respondent No.2-PSPCL to ensure that the power supply to mushroom cultivators be provided at Agriculture Power (AP) Tariff on the pattern of AP High Density Farming activities. Activities such as composting, spawning and production of mushroom were also to be included for availing the benefit. As a result of the subsidy, the price of production of one kilogram of mushroom has come down from ₹93/- to ₹79/-. In pursuance of circular dated 07.02.2016 (Annexure P-1), respondent No.2 issued commercial circular No.6/2016 dated 09.02.2016 (Annexure P-4), whereby, the mushroom farming consumers were to be billed as per "AP Metered tariff" instead of Industrial/commercial tariff and the difference of cost was to be borne by the State Government as part of the subsidy. Vide another circular dated 03.08.2016 (Annexure P-5), respondent No.2 issued clarification that the benefit of lower tariff (AP Metered) shall only be given for the load used for composting, spawning and production and the load used for other activities shall not be considered for the benefit of lower tariff. However, vide circular dated 18.04.2017 (Annexure P-6), both the earlier circulars dated 09.02.2016 and 03.08.2016 (Annexures P-4 and P-5, respectively), were kept in abeyance till further orders. Ultimately, vide impugned circular dated 13.02.2018 (Annexure P-7), earlier circulars dated 09.02.2016 and 03.08.2016 (Annexures P-4 and P-5, respectively), which were kept in abeyance, have been withdrawn and it has been decided to recover the amount of subsidy already allowed to the mushroom cultivators. Pursuant to issuance of circular dated 13.02.2018 (Annexure P-7), the petitioner has been issued a demand notice dated 24.08.2018 (Annexure P-8) for recovery of ₹10,31,408/- for the benefit provided during the period from 23.02.2016 to 06.02.2017.

Learned counsel contends that the impugned action of the respondents is barred by the doctrine of promissory estoppel. If a consumer had been allowed the benefit previously, the said benefit cannot be taken away with retrospective effect thereby saddling the petitioner with heavy financial burden. Cites ***Food Corporation of India Vs. Goraya Rice Mills,*** LPA No.1484 of 2010, decided on 23.05.2011.

On the other hand, learned counsel for respondent Nos.2 to 4 submits the petitioner is a holder of electricity connection bearing account No.3002233744 and is engaged in mushroom farming. Vide circulars dated 09.02.2016 and 03.08.2016 (Annexures P-4 and P-5, respectively), it was decided to charge AP tariff instead of industrial tariff in respect of all the consumers who were engaged in mushroom cultivation. Subsequently, vide circular dated 18.04.2017 (Annexure P-6), it was decided to keep circulars (Annexures P-4 and P-5) in abeyance. Ultimately, vide circular (Annexure P-7), the respondents have withdrawn the concession/rebate given to the mushroom farmers with immediate effect and also decided to recover the amount of concession/rebate already allowed to such consumers. Therefore, the entire act has been done as per the commercial circulars issued by the respondents from time to time.

Heard.

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: -

> *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.

Allowed in the above terms.

30.08.2019 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No