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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 10th May, 2022
Pronounced on: 4th July, 2022

+ W.P.(C) 7933/2011

GARG ACRYCLICS LTD Petitioner

Through: Ms. Diya Kapur, Mr. Arjit
Benjamin, Mr. Abhishek Grover and
Mr. Mayank Kamra, Advs.

Versus

UOI Respondent

Through: Mr. Vivek Goyal, CGSC with
Mr. Umesh Sharma, Assistant Director with
Mr. Satish Kumar, Assistant in the office of
Textile Commissioner

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

% **J U D G M E N T**
04.07.2022

The Dispute

1. With a view to incentivize specific sectors of the textile industry, the Ministry of Textiles, vide Resolution No. 28/1/99-CTI dated 31st March, 1999, introduced the Technology Upgradation Fund Scheme (TUFS), which, in substance, provided 5% reimbursement of the interest charged by financial institutions identified in the TUFS, on



loans availed by the concerned unit in the textile industry for the purpose of upgradation of the unit.

2. The TUFs, as originally introduced by the aforesaid Resolution dated 31st March 1999, applied to the textile, jute and cotton ginning and pressing industries. The Resolution noted that the TUFs was operational with effect from 1st April 1999 for a period of 5 years, i.e. up to 31st March 2004, which was subsequently extended to 31st March 2007.

3. The salient features of the TUFs, to the extent they are relevant for the controversy in issue, may be noted thus:

(i) Part I of the TUFs dealt with its scope and enumerated the industries which would be entitled to its benefit. Among these was the industry of “processing of fibres, yarns, fabrics, garments and made ups”, within which broad parenthesis the petitioner, undisputedly, falls.

(ii) Part II dealt with the eligibility criteria, for assistance under the TUFs. Clause 1, thereunder, contained in the “Definition of Technology Upgradation”, and defined Technology Upgradation as meaning induction of state-of-the-art, or near-state-of-the-art technology, involving at least a significant step up from the existing technology. For this purpose, technology levels were benchmarked, in terms of the specified machinery, on a Sector-wise basis, with the cautionary



note that machinery, with technology levels lower than specified, would not be permitted for funding under the TUFS. Clause 3 set out the “General Eligibility Conditions”, and Clauses 3.1 and 3.2 thereunder enumerated the types of units and types of textile machinery which would be eligible for the benefit of the TUFS. Clause 3.6 specified the “cut-off date under TUFS” and, to the extent it is relevant, sub-clause (a) thereunder read thus:

“(a) The loans which had been sanctioned prior to 1.4.99 but not disbursed will be reconsidered under TUFS as fresh cases, is otherwise they will teach the parameters of TUFS. In case of part-disbursed loans, the existing loan cases will have to be terminated and the remainder of the investment conforming in TUFS norms may be considered as a fresh project by the lending agencies.”

Clause 4 specified “Sector-Specific Eligibility Conditions”. Inasmuch as the coverage of the petitioner under the TUFS is not in dispute, one need not burden the present judgement by referring thereto. Clause 5, titled “Interpretation of Eligibility”, read thus:

“5. INTERPRETATION OF ELIGIBILITY:

(1) The Government has constituted a Technical Advisory Committee (TAC) with the Textile Commissioner (convener) the Jute Commissioner and technical experts from the Textile Research Institutions (TRAs), industry and academic field covering the different segments, as members.

(2) If any question of interpretation or clarification is wasted by the Nodal Agency as to the eligibility of any unit or machinery under



the scheme, the use of the Technical Advisory Committee appointed in this behalf will be obtained.

(3) The role of the TAC has since been expanded to cover the function of monitoring the scheme also and TAC has been redesignated as Technical Advisory-cum-Monitoring Committee (TAMC).”

(iii) Part III of the Resolution set out the terms and conditions subject to which loans would be disbursed under the TUFs. The following sub-clauses of Clause 1 under Chapter III merit reproduction:

“1. Under the Technology Upgradation Fund Scheme, loans will be provided subject to terms and conditions given below:

a) Duration of Scheme:

The scheme will be in operation for the period of 5 years from 01-04-1999 to 31-03-2004. The scheme was subsequently extended to 31-03-2007. Loans sanctioned by the lending agency in the last date of the duration of the scheme. Will be eligible under the scheme and the reimbursement would continue to be available till the said is repaid as per the normal lending period of the nodal agency.

b) Rate of Interest:

(i) Rupee loan:

Effective rate of interest charged to the concerned borrower will be



5 percentage points lower than the prevailing commercial rates of interest charged by the Financial Institutions and Banks concerned; the Ministry of Textiles will reimburse the 5 percentage points under the scheme.

(ii) Period of interest reimbursement:

(a)1. Interest reimbursement of 5% and/or cover for exchange fluctuation up to 5% p.a. will be available during the period of loan as specified in the Letter of Intent or as may be specified in the loan document. Interest reimbursement under TUFS would continue to be available during any extended/rescheduled period of repayment of loans not exceeding a maximum period of 10 years including 2 years moratorium period, if such a rescheduling is accepted by the concerned nodal agency/co-opted agency.”

(iv) Part VI enlisted the Nodal Agencies under the TUFS for different segments. The nodal agency for the textile industry was the Industries Development Bank of India (IDBI). Clause 3 required applications, for assistance under the TUFS, to be submitted to the concerned nodal agencies or to the Financial Institution co-opted by the nodal agencies. Clause 5 required the



nodal agencies to furnish periodical information to the Textile Commissioner regarding, *inter alia*, sanction and disbursement of loans under the TUFs. Clause 6 placed on record the approval, by the Government, of placement of funds with the nodal agencies towards reimbursement of 5% interest to the borrowers under the TUFs on a quarterly basis in advance, so as to ensure full reimbursement of the 5% interest amount to the borrower without delay.

(v) Part VII enlisted the nodal banks under the TUFs. Clause (ii) required the nodal banks to determine eligibility and release the TUFs benefit in respect of all cases financed by the nodal banks under TUFs. Examination of eligibility of cases for the benefit of the TUFs was, per clause (iv), to be undertaken by the Nodal Banks before the project became eligible to the benefit of interest reimbursement under the TUFs. Clause (xi) required the Nodal Banks to submit an annual forecast of funds required to disburse benefits under the TUFs, about 6 months in advance of the budget to the Ministry of Textiles (MOT) for necessary budgetary allocation. The Nodal Banks were also required, by the same clause, to submit quarterly interest reimbursement claims to the MOT 1 ½ to 1 month in advance of the due date, based on the principal outstanding amount in respect of assisted cases, so that actual funds could be released by the MOT.



Clause (xii) required the Nodal Banks to submit utilisation certificate to the MOT on monthly/quarterly basis, before submitting a claim for the next quarter. Clause (xiii) required funds, placed by the MOT with the Nodal Banks to be kept in a dedicated account to be opened by the Nodal Banks, who were also required, under Clause (xiv), to maintain a database of company/project-wise eligibility established/pending references for TUFS-eligibility/interest reimbursement effected, etc., for information to the Textile Commissioner. In case of any doubt regarding eligibility of any case for the benefit of the TUFS, Clause (xvii) allowed the Nodal Banks to contact the Textile Commissioner. Clause (xviii) mandated decision, by the Nodal Banks, of the eligibility of any particular case to the benefit of the TUFS within 4 to 6 weeks of sanction of the loan, subject to the condition that interest reimbursement was released to the TUFS beneficiary within 1 to 2 days of payment of interest.

(vi) Part VIII envisaged the laying down, by the Inter-Ministerial Steering Committee (IMSC) under the Chairmanship of the Secretary (Textiles), of norms for monitoring and appraising effective implementation of the TUFS and also empowered the Steering Committee to set up an appropriate machinery therefor. Periodical



review of the functioning of the TUFS by the Steering Committee was also contemplated by the said clause.

4. The period of operation of the TUFS was extended, vide MOT Circular No. 4 dated 11th March 2008, till 31st March 2012.

5. On 4th April 2007, Circular No. 1 was issued by the MOT, in the context of the TUFS, which read thus:

“Circular No. 1
(2007-2008 Series)

Sub: Technology Upgradation Fund Scheme (TUFS)

The Technology Upgradation Fund Scheme (TUFS) has been extended beyond 31-03-2007 subject to necessary modifications in the process of its modifications, in consultation with the stakeholders, has already started. In view of this the Government has decided to keep the Technology Upgradation Fund Scheme (TUFS) in abeyance for sanction of any fresh loans w.e.f. 01-04-2007 in the finalisation of modifications and issuance of instructions in this regard. All the Nodal Agencies/Nodal Banks/Co-opted PLIs are therefore requested to take note of the said decision of the Government.”

6. The TUFS thus, remained in abeyance till 1st November, 2007, when the MOT issued Resolution 6/4/2007-CTI, in which it was observed that the TUFS, though a successful scheme, was resulting in non-uniform benefits across various segments of the textile Sector. To infuse greater uniformity in the TUFS, certain modifications were incorporated therein and, having done so, the Resolution extended the TUFS for textile and the jute industries from the date of the



Resolution, i.e. from 1st November 2007 till 31st March 2012. Concomitantly, the Resolution communicated the decision of the Government to provide financial and operational parameters for the modified TUFs in respect of loans sanctioned with effect from 1st November 2007.

7. The Resolution dated 1st November 2007 did not, however, provide for the period from 1st April 2007 till 1st November 2007. According to the petitioner, this resulted in agitation and representations being made by the beneficiary industry, resulting in the issuance of Circular No. 4 by the Textile Committee, MOT, on 11th March 2008, making the modified TUFs applicable during the entire period of the 11th 5-year plan. Admittedly, as a result of this Circular, the modified TUFs became applicable during the period 1st April 2007 to 1st November 2007 as well.

8. The petitioner submits that, being thus assured that the benefit of the TUFs would be available till 31st March 2012, the petitioner, desirous of availing the said benefit, made large-scale investments. Specifically, the petitioner avers that (i) on 10th December 1999, the petitioner applied to the Punjab State Electricity Board for increase and extension of the sanctioned load made available to it, (ii) the petitioner placed orders for large amounts of machinery, from units situated abroad, (iii) on 22nd March 2010, the petitioner opened a Letter of Credit for US \$ 246240 with the Punjab National Bank (PNB) in favour of the foreign supplier of machinery, (iv) on 15th May 2010, the petitioner applied to the PNB for sanction of a term loan of



₹ 56 crores and enhancement of its cash credit limits, which was approved and granted by the PNB on 18th September 2010 and (v) on 18th June 2010, the petitioner applied with the PNB for opening a Letter of Credit for ₹ 4.9 lakhs in favour of the foreign supplier. These investments, the petitioner contends, have placed it in an irreversible financial situation, which would result in irreparable damage to the petitioner if it is not granted the benefit of the TUFs.

9. On 30th June 2010, the office of the Textile Commissioner, MOT issued Circular No. 2, which read as under:

**“Technology Upgradation Fund Scheme (TUFs)
(01-04-2007 to 31-03-2012)**

**Circular No. 2
(2010-2011 Series)**

Sub: Technology Upgradation Fund Scheme (TUFs)

In pursuance of Expenditure Finance Committee (EFC) decision dated 28.06.2010 with regard to new sanctions under TUFs, Nodal Agencies/Nodal Banks/Co-opted PLIs are advised not to issue any further new sanctions under TUFs till additional allocations are approved by Cabinet Committee on Economic Affairs (CCEA). Lending agencies are also advised to freeze all new proposals in pipeline till additional allocations are made.

This may be brought to the notice of all concerned.

(Smt. Shashi Singh)
Joint Textile Commissioner”

10. On 28 April 2011, the MOT issued Resolution No. 6/5/2011-TUFs, titled “Resolution on TUFs on Techno-Operational Parameters



(28.04.2011 to 31.03.2012)”. Para 3 of the Resolution stated that an independent evaluation of the TUFs by M/s CRISIL, a professional consultant, revealed that, while the TUFs had facilitated an increase in productivity, reduction in cost and waste and improved quality across the value chain, however, the gains made were not uniform across various segments, with the processing and power loom Sector emerging as major areas of concern. “To ensure optimum value addition across the value chain”, the said para noted the recommendation, of the evaluation study “that TUFs may be completely restructured to channelize investments towards hitherto low focus areas”.

11. A holistic reading of the aforesaid Resolution dated 28th April 2011, especially of para 4 thereof, makes it clear that the MOT treated the earlier existing TUFs as having been discontinued, and new sanctions thereunder stopped w.e.f. 29th June 2010, continued the benefit of the earlier TUFs only in respect of loans sanctioned during the period 1st April 1999 to 28th June 2010. The reintroduced TUFs, therefore, saved the applicability of the earlier TUFs only in respect of loans sanctioned during the said period.

12. As already noted in para 8 *supra*, the petitioner had, on 15th May 2010, applied to the PNB for grant of a term loan of ₹ 56 crores and for enhancement of its cash credit limit to ₹ 20 crores. The application noted that, on the date when it was filed, i.e. on 15th May 2010, the petitioner was availing a term loan facility, from the PNB, of ₹ 50 crores and was entitled to a cash credit limit of ₹ 25 crores.



The application stated that the petitioner had chalked out an expansion programme involving installation of 24,480 cotton spindles in its factory, at a cost of ₹ 81.4 crores. This additional cost, it was stated, was proposed to be financed with internal accruals of ₹ 19.4 crores, additional capital contribution of ₹ 6 crores and a term loan of ₹ 56 crores. The application further assured that the machinery proposed to be acquired for expansion fulfilled the eligibility criteria under the TUFS and that the Term Loan, if sanctioned, would be eligible for 4% interest subsidy. To implement the expansion, the application stated that the petitioner required an additional Term Loan of ₹ 56 crores, enhancement of its cash credit limit from ₹ 25 crores to ₹ 45 crores and packing credit, within cash credit, from ₹ 15 crores to ₹ 20 crores. A copy of the expansion Project report was enclosed with the application.

13. As noted, the Term Loan of ₹ 56 crores and enhancement of credit facilities, as sought by the petitioner, were approved and sanctioned by PNB on 18th September 2010.

14. The result was that, by operation of the Resolution dated 28th April 2011, the petitioner became disentitled to the benefit of the TUFS, as the loan, under the TUFS, for which the petitioner had applied on 15th May 2010, was sanctioned only on 18th September 2010, after the “cut-off date” of 30th June 2010.

15. Aggrieved, the petitioner represented to the respondent on 5th May 2011, requesting that the benefit of the restructured TUFS be



extended to units which had taken steps towards expansion, as required by the earlier TUFs, prior to 30th June 2010, but had been sanctioned loans by the nodal Banks or funding agencies only after 30th June 2010. It was submitted, in the representation, that the Circular dated 30th June 2010 of the MOT did not withdraw the existing TUFs, but merely placed, in abeyance, the allocation of funds by the CCEA. This, contended the petitioner, conveyed an assurance to units eligible for the benefit of the existing TUFs that the benefits thereof would continue to remain available till 31st March 2012, merely awaiting allocation of funds by the CCEA. The petitioner also submitted that any differential treatment, between units which had taken steps for the requisite expansion, under the pre-existing TUFs prior to 30th June 2010, but were sanctioned the loans after the said period, vis-à-vis units which were sanctioned loans prior to 30th June 2010, would be discriminatory and unfair. In this context, the petitioner sought to highlight that the basic activities and structure envisaged by the restructured TUFs (as brought into effect *vide* the Resolution dated 28th April 2011) were practically identical to those envisaged by the earlier TUFs. Underscoring the huge investments made by the petitioner on the assurance held out by the respondent that the benefit of the TUFs would be made available to it, the petitioner submitted that there was no justification to deny units which had applied for sanction prior to 30th June 2010, but which were sanctioned loans by the concerned Nodal Banks after 30th June 2010 and before 28th April 2011, the benefits of the restructured TUFs. The representation concluded with the request that “the immediate clarification be issued by the Hon’ble Ministry of Textiles clarifying



that the Restructured TUFS is made available to all projects sanctioned during the period 1st July 2010 till 27th April 2011 subject to the same fulfilling the terms and conditions under the Restructured TUFS”.

16. This was followed by a second, identical, representation dated 9th June 2011.

17. It merits noting, therefore, that the petitioner, in both the above representations, sought extension, to it, of the benefit of the restructured TUFS, as brought into effect on 28th April 2011, and not of the pre-existing TUFS, under which the petitioner had applied for loans, with the PNB, on 15th May 2010. As against this, the prayer in the writ petition is for making the TUFS available to the petitioner during the entire period from 1st April 2007 to 31st March 2012. Quite obviously, there can be no question of extending the benefit of the restructured TUFS, as brought into effect *vide* Resolution dated 28th April 2011, for any period prior to the date of the said Resolution, as the Resolution dated 28th April 2011 did not envisage its retrospective operation but was, rather, expressly made prospective. The prayer in the petition, therefore, as adverted, necessarily has to be regarded as referring to the pre-existing TUFS. The averments in the petition, too, relying on the “assurance”, held out by the Circular dated 11th March 2008, of the MOT, that the pre-existing TUFS would be available for the entire period from 1st April 2007 to 31st March 2012. The submissions advanced at the Bar by Ms. Diya Kapur, learned Counsel for the petitioner, too, essentially sought extension, to the petitioner,



of the benefit of the pre-existing TUFS for the entire period till 31st March 2012, on the basis of the sanction of the loan to the petitioner by the PNB on 18th September 2010.

18. Apropos the petitioner's representation, the MOT addressed the following communication to the petitioner on 9th February 2012:

"No. 6/3/2012-TUFS
Government of India
Ministry of Textiles

New Delhi dated 9th February, 2012

M/s Garg Acrylics Ltd.,
209, M.G. House Community Centre,
Wazir Industrial Areas,
Delhi 10052

**Subject: Representation on restructured TUFS-
regarding**

Sir,

I am directed to refer to your representation No.GAL/2011-12 dated 5.5.2011 on the subject mentioned above and to bring out the following:-

The CCEA in its meeting held on 1.11.2007 considered the continuation of the TUFS in the 11th five year plan period and decided that TUFS with such changes recommended by the EFC be implemented over the entire 11th five year plan period within the plan outlay and a review is undertaken in 2009-10.

Accordingly the Scheme was reviewed and on the basis of recommendations of M/s CRISIL (Evaluating agency) and consultations with various stakeholders the Scheme was re-structured. Notes were put up for the approval of the EFC and subsequently the CCEA.



On 29th March, 2011 the CCEA approved the restructuring and enhancement of the plan allocation (from Rs. 8000 crores to Rs. 15405 crores) for the TUFs in the Eleventh Plan Period for the period 28.04.2011 to 31.03.2012. In pursuance of the EFC recommendations that no new sanctions under TUFs will be made till CCEA approval is obtained, Ministry of Textiles had suspended new sanctions under TUFs w.e.f. 29.6.2010 to 27.4.2011 (Black-out period). Circular No. 2 dated 30th June, 2010 issued by the office of the Textile Commissioner notified the same. The re-structured TUFs came into force w.e.f. 28.4.2011.

A view has to be taken for covering the said blackout period under TUFs. The Inter-Ministerial Steering Committee (IMSC) deliberated on the said issue on 2nd February, 2012. The IMSC decided that the Ministry of Textiles would take up the issue with the competent authority to seek financing of TUFs blackout period cases.

This issues with the approval of Secretary, Textiles.

Yours faithfully,
Sd/-
(Anita Puri)

Under Secretary to the Govt. of India”

19. The petitioner’s representations were, however, rejected, by the MOT, *vide* the following communication dated 1st May 2012, on the basis of the view expressed by the Ministry of Finance (“MOF”, hereinafter):

“No. /3/2012-TUFs
Government of India
Ministry of Textiles

Udyog Bhawan, New Delhi.
Dated 1 May 2012

To

M/s Garg Acrylics Ltd,
209, M.G. House Community Centre,
Wazir Industrial Area,



Delhi 110052

Subject:- Representation on Restructured TUFS- reg.

Sir,

I am directed to refer to your letter No. GAL/2012-13 dated 18.4.2012 on the subject mentioned above and to say that the matter of financing of cases sanctioned during the blackout period under TUFS was taken up with Ministry of Finance which is of the view that the investments made during the period were made by the entrepreneurs on their own assessment of financial viability, *when the Scheme was not operation*. Hence coverage of this period for TUFS benefits has not been agreed to.

Yours faithfully,

(Anita Puri)
Under Secretary”

20. Ordinarily, a prayer for issuance of a mandamus to a statutory authority, commanding the authority to perform a particular act, would lie only if, in the first instance, the petitioner approaches the authority with such a request.¹ As already noted, the representations dated 5th May 2011 and 9th June 2011, sought grant of the benefit, to the petitioner, not of the pre-existing TUFS, but of the restructured TUFS, which came into effect on 28th April 2011. The letter of rejection, dated 1st May 2012, too, has been issued with respect to the Restructured TUFS, and not with respect to the pre-existing TUFS. Technically speaking, therefore, it may be questionable as to whether, without, in the first instance, approaching the respondent for extension, to it, of the benefit of the pre-existing TUFS, the petitioner

¹ Refer **Saraswati Industrial Syndicate Ltd. v. U.O.I., (1974) 2 SCC 630**



could directly seek issuance of a writ of mandamus to the respondent in that regard. No such serious jurisdictional issue having, however, been raised by the respondent, either in its counter affidavit or during oral arguments, and extensive arguments having been addressed, at the Bar, regarding the entitlement of the petitioner to the benefit of the pre-existing TUFS, I propose, in this judgement, to address the issue of the petitioner's entitlement to the benefit, not only of the restructured TUFS (as brought into effect from 28th April 2011) but also the pre-existing TUFS (which came into effect on 31st March 1999). Needless to say, the petitioner does not seek the benefit of the pre-existing TUFS from 31st March 1999, but only from the date when it is loan was approved by the PNB, i.e. 18 September 2010. The period for which the petitioner seeks the benefit of the TUFS is, therefore, 18th September 2010 to 31st March 2012. This claim, as also the claim of the petitioner for the benefit of the restructured TUFS, would be examined in this judgement.

21. The petitioner, in the circumstances, has approached this Court under Article 226 of the Constitution of India, seeking issuance, to the respondent, of a writ of mandamus, directing the respondent to make available, to the petitioner, the benefit of the TUFS “for the entire plan period i.e. from 01.04.2007 to 31.03.2012 and further directing them not to exclude the period between 30.06.2010 to 27.04.2011”.

22. Counter-affidavit, by the respondent, and rejoinder, thereto, by the petitioner, had been filed, and learned Counsel for both sides have



been heard at length, with Ms Diya Kapur representing the petitioner and Mr. Vijay Goel, learned CGSC representing the respondent.

Rival Contentions

23. Ms. Diya Kapur pressed, on behalf of the petitioner, the doctrines of promissory estoppel and legitimate expectation. She submits that the respondent having promised *vide* its Circular No. 4 dated 11th March 2008, continuation of the TUFS till 31st March 2012, i.e. during the entire period of the 11th Five Year Plan, it was estopped from discontinuing the scheme midway, especially as the petitioner had, relying on the said promise held out by respondent, made huge investments and irreversibly altered its position. She submits that the only circumstances in which the Government could be permitted not to fulfill the promise held out by it, in such circumstances, is where overarching public interest would militate against holding the Government by its promise or requiring it to abide thereby. Such overarching public interest, submits Ms. Kapur, cannot rest on mere pleadings. The respondent would be bound, if it pleads public interest as a consideration to justify discontinuance of the TUFS, to place, on record, all relevant facts as would convince the Court that the consideration of public interest indeed justifies permitting the respondent to discontinue extension, to the petitioner, of the benefit of the TUFS. The principle of executive necessity which, at one point of time, used to be pleaded as a justification for the Governmental decision in such cases, she submits, can no longer be regarded as valid, after the judgment of the Supreme Court in *U.O.I. v. Indo-*



*Afghan Agencies Ltd*², as was noticed in *Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh*³. Ms. Kapur submits that, in the present case, the respondent was inclined to grant the benefit of the TUFS to the petitioner, and rejected the petitioner's request only because the Department of Expenditure vetoed the proposal as involving huge financial outlay. She submits that "huge financial outlay" can hardly be regarded as an element of public interest, as would justify the respondent resiling from the promise to extend, to the petitioner, the benefit of TUFS till 31st July 2012.

24. In this context, Ms. Kapur emphasizes the fact that the benefit of the TUFS has been extended by the respondent to all entities, who had applied for loan under the TUFS, and in whose favour loan was sanctioned prior to 30th June 2010. It was only those industries who applied for loan prior to 30th June 2010, but were sanctioned loans thereafter, who have been excluded from such benefit. Such exclusion of a select category applicant who, otherwise, was eligible for the benefit of the TUFS, submits Ms. Diya Kapur, cannot be regarded as justified in public interest. In support of these submissions, Ms. Diya Kapur cites *Indo-Afghan Agencies*², *Motilal Padampat Sugar Mills*³, *State of Rajasthan v. Gopal Oil Mills*⁴, *State of Punjab v. Nestle India*⁵, *Bannari Amman Sugars Ltd v. Commercial Tax Officer*,⁶ *MRF Ltd. v. Asst. Commissioner*,⁷ *Pepsico India Holdings v. State of*

²AIR 1968 SC 718

³(1979) 2 SCC 409

⁴(1999) 4 SCC 368

⁵(2004) 6 SCC 465

⁶(2005) 1 SCC 625

⁷(2006) 8 SCC 702



Kerala,⁸ *State of Bihar v. Kalyanpur Cement*,⁹ *Devi Multiplex v. State of Gujarat*,¹⁰ *Manuelsons Hotels v. State of Kerala*¹¹ and *State of Jharkhand v. Brahmputra Metallics*.¹²

25. The aforesaid decisions are also relied on by Ms. Diya Kapur in support of the plea of legitimate expectation. She submits that, in view of the respondent's assurance that the benefit of the TUFS would be available till 31st March 2012, the petitioner had a legitimate expectation to be entitled to such benefit during the said period. This legitimate expectation, on the basis of the law laid down by the Supreme Court in the aforesaid decisions, is enforceable at law.

26. In the aforesaid context, Ms. Diya Kapur seeks to submit that the factual position in the present case is peculiar, as the benefit of the TUFS was available to industries who had obtained sanction prior to 30th June 2010 as well as to those, who obtained sanction after 27th April 2011. The benefit was, she submits, denied only to units in whose favour the loan was sanctioned during the ten months intervening between June 2010 and April 2011. No supervening public interest, submits Ms. Diya Kapur, could justify such arbitrary exclusion, from the benefit of the TUFS, of industries who were sanctioned loans under the TUFS during the aforesaid period of ten months. The situation that emerges, reiterates Ms. Diya Kapur, is that

⁸(2009) 13 SCC 55

⁹(2010) 3 SCC 274

¹⁰(2015) 9 SCC 132

¹¹(2016) 6 SCC 766

¹²2020 SCC OnLine SC 968



the benefit of the TUFs stands denied only for a select period of ten months during its entire life from 1st April 2007 till 31st March 2012.

27. Ms. Diya Kapur also seeks to submit, on facts, that, in fact, TUFs was never discontinued or even suspended. She submits that Circular No. 2 dated 30th June 2010, issued by the MOT, was merely in the form of an advisory, advising lending agencies to freeze new proposals under the TUFs, which had not already been sanctioned, till additional fund allocations were approved by the CCEA. Ms. Diya Kapur submits that it is impossible to read the Circular dated 30th June 2010 as a Circular placing the TUFs in abeyance. There was no reason, therefore, for the industry to presume that the TUFs would suddenly be brought to a halt. In fact, she submits that, in law, the TUFs continued to operate even after 30th June 2010. The presumption, of the respondent, that the sanction of loan to the petitioner by the PNB on 18th September 2010, was after the TUFs had been discontinued, was, therefore, she submits, misconceived.

28. Even qua the lending agencies, the Circular dated 30th June 2010, she submits, cannot be regarded as mandatory or even directory, but was merely advisory in nature. If, therefore, the bank had sanctioned the loan for which the petitioner applied after 30th June 2010, it, at worst, did not heed the advice of the respondent. The communication dated 30th June 2010 cannot, she submits, be regarded as a communication proposing, or even contemplating, discontinuance of the TUFs, so as to justify denial, to the petitioner, of the benefits thereof. The respondent ought, therefore, in her submission, to be



bound down to its initial promise to extend the benefit of the TUFS to eligible applicants till 31st March 2012.

29. Ms. Diya Kapur also invokes Article 14 of the Constitution of India. She submits that the denial of the benefits of the TUFS for the period 30th June 2010 to 27th April 2011, by extending the benefit for the prior period and the period thereafter, would *ex facie* be violative of Article 14. She submits that the sole basis for discriminating industries who were sanctioned loans during this “blackout” period was the date of sanction. Their eligibility, otherwise, to the benefit of the TUFS, was not in dispute. The date of sanction, she submits, could not be regarded as creating an intelligible differentia between industries who were eligible for the benefit of the TUFS and those who, by the respondent’s decision, became so ineligible. Moreover, the differentia, if at all, bore no rational nexus to the object of the TUFS. Rather, it resulted in discrimination between equals, as, between two applicants who had applied for the benefit of the TUFS prior to 30th June 2010, it created a distinction between one who had been sanctioned the loan prior to the said date and one in whose favour the loan was sanctioned thereafter. Inasmuch as the exercise of sanction of the loan was outside the power of the applicant applying for such sanction, Ms. Kapur submits that there is no justifiable basis to differentiate between the aforesaid two applicants, insofar as their eligibility to the benefit of the TUFS is concerned. Such a discrimination, she submits, results in persons who were sanctioned the loan under the TUFS prior to 30th June 2010 obtaining an unfair advantage over their competitors such as the petitioner, who had also



applied for such sanction, but in whose favour the sanction was issued after 30th June 2010.

30. Finally, Ms. Diya Kapur points out that a similar suspension of the operation of the TUFs had been put in place by the MOT Circular No. 1 dated 4th April 2007 (*supra*) but, upon representations having been made by the industry, was withdrawn *vide* subsequent Resolution dated 1st November 2007. She, therefore, submits that there is a precedent for regularizing the period between 30th June 2010 and 27th April 2011, insofar as extending, to persons such as petitioner, the benefit of the TUFs is concerned.

31. Ms. Kapur submits, therefore, that the petitioner is entitled, in law, to be given the benefit of the TUFs during the entire period of its existence i.e. till 31st March 2012, whether such benefit is granted under the pre-existing TUFs or under the restructured TUFs, brought into effect on 28th April 2011.

32. Opposing the submissions of Ms. Diya Kapur, Mr. Goyal, learned CGSC, relied on the counter affidavit that the Union of India has placed on record. Drawing my attention to various passages therein, Mr. Goyal submits that the law permits discontinuance of a beneficial scheme such as the TUFs midway, on grounds of public interest. He has drawn my attention to the covenants of the restructured TUFs, as contained in the Resolution dated 28th April 2011, which clearly identify the reason why the TUFs was required to be restructured. He points out that, though the TUFs was a successful



scheme, it was found to be working in an imbalanced fashion, as certain sectors of the textile industry were profiting more than others. He also submits that, consequent to studies conducted by the CRISIL, a policy decision had been taken to extend the sweep of the TUFS to several additional industries, apart from the textile and jute industries to which alone it applied at that point of time. This, he submits, involved huge additional financial outlay, which required detailed examination and the introduction of an entirely new restructured TUFS. He emphasizes the fact that the original TUFS, which came into effect in 1999, was no longer in operation after 28th April 2011, with effect from which date the restructured TUFS came into operation. The petitioner having not applied for the benefit of the restructured TUFS, he submits that the petitioner is not entitled to claim any such benefit.

33. Insofar as the pre-existing TUFS is concerned, Mr. Goyal submits that the TUFS was discontinued on 30th June 2010. No decision, allowing the lending agencies to issue any fresh sanctions under the then existing TUFS, he submits, was ever issued and, therefore, it cannot lie in the mouth of the petitioner to contend that, even after 30th June 2010, the earlier TUFS continued to remain in operation. Inasmuch as the decision to discontinue the TUFS on 30th June 2010 and the subsequent decision to introduce the restructured TUFS with effect from 28th April 2011, was prompted by the desire to increase the sweep of the TUFS and extend its benefit to several additional industries, Mr. Goyal submits that the exercise was undoubtedly guided by public interest. Once this was so, Mr. Goel



submits that no case for interference by a court, in exercise of the jurisdiction vested in it by Article 226 of the Constitution of India, can be said to exist.

34. The subjective discretion of the executive, in assessing which way public interest lay, he submits, has to be accorded due respect. He submits that Ms. Kapur, too, acknowledged the fact that that supervening public interest could be a ground to pre-maturely curtail the operation of the earlier TUFS. This principle, he submits, is well-settled through a catena of pronouncements of the Supreme Court as well as of various High Courts.

35. Mr. Goyal submits that mere submission of application does not vest any right in an industry seeking the benefit of the TUFS, and such right would vest only when the loan, applied for, was sanctioned. The sanction, in favour of the petitioner, having taken place after 30th June 2010, when the TUFS was effectively discontinued or, at the very least, suspended, and the PNB having granted such sanction in the teeth of the instructions contained in the Circular dated 30th June, 2010 issued by the respondent, Mr. Goyal submits that no benefit would accrue to the petitioner on the basis of such sanction.

36. Mr. Goyal submits that, if industries, who were sanctioned loans after 30th June 2010, in violation of the circular issued on the said date, were to be held as entitled to the benefit of the TUFS, it would open floodgates, and would result in severe financial prejudice to the Government. The decisions relied upon by Ms. Diva Kapur, he



submits, do not help her client, as they recognize supervening public interest as a valid consideration, on the basis of which a beneficial scheme could pre-maturely be discontinued by the Government. In such matters of policy, Mr. Goyal submits that the court is required to hold its hands.

37. As such, Mr. Goyal prays that the writ petition be dismissed.

Analysis

38. Before adverting to the arguments advanced by learned Counsel, it is necessary to appreciate the actual import of the circular dated 30th June 2010 and the resolution dated 28th April 2011 whereby the restructured TUFS came into effect.

39. On its plain reading, the circular dated 30th June 2010 is neither mandatory nor even directory in nature. It is in the form of a mere advisory. It does not, on its plain reading, convey any impression, to the reader, that the TUFS was in the process – or even in danger – of being discontinued. If, on 30th June 2010, the respondent was inclined to discontinue the TUFS, the Circular ought to have said so. It does not, however, do so. It refers to a decision dated 28th June 2010 of the Expenditure Finance Committee (EFC) and, on the basis thereof, advises banks and financial agencies not to issue further new sanctions under the TUFS. This advisory, too, on the face of the Circular, is not couched in absolute terms, but is only intended to await approval of additional allocations by the CCEA. There is substance in Ms. Diya



Kapur's contention that there was no reason for the petitioner to, on the basis of the aforesaid circular dated 30th June 2010, suspect that the TUFs was in danger of being discontinued, or that it would not continue thereafter.

40. At the same time, it is not possible to accept the contention that the earlier existing TUFs continued to remain in force till 30th March 2012. Paras 3 and 4 of the Resolution dated 28th April 2011, whereunder the restructured TUFs came into operation, clearly indicate that the earlier existing TUFs was being replaced, wholesale, by the restructured TUFs. It is not possible, therefore, to treat the earlier existing TUFs as continuing to remain in force after 28th April 2011.

41. The Resolution dated 28th April 2011 required an application, seeking the benefit of the restructured TUFs, to apply under the said Resolution, in the manner stipulated therein. The application made under the earlier TUFs cannot be treated as spilling over into the restructured TUFs so as to entitle such applicant to the benefit of the latter scheme in the absence of any stipulation, to the said effect, contained in the Resolution dated 28th April 2011, or in the covenants governing the restructured TUFs. This is also apparent from the fact that the Resolution dated 28th April 2011, whereby the restructured TUFs was brought into effect, envisaged continuance of the benefit of the earlier TUFs, to applicants who had applied and who had been sanctioned loans thereunder, prior to 30th June 2010. For such



applicants, therefore, the earlier existing TUFs continued to remain in force till 30th June 2012.

42. For the sake of convenience, therefore, I would be referring to the TUFs, as in existence prior to 28th April 2011, as the “earlier TUFs”.

43. Applicants who had not been sanctioned loans, prior to 30th June 2010, under the earlier TUFs, were not, therefore, entitled to the benefit of the earlier TUFs, once the restructured TUFs had come into being on 28th April 2011. The request, by the petitioner, to the respondent, in its representations dated 5th May 2011 and 9th June 2011, to be extended the benefit of the restructured TUFs was, therefore, *ex facie* misconceived and could not have been granted, as the petitioner had not applied under the restructured TUFs. Ms. Kapur, too, during submissions, did not, fairly, seek extension, to her client, of the benefit of the restructured TUFs which came into effect on 28th April 2011, though she did advance a submission that her client could not be denied the benefit of the TUFs altogether, whether in its earlier or in its restructured *avatar*.

44. Ms. Kapur, however, does press her client’s claim for being extended the benefit of the earlier TUFs till 30th June, 2012, as was being made available to applicants who had applied for and were sanctioned loans under the earlier TUFs prior to 30th June 2010. In other words, she prays that her client be accorded the same treatment as was accorded to applicants who had applied for the benefit of the



earlier TUFs and were sanctioned loans thereunder prior to 30th June 2010. The only difference between such applicants and her client, she submits, is that, though her client had applied for the benefit of the earlier TUFs prior to 30th June 2010, it was actually sanctioned loans only after the said date.

45. As I have already noted hereinabove, for applicants who had not been sanctioned loans under the earlier TUFs prior to 30th June 2010, it is not possible to hold that they would be entitled to the benefit of the earlier TUFs after 28th April 2011, when the restructured TUFs had come into being, from the simple reason that no loan had been sanctioned in their favour prior to 30th June 2010 and they had never applied for the benefit of the restructured TUFs after 28th April 2011. The prayer of Ms. Kapur, to be granted the benefit of the pre-existing TUFs has, therefore, necessarily to be rejected insofar as it covers the period after 28th April 2011.

46. What remains, therefore, is to examine whether the petitioner could be entitled to the benefit of the earlier TUFs during the period 18th September 2010, when the petitioner was sanctioned loan under the earlier TUFs, till 28th April 2011.

47. The discussion hereinafter would, therefore, be in the context of the claim of the petitioner to this limited extent. It is in this background that I proceed to examine, therefore, the issues of promissory estoppel, legitimate expectation and the plea advanced by



Ms. Diva Kapur predicated on Article 14 of the Constitution of India, apart from other contentions.

48. It would be appropriate to examine these issues by traipsing through the avenue of judicial authorities chronologically.

Indo Afghan Agencies Limited²

Facts

49. The case dealt with an Export Promotion Scheme published by the Textile Commissioner, which, by way of incentives, granted import entitlement equal to 100% of the FOB value of exports of woollen goods to Afghanistan. Indo Afghan Agencies Ltd (“IAAL”, hereinafter), consequent to effecting the required exports of FOB value ₹ 5,03,471.73, was issued an import entitlement certificate by the office of the Textile Commissioner restricted, however, to ₹ 1,99,459/-. IAAL, consequently, challenged the aforesaid decision of the Textile Commissioner by way of a writ petition in the High Court of Punjab. The High Court held that, as the Export Promotion Scheme specifically provided for granting certificate to import materials of the value equal to 100% of the FOB value of the goods exported, IAAL could not be issued an import entitlement certificate for any lesser amount.

50. Aggrieved, the Union of India and others approached the Supreme Court.



Discussion and findings

51. The Supreme Court held thus:

- (i) Reduction of the import entitlement of IAAL had necessarily to be preceded by an opportunity of hearing, which was not granted.
- (ii) The Export Promotion Scheme envisaged such reduction only if, on enquiry, the exports were found to be overvalued.
- (iii) Executive necessity was not a legitimate ground to absolve the Government of a promise held out by it, which had been acted upon by citizens to their detriment.
- (iv) The principle of promissory estoppel, whereunder the authority could be compelled to honour the promise held out by it to its citizens, would also apply to executive orders.
- (v) Restrictions could be imposed by the Textile Commissioner on special considerations such as the difficult foreign exchange position of the country, other matters having a bearing on the general interest of the State or the misconduct of the exporter. Such discretion had, however, to be exercised reasonably, for which purpose this Court relied on ***Ramchand***



*Jagadish Chand v. U.O.I.*¹³ and *Probhudas Moraree Rajkotia v. U.O.I.*¹⁴.

(vi) In *Joint Chief Controller of Imports and Exports, Madras v. Amin Chand Mutha*¹⁵, the partnership firm, of which the respondent Amin Chand Mutha (ACM) was a partner, was an established importer, entitled to quota rights. The firm was dissolved. The respondent, as one of the partners in the erstwhile firm, applied to the Joint Chief Commissioner of Imports and Exports (“Joint CCIE”) for distribution of the quota right of the erstwhile firm between the two partners. However, as, by then, the CCIE had not approved division of the quota rights between the partners, ACM was not able to specify its share in his application. After expiry of the period for which the license was to be issued, the CCIE intimated ACM that the Joint CCIE had been instructed regarding division of the quota rights between ACM and the other partner. Even so, the Joint CCIE refused to apportion the quota rights on the ground that the order of the CCIE would not apply retrospectively. ACM moved the High Court of Madras, which allowed the writ petition. The Joint CCIE appealed to the Supreme Court. The Supreme Court held that, as the CCIE, consequent on being satisfied that the firm had dissolved, was bound to allow division of quota rights, the approval granted by the CCIE in that regard had necessarily to take back to the date

¹³ (1962) 3 SCR 72

¹⁴ AIR 1966 SC 1044

¹⁵ (1966) 1 SCR 262



of dissolution of the firm. Thus, the Supreme Court enforced compliance, applying the principle of promissory estoppel, with the provisions relating to grant of license.

(vii) An authority, which was not issuing licences in accordance with the scheme could be obligated, by a court, to grant the license. The authority could, therefore, be directed by the court to honour its obligations under the scheme.

52. In view of the aforesaid, the Supreme Court set aside the decision of the Textile Commissioner and directed issuance of import entitlement certificates to IAAL equivalent to the 100% of the FOB value of the exports effected by it.

Motilal Padampat Sugar Mills³

Facts

53. On 10th October 1968, a news item appeared, stating that the State of Uttar Pradesh had decided to grant sales tax exemption, under Section 4(A) of the UP Sales Tax Act, 1948, to all new industrial units, for a period of three years. The news item purported to be based on a statement made by the Secretary in the Industries Department of the State Government. Acting on the basis of this representation, Motilal Padampat Sugar Mills Co. Ltd. (“MPSM”, hereinafter) wrote to the Director of Industries evincing its intent to set up a hydro generation plant for manufacture of Vanaspati and sought a



confirmation that the plant would be entitled to sales tax holiday for three years, as was announced by the Secretary in the Industries Department. Responses were received from the Director of Industries and the Chief Secretary to the State Government, assuring MPSM that it was entitled to a sale tax holiday for three years from the date of obtaining of power connection by the Vanaspati factory proposed to be set up by it. On the basis of these assurances, MPSM contacted financiers for financing the project and also entered into an agreement with the supplier of plant and machinery for the Vanaspati factory, which was located at Bombay. A further communication was addressed to the MPSM by the Chief Secretary, confirming that the State Government was willing to consider MPSM's request for sales tax holiday for three years from the date of production and requiring MPSM to submit a formal application to that effect; in the meanwhile, MPSM was advised to go ahead with the arrangements for setting up of the factory. On a request by MPSM for a more categorical assurance in this regard, the Chief Secretary, *vide* a subsequent letter, categorically stated that the proposed Vanaspati factory of MPSM "will be entitled to exemption from UP Sales Tax for a period of three years from the date of going into production and that this will apply to all Vanaspati sold during that period in UP itself". In these circumstances, MPSM went ahead and set up the Vanaspati factory, and considerable progress was achieved in that regard.

54. On 20th January 1970, the State Government partly resiled on the assurance held out by it to MPSM and intimated MPSM that a policy decision had been taken by the Government to the effect that



new Vanaspati units in the State, which commenced commercial production by 30th September 1970, would be given partial concession for payment of sales tax, limited to 3 ½ % in the first year of production, 3 % in the second year of production and 2 ½ % in the third year of production. MPSM wrote to the Secretary on 25th June 1970, intimating that it proposed to start commercial production of Vanaspati with effect from 1st July 1970 and informing that it would be availing exemption and charging sales tax @ 3 ½ % instead of 7 % on sales of Vanaspati effected by it for a period of one year commencing 1st July 1970.

55. On 12th August 1970, another news item appeared, announcing the decision of the Government to rescind the earlier decision dated 20th January 1970 and completely withdrawing the sales tax concession granted to new Vanaspati units.

56. MPSM challenged this decision before the High Court of Allahabad, seeking a direction to the State Government to issue a notification exempting sales of Vanaspati by MPSM, with effect from 2nd July 1970, for a period of three years. In other words, even after having informed the Secretary, *vide* its letter dated 25th June 1970, that it would be availing sales tax exemption @ 3½ %, 3% and 2½ %, as envisaged by the Government *vide* its letter dated 20th January 1970, MPSM insisted on its original pound of flesh i.e. complete sales tax holiday for a period of one year with effect from the date of commencement of commercial production. The fate of MPSM, as it



turned out, was happier than that of Shylock, as the Supreme Court held MPSM to be entitled to the pound of flesh that it sought.

Discussion and findings

57. The preliminary objection, advanced by the State, that, by its letter dated 25th June 1970, MPSM had waived its right to complete sales tax holiday by agreeing to avail sales tax exemptions at the rates of 3 ½ %, 3 % and 2 ½ % envisaged by the letter dated 20th January 1970, was rejected by the Supreme Court, which held that waiver was a question of fact, which had to be specifically pleaded and established. Waiver required abandonment of a right with the specific knowledge of existence of such right, as held in *Earl of Darnley v. London, Chatham and Dover Rly. Co.*¹⁶. There was no presumption that every man knew the law. In this regard, the Supreme Court endorsed the view of Lord Diplock in *Evans v. Bartlam*¹⁷ which significantly distinguished the principle that there was no presumption that everyone knew the law, with the principle, equally trite but conceptually distinct, that ignorance of the law is no excuse¹⁸.

58. Promissory estoppel, held the Supreme Court, was a principle based on equity, intended to mitigate the rigors of strict law, for which the *locus classicus* was the judgment of Lord Denning in *Central Property Trust Ltd. v. High Trees House Ltd.*¹⁹. Promissory estoppel, to be established, did not require any contractual or other pre-existing

¹⁶ (1867) LR 3 HL 43

¹⁷ (1937) AC 473

¹⁸ *Ignorantia juris non excusat*

¹⁹ (1956) 1 All ER 256



legal relationship between the parties, for which purpose reliance was placed on *Durham Fancy Goods Ltd. v. Michael Jackson (Fancy Goods) Ltd.*²⁰. Classically stated, the promissory estoppel doctrine postulated that, where one party, by words or conduct, made a clear and unequivocal promise to another, with the intent of creating a legal relationship or effecting a legal relationship to arise in future, with the knowledge of intent that the promise would be acted upon by the other party, and the other party, in fact, acted on the promise and altered its position thereby, the promisor was estopped from going back on his promise, irrespective of whether there existed or does not exist, any earlier legal relationship between the promisor and promisee.

59. Promissory estoppel was also enforceable against governmental and public authorities, even in respect of actions taken by them in sovereign/public capacity, in order to prevent fraud or avoid manifest injustice.

60. Promissory estoppel, clarified the Supreme Court was, irrespective of its nomenclature, not a species of estoppel, but was founded on equity. Passing of consideration was not necessary for promissory estoppel to apply. Promissory estoppel could, however, constitute a basis for enforcing a legal obligation cast on the opposite party only where such enforcement is necessary to avoid injustice.

61. Where the principle of promissory estoppel was found to apply, executive necessity is no defence, as held in *Indo Afghan Agencies*².

²⁰ (1968) 2 All ER 987



62. The Supreme Court further held that suffering of detriment by the party acting on the promise is not a *sine qua non* for the principle of promissory estoppel to apply. All that is required is alteration in the position of the party. Where the party acts on the promise held out by the authority, the position of the party *ipso facto* stands altered. Though the suffering of “detriment”, classically understood, was not a *sine qua non*, the Supreme Court clarified that injustice, in the event of the government or authority not being bound down by the promise held out by it, has, however, necessarily to be established. What was required to be seen, therefore, was whether any prejudice would be suffered, were the promisor to be allowed to resile from the promise.

63. The Supreme Court also delineated the circumstances in which relief could *not* be sought on the ground of promissory estoppel. Promissory estoppel, held the Supreme Court, could not be pressed into service to debar the government from enforcing a statutory prohibition. Further, being itself a principle of equity, promissory estoppel has, necessarily, to yield where equity points to the contrary. In other words, no authority can be directed to enforce a promise, where such enforcement would be inequitable. Nor could promissory estoppel be invoked to require the government to carry out a promise which is contrary to law.

64. Equally, held the Supreme Court, enforcement of a promise cannot be directed where such enforcement is against public interest. To sustain such a defence, however, public interest had not merely to



be pleaded, but had also to be proved. The authority pleading public interest as a defence had necessarily to set out and declare the facts and circumstances on the basis of which the court would be in a position to determine which way equity lay. The responsibility in this regard lay with the court, and the government could not arrogate to itself the sole decision to decide on its liability. The burden of proof in this regard, on the other hand, lay with the government, and was of an extremely high standard. In other words, in order to escape being bound by the promise held out by it, the government or authority had to make out a case of overwhelming public interest. In this regard, the Supreme Court clarified that mere change of policy did not amount to public interest and could not, therefore, be pleaded as a ground to escape the promise held out by the authority.

65. Even in the absence of public interest, held the Supreme Court, the government or authority could resile from the promise held out by it provided that, before doing so, the affected party was put on notice, and provided, further, that it was possible for the affected party to restore, or be restored to, the *status quo ante*.

Application

66. Applying the above principles, the Supreme Court held, in the facts before it, thus:

- (i) The letter dated 25th June 1970, addressed by MPSM, could not be regarded as constituting a waiver so as to disentitle



MPSM from seeking complete sales tax holiday for three years from the date of commencement of production, as there was nothing to indicate that, at the time of issuing of the said letter, MPSM was consciously aware of its entitlement to complete sales tax holiday for three years, and there was no legal presumption that every man knows the law.

(ii) The government had, in its letter dated 23rd January 1969, extended a categorical representation that the proposed Vanaspati factory of MPSM would be entitled to complete sales tax exemption for three years from the date of commencement of production.

(iii) The representation was made knowing or intending that it would be acted upon by MPSM, as MPSM had made it clear that it was only on account of the sales tax exemption promised by the government that MPSM had set up its factory for manufacture of Vanaspati.

(iv) The pre-requisites for promissory estoppel, therefore, existed. The government was, therefore, bound to honour the representation held out by it and to exempt MPSM from sales tax in respect of sales of Vanaspati effected in UP for three years from the date of commencement of production.

(v) The UP Sales Tax Act, 1948 empowered the government to grant exemption. Had no such power existed in the Act, no



direction to abide by the promise held out by it could have been issued to the government, as that would require the government to act contrary to law. As the UP Sales Tax empowered the government to grant exemption, the government was bound by its promise to exempt MPSM from sales tax for three years from the date of commencement of commercial production.

MPSM's appeal was, therefore, allowed.

Bakul Cashew Co. v. STO²¹

Facts

67. The Government of Kerala, *vide* GOM dated 12th October 1973 issued under Section 10 of the Kerala General Sales Tax Act, 1963 (“the KGST Act”) granted retrospective exemption on the tax payable by cashew manufacturers in Kerala on the purchase turnover of cashew nuts imported from outside India through the Cashew Corporation of India during the period 1st September 1970 to 30th September 1973, under Section 5 of the KGST Act. This notification was, however, cancelled by a subsequent notification dated 12th October 1973, issued by the Government of Kerala under Section 10(3) of the KGST Act. Bakul Cashew Co. (BCC) and others, who were importers of cashew from African countries, challenged the latter notification dated 9th November 1973, and sought revival of the earlier notification dated 12th October 1973, by way of a writ petition filed before the High Court of Kerala. The appellants predicated their

²¹ (1986) 2 SCC 365



claim on the plea of promissory estoppel. In this context, they also relied upon a representation stated to have been made on behalf of the Government by the Chief Minister, the Industries Minister and the Revenue Minister at a meeting held on 28th April 1971.

Discussion and findings

68. Though the judgment did not address the issue of promissory estoppel, which was the only plank on which the appellants before the Supreme Court based their case, the judgment becomes relevant because of para 5, in which the Supreme Court emphasized the fact that a plea of promissory estoppel had to be based on clear and cogent material. As was noticed by the Supreme Court in its subsequent decision in *Kasinka Trading v. U.O.I.*²², to which detailed reference would be made hereinafter, *Bakul Cashew Co.*²¹ cannot be regarded as an authority on the applicability of the plea of promissory estoppel, as the pleadings before the Court, in that case, were found to be insufficient. Para 5 of the decision in *Bakul Cashew Co.*²¹ read thus:

“The allegations in the appeal do not contain any information about who was present at the so called meeting, what representation was actually made, whether any of the appellants acted on the basis of the said representation and how he was prejudiced thereby. No material in the form of documents in support of that plea that they altered their price structure relying upon the alleged representation was also produced by the appellants. The appellants were owners of existing factories. None of them is shown to have established any new factory relying on the representation of any of the ministers. They were carrying on the business in their factories already. It is not their case that they would have

²² 1995 1 SCC 274



closed down their factories but for the alleged representation made to them. Nor it is their case that they gave up a more advantageous project and diverted their capital towards the cashew nut factory believing that the Government would grant exemption from payment of tax and had suffered any loss thereby. It is contended that the officer who had filed the counter-affidavit could not have known what transpired at the alleged meeting. The same plea is available against the appellants too. The person who has sworn to the affidavit on behalf of the appellants also does not say that he was present at the meeting or that he had any personal knowledge about what transpired at the meeting. He does not give any material details about what actually transpired there. In cases of this nature the evidence of representation should be clear and unambiguous. It 'must be certain to every intent'. The statements that are made by ministers at such meetings, such as, 'let us see', 'we shall consider the question of granting of exemption sympathetically', 'we shall get the matter examined', 'you have a good case for exemption' etc. even if true, cannot form the basis for a plea of estoppel. Moreover, the events that have taken place subsequently belie the fact of any such promise by the ministers. It is seen that the Cashew Corporation of India had made a representation to the Government of India on May 7, 1971 and the Government of India wrote to the State Government on March 4, 1972 urging that the exemption prayed for by the cashew manufacturers may be favourably considered by the Government of Kerala. The Government of Kerala however rejected the said request. Then on further pressure being put upon it, it issued the notification dated October 12, 1973 and immediately thereafter withdrew it after it encountered severe public criticism. This conduct on their part is not consistent with the appellants' case that they had actually promised in the year 1971 to exempt the cashew trade from payment of the tax. The allegations made in the petition do not establish (i) that there was a definite representation by the Government to the effect that the Government will not levy the tax; (ii) that the appellants in fact altered their position by acting upon such representation; and (iii) that they had suffered some prejudice sufficient to constitute an estoppel. Hence the whole case of promissory estoppel lacks the necessary factual foundation. It is, therefore, unnecessary to consider the question of law whether the plea of promissory estoppel can be raised



against a legislation which levies tax and whether an assessee can claim exemption from a tax levied by the legislature merely on the basis of a representation of a minister.”

69. *Bakul Cashew Co.*²¹ is, therefore, an authority for the proposition that a plea of promissory estoppel cannot be made, to employ a somewhat hackneyed expression, “in air”, but is required to be supported by requisite pleadings and clear and cogent factual material.

***Pournami Oil Mills v. State of Kerala*²³**

Facts

70. By order dated 11th April 1979, the Government of Kerala exempted new small scale industrial units, set up after 1st April 1979 from payment of Sales Tax for a period of five years from the date of their production. The ambit of this exemption was, however, restricted by a subsequent notification dated 29th September 1980, which confined the exemption to the limits stipulated in the proviso to the said latter notification which came into effect on 21st October 1980.

71. Pournami Oil Mills and other appellants before the Supreme Court had set up their small scale industrial units between 1st April 1979 and 21st October 1980. The Government sought to restrict their right to exemption to the limits envisaged by the notification dated

²³ 1986 Supplement SCC 728



21st October 1980. The appellants before the Supreme Court contended, *per contra*, that they were entitled to complete exemption, as envisaged by the earlier notification dated 11th April 1979. The issue before the Supreme Court was, therefore, whether the appellants before it were entitled to exemption to the extent envisaged by the notification dated 11th April 1979 or whether their exemptions were circumscribed by the latter notification, which came into effect on 21st October 1980.

Discussion and findings

72. The Supreme Court held that, having invited new small scale industrial units, *vide* first notification dated 11th April 1979, to set up industries in the State of Kerala, with the avowed intention of boosting industrialization, and having held out a promise of exemption from Sales Tax and Purchase Tax for a period of five years to run from the date of commencement of production, small scale industrial units which had, acting on the basis of this representation, commenced commercial production after 11th April 1979 but before 21st October 1980, had necessarily to be extended the benefit of the notification dated 11th April 1979. As held by the Supreme Court, “if in response to such an order and in consideration of the concession made available, promoters of any scale small concern had set up their industries within the State of Kerala, they would certainly be entitled to plead the rule of estoppel in their favour when the State of Kerala purports to act differently”. The Supreme Court distinguished the earlier decision in *Bakul Cashew Co.*²¹, on the ground that, in that



case, the plea of promissory estoppel was rejected for want of material particulars. The final conclusion of the Supreme Court was thus set out, in para 8 of the report:

“It is not disputed that the first Order namely, the one dated April 11, 1979 gave more of tax exemption than the second one. The second notification withdrew the exemption relating to purchase tax and confined the exemption from sales tax to the limit specified in the proviso of the Notification. All parties before us who in response to the Order of April 11, 1979 set up their industries prior to October 21, 1980 within the State of Kerala would thus be entitled to the exemption extended and/or promised under that Order. Such exemption would continue for the full period of five years from the date they started production. New industries set up after October 21, 1980 obviously would not be entitled to that benefit as they had noticed of the curtailment in the exemption before they came to set up their industries.”

Kasinka Trading v. U.O.I.²²

Facts

73. By notification dated 66/1979-Cus, the Union of India exempted polyvinyl chloride (PVC) resins classifiable under Chapter 39 of the Customs Tariff, when imported into India, entirely from customs duty. The notification specifically stated that it “shall be in force and inclusive of 31-3-1981”.

74. Prior to, 31st March, 1981, however, a second notification was issued on 16th October 1980, which read thus:

“New Delhi, 16th Oct., 1980

24th Asvina, 1902 (SAKA)
NOTIFICATION



CUSTOMS

GSR – In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, No. 66-Customs dated 15-3-1979, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts polyvinyl chloride resins, falling within Chapter 39 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule as is in excess of 4 per cent ad valorem.

Sd.

(K. Chandramouli)

Under Secretary to the Govt. of India

No. 205/F.No.355/141/89/Cus. I.

Attested

(V.K. Mullick)

Assistant Collector of Customs,
Correspondence Deptt.”

75. Kasinka Trading (“Kasinka”, hereinafter) challenged notification dated 16th October 1980, invoking the principle of promissory estoppel. Kasinka sought to contend that the Government could not have withdrawn the earlier notification dated 15th March 1979 before 31st March 1981, till which date exemption had been granted by the former notification. Relying on the notification dated 15th March 1979, Kasinka submitted that it had placed orders for import of PVC resin. Kasinka sought to contend that the Government had to be treated as bound by the representation held out in the



notification dated 15th March 1979 and restrained from going back from the promise contained therein.

76. The Union of India contended, *per contra*, that promissory estoppel had always to yield to public interest, and that the notification dated 16th October 1980 stated, expressly, to have been issued in public interest. It was contended that if the Government, after a review of its policy, found that the exemption granted by an earlier notification was required to be modified, altered or superseded in the larger public interest, Courts could not interdict it from doing so.

Discussion and findings

77. The Supreme Court noted, at the outset, that both the notifications under consideration before it, i.e., the notification dated 15th March 1979 as well as the notification dated 16th October 1980, had been issued under Section 25 of the Customs Act, 1962, which empowered the Central Government to exempt, either absolutely or conditionally, specified goods from payment of customs duty, either in whole or in part. Adverting, thereafter, to the principle of promissory estoppel, the Supreme Court noted that the principle was one evolved by equity to avoid injustice, and that its basis was that a party who “by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance of the promise would be acted upon by the other party to



whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealing, which have taken place or are intended to take between the parties.” The doctrine, it was noted, was also invokable against the Government, particularly where it was necessary to prevent fraud or manifest injustice.

78. At the same time, the Supreme Court also underscored the exemptions to the doctrine. It was held that promissory estoppel would not be invoked to compel the Government or the authority to carry out a promise which was contrary to law or which the authority did not have the competence to make. It was also noted that the parties seeking to invoke promissory estoppel were required to lay a clear, sound and positive foundation for invocation of the doctrine in the petition itself and that the doctrine could not be invoked on the basis of bald assertions, devoid of supportive material. The party would also have to establish, positively, that, acting on the basis of the doctrine, it had altered its position. If pleadings to this extent were available, the Court was then “bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine”. Promissory estoppel has, in every case, to yield to equity.



79. Specific reliance by placed, by the Supreme Court, on the following passage from Prof. S.A. De Smith's Judicial Review of Administrative Action:

“Contracts and Covenants entered into by the Crown are not to be construed as being subject to implied terms that would exclude the exercise of general discretionary powers for the public good. On the contrary they are to be construed as incorporating an implied term that such powers remain exercisable. This is broadly true of other public authorities also. But the status and functions of the Crown in this regard are of a higher order. This Crown cannot be allowed to tie its hands completely by prior undertakings is as clear as the proposition that the Courts cannot allow the Crown to evade compliance with ostensibly binding obligations whenever it thinks fit. If a public authority lawfully repudiates or departs from the terms of a binding contract in order to have been bound in law by an ostensibly binding contract because the undertakings would improperly fetter its general discretionary powers the other party to the agreement has no right whatsoever to damages or compensation under the general law, no matter how serious the damages that part may have suffered.”

80. Applying these principles to the facts before it on merits, the Supreme Court held that a clear case of public interest, as the predominant consideration for withdrawing the earlier notification dated 15th March 1979 by the latter notification dated 16th October 1980, was made out. The circumstances in which it had been decided to withdraw the earlier notification had been clearly set out by the Union of India in its counter affidavit. The recitals in the counter affidavit disclosed that the notification dated 15th March 1979 was designed to offset the excess price which local entrepreneurs were required to pay for importing PVC resin at a time when the difference between the indigenous product and the imported product was



substantial. As no importer could be expected to import PVC resin by incurring losses, the exemption notification was intended to offset these losses to the maximum extent possible. It was not intended to be a source for an importer to earn extra profit. Subsequently, when it was found that the international prices of the product of PVC resin had fallen, and that, consequently, the import price of the product had become lower than the ex-factory price of indigenous PVC resin, the matter was re-examined and it was decided that, in public interest, the exemption was required to be withdrawn. The assertion, in the counter affidavit of the Union of India that, at the time of issuance of the withdrawal notification dated 16th October 1980, there was no scope of any loss to be suffered by the importer, it was noted, had remained unrebutted. In these circumstances, the Supreme Court held that the counter affidavit of the Union of India clearly made out a case for discontinuation of the exemption extended by the notification dated 15th March 1979.

81. In this context, the Supreme Court clearly distinguished the position in law which obtains in the case of an exemption notification vis-a-vis the position in law which obtains in the case of an incentive, such as that which formed subject matter of consideration before the Supreme Court in its earlier decisions in *Indo-Afghan Agencies Ltd*² and *Motilal Padampat Sugar Mills*³. Para 21 of the report in *Kasinka Trading*²² may be reproduced, for this purpose, thus:

“The power to grant exemption from payment of duty, additional duty etc. under the Act, as already noticed flows from the provisions of Section 25(1) of the Act. The power to



exempt includes the power to modify or withdraw the same. The liability to pay customs duty or additional duty under the Act arises when the taxable event occurs. They are then subject to the payment of duty as prevalent on the date of the entry of the goods. An exemption notification issued under Section 25 of the Act had the effect of suspending the collection of Customs duty. It does not make items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty etc., wholly or partially and subject to such conditions as may be laid down in the Notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption notification, in the "public interest", is an exercise of the statutory power of the State under the law itself as is obvious from the language of Section 25 of the Act. Under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner. From the very nature of power of exemption granted to the Government under Section 25 of the Act, it follows that the same is with a view to enabling the Government to regulate, control and promote the industries and industrial production in the country. Notification No. 66 of 1979 in our opinion, was not designed or issued to induce the appellants to import PVC resin. Admittedly, the said Notification was not even intended as an incentive for import. The Notification on the plain language of it was conceived and issued on the Central Government "being satisfied that it is necessary in the public interest so to do." Strictly speaking, therefore, the Notification cannot be said to have extended any "representation" much less a "promise" to a party getting the benefit of it to enable it to invoke the doctrine of promissory estoppel against the State. It would bear repetition that in order to invoke the doctrine of promissory estoppel, it is necessary that the promise which is sought to be enforced must be shown to be an unequivocal promise to the other party intended to create a legal relationship and that it was acted upon as such by the party to whom the same was made. A Notification issued under Section 25 of the Act cannot be said to be holding out of any such unequivocal promise by the Government which was intended to create any legal relationship between the



Government and the party drawing benefit flowing from of the said Notification. It is, therefore, futile to contend that even if the public interest so demanded and the Central Government was satisfied that the exemption did not require to be extended any further, it could still not withdraw the exemption.”

82. The Supreme Court also discountenanced the submission, advanced by the appellants before it, that, a date upto which the benefit of exemption would be available having been stipulated in the notification dated 15th March 1979, the Government could not resile or withdraw the benefit prior to the said date. Acceptance of such submission, it was noted, would amount to divesting the Government of the authority, statutorily conferred by Section 25 of the Customs Act, to withdraw the benefit extended by a notification if it was found necessary so to do in public interest. In this regard, the Supreme Court adopted the view, expressed by the High Court of Jammu & Kashmir in *Malhotra and Sons v. U.O.I.*²⁴, which had been cited, with approval, in *Motilal Padampat Sugar Mills*³, that “the Courts will only bind the Government by its promises to prevent manifest injustice or fraud and will not make the Government as slave of its policy for all times to come when the Government acts in its governmental, public or sovereign capacity”. Withdrawal of an exemption, within the powers conferred by the statute, was a matter of public interest, and the Supreme Court held that “Courts would not bind the Government to its policy decision for all times to come irrespective of the satisfaction of the Government that a change in the policy was necessary in the “public interest”.” It was further observed

²⁴ AIR 1976 J&K 41



in para 23 of the report in *Kasinka Trading*²² that the Courts do not interfere with the fiscal policy where the Government acts in public interest, and neither any fraud or lack *bona fide* is alleged much less established. The Government, it was held, had “to be left free to determine the priorities in the matter of utilization of finances and to act in the public interest while issuing or modifying or withdrawing an exemption notification under Section 25(1) of the Act”. The power to extend an exemption in public interest, it was held, also included, in its wake, the power to curtail the exemption in public interest.

83. The Supreme Court distinguished its earlier decisions in *Pournami Oil Mills*²³ and *Shri Bakul Oil Industries v. State of Gujarat*²⁵. The basis of such distinction, as enunciated in para 27 of the decision, is of signal significance, and may be reproduced, thus:

“27. Indeed, the submission on the fact situation is not controvertible but in the absence of any material placed before, the High Court or even in this appeal to establish that the notification dated 29.8.1980 was issued for any oblique or extraneous consideration and was not “in public interest”, it is not possible to find fault with that notification for the reasons we have already given while dealing with the first batch of cases. The appellants, who are in business, have to be prepared for tides in the business. In *Pournami Oil Mills*²³, it was the incentive to set up new industry in the State with a view to boost the industrialisation that exemption had been granted and it was in that fact situation that the doctrine of promissory estoppel was held available to the appellant therein. Again in *Bakul Oil Industries*²⁵ it was the incentive to set up industries in a conforming area that the exemption had been granted and the Court held that the Government could withdrawn an exemption granted by it earlier only if such withdrawal could be made without offending the rule of

²⁵(1987) 1 SCC 31



promissory estoppel and without depriving an industry entitled to claim examination for the entire specified period for which exemption had been promised to it at the time to giving incentive. Both these cases therefore cannot advance the case of the appellant and are distinguishable on facts because the exemption notification under Section 25 of the Act which was issued in this case did not hold out any incentive for setting up of any industry to use PVC resins and on the other hand has been issued in exercise of the statutory powers, in public interest and subsequently withdrawn in exercise of the same powers again in public interest. In our opinion, no justifiable prejudice was caused to the appellants in the absence of any unequivocal promise by the Government not to act and review its policy even if the necessity warranted and the "public interest" so demanded. Thus, in the facts and circumstances of these cases, the appellants cannot invoke the doctrine of promissory estoppel to question the withdrawal notification issued under Section 25 of the Act.”

84. The Supreme Court, therefore, clearly distinguished between a notification extending an exemption from payment of tax or duty and an incentive held out by the Government in, for example, an industrial policy. Exemption notifications, it was pointed out, do not hold out any promise and are issued in the light of the fiscal situation as it obtains on the date of the notification. A change in the fiscal environment, therefore, could justify withdrawal or rescinding of the notification. The mere stipulation, in the earlier notification, of a period till which the benefit of exemption would be available thereunder, cannot derogate from this power.

Shrijee Sales Corporation v. U.O.I.²⁶

Facts

²⁶ (1997) 3 SCC 398



85. The appellant Shrijee Sales Corporation (“Shrijee”, hereinafter), in this case, essentially questioned the correctness of the earlier decision of the Supreme Court in *Kasinka Trading*²². The facts were, therefore, similar, but are, for the sake of completion, being noted, albeit at the cost of some repetition.

86. *Vide* Notification 66/79-Cus, the Government exempted imports of PVC resins classified under Chapter 39 of the Customs Tariff Act, 1975, entirely from customs duty leviable thereon. The notification stated that it “shall be in force upto and inclusive of 31st March 1981”. Shrijee contended that, trusting the assurance of exemption from customs duty on imported PVC till 31st March 1981, it entered into an agreement with the UP Export Corporation, Kanpur for import of PVC, i.e. an actual user and also opened letters of credit in favour of foreign suppliers, pursuant whereunto imported PVC arrived at Bombay Port on 8th November 1980.

87. Prior thereto, however, on 16th October 1980, the exemption to imported PVC, as extended by notification 66/1979-Cus was withdrawn *vide* notification 205/1980-Cus dated 16th October 1980. Shrijee contended that, having promised, *vide* Notification 66/1979-Cus, that imported PVC would be exempted from customs duty till 31st March 1981, the Government could not have withdrawn the exemption prior to the expiry of the said period on 16th October 1980. As a consequence of such withdrawal, Shrijee contended that it had suffered immense financial prejudice.



Discussions and findings

88. The Supreme Court, after quoting, with approval, the judgment of the Full Bench of this Court in ***Bombay Conductors and Electrical Ltd v. Government of India***²⁷, clarified that, while the principle of promissory estoppel would operate against the Government, as much as against any private party, the Government was allowed to change its stand in the case of supervening public equity. In such an event, the Supreme Court held that the Government was competent to withdraw from the representation made by it, even if, relying on such representation, citizens may have taken steps which resulted in adverse consequences on the representation being withdrawn. The Court was, however, required to satisfy itself, in such cases, that public interest existed, justifying the withdrawal.

89. The Supreme Court also relied, with approval, on its earlier decision in ***Kasinka Trading***²², and endorsed the said judgment in its entirety. The power of the Government to withdraw an exemption, once granted, in public interest, it was held, applied equally irrespective of whether the notification which was withdrawn stipulated, or did not stipulate, any period for which the benefit was made available. It was held that “once public interest is accepted as the superior equity which can override individual equity, the principle should be applicable even in case where a period has been indicated”.

²⁷ Judgment dated 26th March, 1983 in CWP 1574/1980



90. Even in the absence of public interest, the Supreme Court held that the Government could competently resile from a promise given by it, provided no adverse irreparable consequence ensued to the citizens as a result. In such an event, the Government would have to give reasonable notice-which was not, necessarily, a formal notice-providing the promisee citizenry a reasonable opportunity to restore the *status quo ante*. Where such restoration was not possible, however, the promise was final and irrevocable, and could not be withdrawn.

91. Holding that, in the circumstances before it, the Union of India had made out a case of supervening public interest, and endorsing the earlier decision in *Kasinka Trading*²², the Supreme Court dismissed the appeal of Shrijee.

Sales Tax Officer v. Shree Durga Oil Mills²⁸

Facts

92. Shree Durga Oil Mills (“SDOM”, hereinafter) was issued a permanent Registration Certificate as a small scale industrial unit, to set up an industry, engaged in production of oil, on 10th April 1980. Production was commenced, by SDOM, prior thereto, on 19th March 1980. Clause 8 of the Industrial Policy Resolution (IPR) dated 18th July 1979, which was in force at the time, provided, *inter alia*, that small scale industries would be except from purchase/sales tax for five

²⁸ (1998) 1 SCC 572



years on construction material, raw material, machinery and packing materials. SDOM contended that, relying on the promise as held out in the IPR, it had availed a huge loan from the bank for purchasing raw material for production of oil. Nonetheless, the jurisdictional Sales Tax Officer (SDO) assessed SDOM to tax for the assessment years 1979-80 to 1981-82. The plea of SDOM, that it was exempted from paying tax on oil or purchase of the raw materials for production of oil, as per the promise held out by Clause 8 of IPR, was negated by the SDO on the ground that no notification, under Section 6 of the Orissa Sales Tax Act, 1947 (“the OST Act”) had been issued, granting such exemption.

93. Aggrieved by the assessment orders issued by the SDO, SDOM moved the High Court under Article 226 of the Constitution of India.

94. The High Court allowed the writ petition, accepting the stand of SDOM that the IPR held out a clear and unequivocal promise, whereby a legal relationship was sought to be created between the State and the persons who had acted on the basis of the IPR. Inasmuch as SDOM had set up its industry on the basis of promise held out in the IPR, the High Court held that the State Government could not resile from the commitment made by it in the IPR, which covered the period from 1977 to 1983. The assessment orders issued by the SDO were, therefore, quashed.

95. Aggrieved SDOM appealed to the Supreme Court.



Discussion and findings

96. The Supreme Court noted, at the outset, that raw materials which went into the manufacture of finished goods, sold to a registered dealer who was a manufacturer in Orissa and had commenced production after 1st April 1969, were exempted from Sales/Purchase Tax by the notification dated 11th November 1969, issued under Section 6 of the OST Act, for a period of five years. The exemption was extended for a further period of five years by notification dated 23rd April 1976. Both these notifications were, however, abrogated *vide* notification dated 20th May 1977. On 9th September 1977, a fresh exemption notification was issued, restricted, however, to industries which had commenced production prior to 1st April 1977. SDOM having commenced production on 19th March, 1980, it was not eligible for the exemption granted by the notification dated 9th September 1977. Nonetheless, contended SDOM, it was required to be granted such exemption in view of the promise held out by the IPR, for the period 1979 to 1983.

97. Before the Supreme Court, SDOM relied on the earlier decisions in *Pournami Oil Mills*²³ and *Pine Chemicals Ltd v. Assessing Authority*²⁹.

98. The observations of the Supreme Court, with respect to the latter decision in *Pine Chemicals*²⁹, are significant. *Pine Chemicals*²⁹ also dealt with a case in which exemption had been granted, from

²⁹ (1992) 2 SCC 683



Sales Tax, under the J&K General Sales Tax Act, 1962. The Supreme Court found, in that case, that the Government had actually passed an order granting exemption to new industries from Sales Tax under Section 5 of the General Sales Tax Act, 1948 (“the 1948 Act”), on the basis of which the appellants before it, including Pine Chemicals had set up their industries. In that view of the matter, the Supreme Court held Pine Chemicals to be entitled to exemption from tax for the entire period of five years as promised by the Government.

99. The Supreme Court distinguished the decision in *Pine Chemicals*²⁹ on two grounds.

100. The first ground on which *Pine Chemicals*²⁹ was distinguished was that Section 5 of the General Sales Tax Act, under which the notification in *Pine Chemicals*²⁹ had been issued, was different from Section 6 of the OST Act, under which the notification under consideration before it, had been issued. Unlike Section 6 of the OST Act, which specifically empowered the Government to, by notification, grant exemption and withdraw exemption at any point of time, Section 5 of the General Sales Tax Act, it was observed, read thus:

“5. Exemption from taxation. – The Government may, subject to such restrictions and conditions as may be prescribed, including conditions as to licence and licence fee, by order exempt in whole or in part from payment of tax any class of dealers or any goods or class or description of goods.”

101. Secondly, the Supreme Court observed that, in *Pine Chemicals*²⁹, no defense of overriding public interest had been



pleaded by the Government. Where, after granting exemption, the Government found itself suffering tremendous financial crunch, to tide over which it was necessary to do away with the exemption, the Supreme Court held that the Government was within its competence in doing so. Where, therefore, the statute conferring the power to grant exemption also empowered the Government to withdraw the exemption, and withdrawal of the exemption was found necessary to meet the financial crunch that was suffered by the Government as a consequence of grant of exemption, the Government was within its right to withdraw the exemption and such withdrawal could not be challenged on the ground of promissory estoppel.

102. That apart, the Supreme Court observed that the IPR specifically contemplated issuance of Government orders, by the concerned departments, laying down the mode of administering the concessions and incentives held out by the IPR. As such, it was found that the IPR did not, by itself, grant any exemption to industries set up on its basis, but merely promised that orders would be issued laying down the mode of administering the concessions and incentives granted by the IPR, by concerned departments.

103. The Supreme Court held that Section 6 of the OST Act permitted grant of exemption only by way of notification. An executive order could not, therefore, substitute the requirement of a notification for grant of exemption. Section 6 also empowered the Government to, at any time, modify or withdraw the exemption extended by a notification. As such, in deciding to withdraw the



exemption granted by the earlier notifications issued by it, rendering the said notification inapplicable to industries which had commenced production after 1st April 1977, the Supreme Court held that the State Government could not be said to have acted in violation of the law.

104. In this context, the Supreme Court observed that a party setting up an industry, and availing the benefit of an exemption notification, ought to have been aware of the fact that such exemption, once granted, could be modified, amended or withdrawn at any point of time. It could not, therefore, legitimately invoke the principle of promissory estoppel when the exemption was modified or withdrawn.

105. That apart, the plea of severe financial crunch, as advanced by the Government, indicated overarching public interest, which was a justifiable basis to withdraw the exemption already granted. The principle of promissory estoppel, it was observed, had necessarily to cede place to overarching public interest.

106. For these reasons, the Supreme Court reversed the decision of the High Court and dismissed the writ petition filed by the respondent before it including SDOM.

State of Rajasthan v. Gopal Oil Mills⁴

Facts



107. *Vide* a scheme issued under the Rajasthan Sales Tax Act and the Central Sales Tax Act, which came into effect on 23rd May 1987, Gopal Oil Mills (“GOM”, hereinafter) claimed exemption from payment of tax. The said exemption was, however, withdrawn in respect of certain industries by a subsequent notification dated 7th May 1990. Exemption, in respect of the Central Sales Tax Act was restored by a second notification dated 26th July 1991, without, however, restoring the exemption earlier granted in respect of State Sales Tax. This second notification, to the extent it did not restore the exemption granted in respect of State Sales Tax, was challenged by GOM and another assessee before the High Court. The challenge having succeeded, the State of Rajasthan appealed to the Supreme Court. However, before the Supreme Court, GOM confined its claim to the withdrawal of benefit under the Central Sales Tax Act during the period 7th May 1990 to 26th July 1991.

Discussion and findings

108. The Supreme Court held that the government was bound by its promise to grant exemption from Central Sales Tax Act even during the period 7th May 1990 to 26th July 1991, unless denial of such exemption was justifiable on considerations of public interest. The Supreme Court held that public interest could not be regarded as a justification for the impugned denial of exemption for two reasons. Firstly, the exemption was in fact restored w.e.f. 26th July 1991. This was held to constitute a strong indicator of the absence of any public interest for denying the exemption for the period 7th May 1990 to 26th



July 1991. Secondly, the Supreme Court observed that the State government had not been able to produce any material to indicate that denial of the exemption for the period from 7th May 1990 to 26th July 1991, only to the extent it applied to Central Sales Tax, was in public interest.

109. This decision, too, therefore, underscores the position, in law, that, having promised a benefit to be available for a particular stipulated period, if the Government chooses to deny or withdraw it for a part of the said period, it would have to positively establish public interest as an overwhelming consideration justifying its decision.

State of Rajasthan v. Mahaveer Oil Industries³⁰

Facts

110. This case involved the same Scheme which was under consideration in ***Gopal Oil Mills***⁴. By Notification dated 23rd May 1987, issued under Section 4(2) of the Rajasthan Sales Tax Act, 1954 (“RST Act”), the State of Rajasthan notified the Sales Tax Incentives Scheme for Industries, 1987 (“the Incentive Scheme”), under which new industrial units were exempted from payment of sales tax on goods manufactured by them and sold within Rajasthan during the period 5th March 1987 to 31st March 1992. The notification was subsequently extended to 31st March 1987. Annexure-B to the notification contained a negative list of industries which were not

³⁰ (1999) 4 SCC 357



eligible for its benefit. Oil extraction, which was the industry in which the respondent Mahaveer Oil Industries (“Mahaveer”, hereinafter) was engaged, was not one of the industries listed in Annexure-B. Mahaveer was, therefore, eligible for the benefit available under the incentive scheme.

111. A similar incentive scheme, exempting new industrial units from the requirement of payment of Central Sales Tax on Inter-State sales of goods manufactured within the State of Rajasthan, was also issued on 23rd May 1987. Appendix-B to the said notification, too, enlisted industries who could be eligible for its benefit and oil extraction found no place therein. Similarly, on 6th July 1989, two notifications, granting exemption from payment of sales tax in respect of Intra-State sale of goods and Central Sales Tax in respect of Inter-State sale of goods manufactured within the Rajasthan were issued, under Section 4(2) of the RST Act and Section 8(5) of the Central Sales Tax Act. Appendix-B to these notifications, too, enlisted industries who would not be eligible for the benefit thereof, and oil extraction found no place therein. These notifications covered the period from 5th March 1987 to 31st March 1992.

112. On 7th May 1990, the State of Rajasthan issued parallel notifications under the Rajasthan Sales Tax Act and the Central Sales Tax Act, amending the notifications dated 23rd May 1987, by, *inter alia*, including, in Annexure-B, the oil extracting or manufacturing industry. As a result, the oil extracting and manufacturing industry



became, *ipso facto*, disentitled from the benefit of exemption from Sales Tax as well as Central Sales Tax, w.e.f. 7th May 1990.

113. Subsequently, *vide* notification dated 26th July 1991, the benefit of exemption from Central Sales Tax Act, as originally extended *vide* notification dated 23rd May 1987 and – withdrawn, subsequently, *vide* notification dated 7th May 1990 – was restored to the extent of 75% in the case of new industries and 60% in the case of industries undergoing expansion or diversification. As a result, industrial units established between 7th May 1990 and 26th July 1991 alone remained disentitled to the benefit of the incentive scheme under the Central Sales Tax, in respect of Inter-State sales of goods.

114. Mahaveer commenced commercial production on 17th February 1991, and applied for an eligibility certificate for claiming exemption from the requirement of payment of Sales Tax and Central Sales Tax Acts, on 2nd April 1991. The application was rejected by the State *vide* reply dated 29th April 1991, pointing out that the incentive scheme stood withdrawn, in respect of oil extracting or manufacturing industry w.e.f. 7th May 1990. Aggrieved, Mahaveer approached the High Court of Rajasthan by way of Writ Petition 2529/1992, challenging the notification dated 7th May 1990 issued under the RST Act and the Central Sales Tax Act. The writ petition was allowed by the learned Single Judge and the appeal preferred by the State was dismissed by the Division Bench, *vide* judgment dated 14th August 199, against which decision the State appealed to the Supreme Court.



Discussion and findings

115. The Supreme Court observed that the notifications dated 7th May 1990 were also subject matter of petitions preferred before the High Court by Gopal Oil Mills (GOM), which had travelled to the Supreme Court, and had been decided *vide* the judgment which came to be reported in *Gopal Oil Mills*⁴ and which has been discussed hereinbefore. In that case, GOM restricted its challenge to the withdrawal of the benefit of exemption earlier granted in respect of Central Sales Tax Act, and did not press its challenge qua the withdrawal of exemption under the RST Act. The Supreme Court held that, in view of the judgment rendered in GOM, the controversy did not survive for consideration insofar as the withdrawal of exemption from Central Sales Tax Act was concerned. The withdrawal of exemption of the exemption granted for payment of State Sales Tax Act under the RST Act, however, remained to be considered.

116. Para 14 of the report encapsulated the issue under consideration, and the fundamental principle of law applicable in that regard, thus:

“Are the respondents justified in holding the State to the promise made by it in the form of an incentive scheme which is made available for a specified period of time, when new industries are set up on the basis of that scheme relying on the promise of benefits held out by it? Public interest requires that the State be held bound by the promise held out by it in such a situation. But this does not preclude the State from withdrawing the benefit prospectively even during the period of the scheme, if public interest so requires. Even in a case where a party has acted on the promise, if there is any



supervening public interest which requires that the benefit be withdrawn or the scheme be modified, that supervening public interest would prevail over any promissory estoppel.”

117. Referring, thereafter, to the decision in *Kasinka Trading*²² and *Shrijee*²⁶, the Supreme Court noted that, in its affidavit filed before the Supreme Court, the State had endeavored to point out that the implementation of the incentive scheme during the years 1988 and 1989 revealed that the scheme was not a success and that, specifically in the case of the oil industry and cottage industry, the object of having more new industries could not be achieved. In effect, therefore, the incentive scheme was resulting in closure of existing units and mushrooming of new units, which was never its intent. It was for this reason that, in public interest, a decision was taken to withdraw the benefit of incentive scheme in respect of the oil industry.

118. The Supreme Court found the argument to be convincing and making out a clear case of supervening public interest, justifying withdrawal of the incentive scheme in respect of the oil industry.

*State of Punjab v. Nestle India Ltd.*⁵

Facts

119. Nestle India Ltd. (Nestle) manufactured milk products, and was paying purchase tax on milk used by it to manufacture its products, in terms of Section 4-B of the Punjab General Sales Tax Act, 1948 (“the PST Act”). No purchase tax was, however, paid by Nestle during the



period 1st July 1996 to 4th June 1997 on the ground that no purchase tax on milk was, as per the decision announced by the Punjab Government, payable during the said period.

120. In a meeting held on 4th June 1997, the Council of Ministers rejected the decision to abolish purchase tax on milk. Consequent notices were issued by the Excise and Taxation Officer to Nestle on 3rd July 1997, calling upon Nestle to pay up the purchase tax on milk for the year 1996-1997. Aggrieved thereby, Nestle approached the High Court of Punjab & Haryana.

121. Before the High Court, the Nestle relied on

- (i) an announcement made by the Chief Minister of Punjab on 26th February 1996, while addressing dairy farmers, that the State Government had abolished purchase tax on milk and milk products, which was given wide publicity in the media,
- (ii) the speech given by the Punjab Finance Minister while presenting the 1996-1997 budget, in which it was stated that, in the previous month, the Chief Minister had abolished Purchase Tax on milk,
- (iii) Memo dated 26th April, 1996 from the Financial Commissioner to the Excise and Taxation Commissioner, which stated that it had been decided, in principle, to abolish purchase tax on milk with effect from 1st April 1996, and requesting the Excise and Taxation Commissioner to issue necessary instructions to his Field Officers,



- (iv) Circular dated 18th May 1996 issued by the Excise and Taxation Commissioner to all Deputy and Assistant Excise and Taxation Commissioners, intimating the decision of the Government to abolish purchase tax on milk and calling on the field formations, and stating that necessary notifications, towards implementation of the said decision, were under process and likely to be issued shortly,
- (v) a letter written by the Excise and Taxation Commissioner to the Financial Commissioner, informing the latter of the aforesaid instructions issued by the Excise and Taxation Commissioner to the Field Officers pursuant to the decision of the Government as communicated by the Financial Commissioner,
- (vi) the minutes of a meeting dated 27th June 1996 held under the Chairmanship of the Chief Minister and attended by the Finance Minister, the Excise and Taxation Commissioner and various Financial Commissioners, in which the decision to abolish purchase tax on milk was reiterated, along with the decision to issue a formal notification in a day or two,
- (vii) an announcement made by the Finance Minister on 18th-24th July 1996, stating that the Government had abolished purchase tax on milk and
- (viii) formal approval to abolition of purchase tax on milk accorded by the Council of the Ministers of the Punjab Government in its meeting held on 21st August 1996.



122. Nestle also relied on the fact that, along with each Sales Tax return filed by it, a specific statement was made to the effect that purchase tax on milk was not being deposited from 1st April 1996 due to the press statements/letters/circulars issued by the department and that the issue had been discussed with the Excise and Taxation Commissioner and Assistant Commissioner. These returns, it was pointed out, had not been rejected by the Tax Authorities.

123. It was further pointed out, by Nestle, that the benefit obtained by availing the exemption from purchase tax on milk had been passed on, by Nestle, to the farmers and milk producers.

124. The State Government contended, before the High Court, *per contra*, that no formal Notification, as required by law, abolishing purchase tax on milk during the year 1996-1997, had been issued by the State Government.

125. The High Court, however, expressed the view that the issuance of notification was a mere ministerial act, the non-performance of which could not be regarded as a ground to disentitle Nestle to the benefit of the promise held out by the various authorities in the State Government, not to charge purchase tax on milk during the year 1996-1997.

126. Accordingly, the High Court allowed Nestle's writ petition and directed the State Government to issue a notification exempting milk



from purchase tax for the year 1996-1997, against which the State appealed to the Supreme Court.

127. Before the Supreme Court, the State Government pleaded that there could be no promissory estoppel against a statute and that, where the statute required issuance of a notification for grant of exemption from purchase tax, in the absence of any such notification, the High Court could not have allowed Nestle's claim for being exempted from purchase tax on milk during the year 1996-1997. It was further contended that the decision not to abolish purchase tax during the year 1996-1997 was taken in public interest.

Discussion and findings

128. Noting the principle, enunciated in *Amrit Vanaspati Co Ltd v. State of Punjab*³¹ that promissory estoppel could not be invoked as a basis to enforce a promise which was incompetent, or suffered from illegality or fraud, the Supreme Court observed, at the outset, that the Punjab Sales Tax Act envisaged exemption from purchase tax only by notification issued by the State Government, and that the State Government was statutorily invested with the power to do so.

129. Considerable reliance was placed, by the Supreme Court, on the decision in *Collector of Bombay v. Municipal Corporation of the City of Bombay*³². In the said case, the Government of Bombay

³¹(1979) 2 SCC 409

³²AIR 1951 SC 469



passed a Resolution, in 1865, authorizing rent free grant of an area to the Municipal Corporation to set up a market. Though the site was handed over to the Municipal Corporation, no formal grant was, in fact, executed, though such grant was required by the applicable statute. The Municipal Corporation spent considerable amount of money in building and improving the market. After the Municipal Corporation had remained in possession of the market for over 70 years since the time it was established, the Collector raised a demand against the Municipal Corporation, claiming arrears of rent under the Bombay City Land Revenue Act, 1876. The dispute travelled to the Supreme Court, which noted that the Resolution of 1865 did not constitute a formal grant, in accordance with the Act, passing title in the land to the Corporation. Nonetheless, the Supreme Court held that the Resolution amounted to a representation by the Government to the Municipal Corporation, allocating the land to the Municipal Corporation rent free. The fact that the grant itself was invalid, by accident, did not, it was held, wipe out the existence of its representation or the fact that, acting on its basis, the Corporation had set up a market, expending huge amounts in the process, and had remained in possession of the market for 70 years. The Supreme Court held, classically, that “invalidity of the grant does not lead to the obliteration of the representation”. In these circumstances, the Supreme Court held that allowing the Government to go back on its representation made to the Municipal Corporation would amount to countenancing a legal fraud. At the very least, held the Supreme Court, the Government of Bombay was bound to abide by the promise, held out by it, that no rent would be charged in future.



130. The judgment in *Collector of Bombay*³² therefore, was found by the Supreme Court to have obligated the governmental authorities, on the principle of promissory estoppel, to abide by the representation made by it, though the representation was legally invalid, as it had not been made in accordance with the procedure prescribed by statute.

131. Adverting to the facts of the case before it, the Supreme Court noted that the PST Act empowered the State Government to exempt or abolish milk as a taxable commodity. Further, the representation that purchase tax was exempted on milk during 1996-1997 was made by persons who had the authority and competence to exempt purchase tax. It was, therefore, a competent representation.

132. In these circumstances, the Supreme Court held that, where effectuation of the promise held out by it required the Government to issue a notification, *and* the concerned statute empowered the Government to do so, the High Court was within its jurisdiction in binding the Government by its promise and compelling the Government to issue an appropriate notification.

133. The Supreme Court distinguished the case before it from one in which the doctrine of promissory estoppel was sought to be invoked merely on the basis of an exemption notification, as in *Kasinka Trading*²². Notifications granting exemption from tax could always be rescinded, modified or amended. They could not, therefore, merely by themselves, constitute unequivocal representations by the



Government, as would justify attracting the principle of promissory estoppel. In such circumstances, the Supreme Court observed that withdrawal of the exemption could be sustained even as it stood, without the Government requiring to establish existence of any overriding equity.

134. Noting that (i) no overriding public interest having been established, by the State Government, to justify non-enforcement of the promise held out by it, (ii) the representations in that regard had been made by the highest authorities, including the Finance Minister, and (iii) acting on the basis of the said representations, the benefit of exemption from purchase tax during the year 1996-1997 had been passed on by Nestle to its customers, the Supreme Court held that it was inequitable to allow the State Government to resile from its decision to exempt milk from purchase tax during the said period. The decision of the High Court was, therefore, affirmed, and the appeal of the State dismissed.

Bannari Amman Sugars⁶

Facts

135. By a GOM dated 1st September 1988, the Government of Tamil Nadu discontinued purchase tax exemption in respect of mills which had exceeded the ceiling of ₹ 300 lacs during five years. The said GOM dated 1st September 1988 was made retrospectively applicable from 1st July 1988 by a letter dated 28th December 1988, issued by the



Government. The aforesaid discontinuance of purchase tax exemption was challenged by Bannari Amman Sugars Ltd (BASL) before the High Court of Madras, under Article 226 of the Constitution of India. The writ petitions were transferred to the Tamil Nadu Taxation Special Tribunal (“the Tribunal”). The Tribunal held the withdrawal of the aforesaid benefits to be unsustainable in law, applying the principles of promissory estoppel and legitimate expectation. The decision of the Tribunal was reversed by the High Court of Madras. BASL appealed to the Supreme Court.

Discussion and findings

136. The Supreme Court laid down the following principles, in the said decision:

- (i) Mere grant of a concession in a governmental dispensation did not result in vesting of any right. The party pleading promissory estoppel was required to establish that it had acted on the basis of such concession.
- (ii) Promissory estoppel could be pleaded only if clear, sound and positive material, with requisite foundation, was placed on record by the person pleading the principle. While examining the contention, the Court was required to bear in mind the results sought to be achieved as well as public good at large. Supervening public equity would entitle a governmental authority to resile from the promise made by it.



(iii) Apart from promissory estoppel, legitimate expectation also constituted sufficient ground for judicial review of the impugned administrative/executive action. Legitimate expectation, as a jurisprudential concept, even if accepted, however, normally resulted only in an entitlement to fair hearing before the decision was taken, negating the promise held out or withdrawing the undertaking. Legitimate expectation, as a principle, did not, by itself, confer a right to the citizen to claim relief straightaway.

(iv) Legitimate expectation was also subject to overriding public interest.

(v) Change in policy could constitute a basis for reversing the decision already taken. Executive discretion to change the existing policy vested in the State. Exercise of such discretion had, however, to be fair and not arbitrary, if it was to conform to Article 14 of the Constitution of India.

(vi) The question of whether the decision to change the prevailing policy, thereby resiling on a promise or assurance held out earlier was, or was not, arbitrary, would depend, in each case, on the facts and circumstances. If a discernible principle emerged for the decision, it would not be regarded as arbitrary.



(vii) Ordinarily, it was advisable for Courts to stay away from the realm of administrative policy except where (a) the policy was inconsistent with any express or implied statutory provision by which the power to which the policy related was created or (b) the policy was wanting in reasonableness and good faith.

(viii) Something overwhelming was, therefore, necessary before a Court would intervene with a policy decision and its implementation. The onus in this regard was extremely high and often difficult to discharge.

(ix) The Court was required to bear in mind, in such cases, that there was always a possibility of differences in opinion. The Court was required to distinguish between proper and improper exercise of power. While doing so, the Court could not import its own standard of reasonableness to the situation before it.

(x) The principle of legitimate expectation would not apply if the change in policy was in accordance with the Wednesbury principle of reasonableness. The Court could interfere only where the change in policy was irrational, perverse or such as no reasonable person would have made, for which purpose reliance was placed on *Punjab Communications Ltd v. UOI*³³.

³³ (1999) 4 SCC 727



(xi) For legitimate expectation to apply, it had to be shown, therefore, that the decision was arbitrary, unreasonable and not taken in public interest, as held in *U.O.I. v. Hindustan Development Corporation*³⁴. Elsewhere, the judgement holds that the exercise of power could be invalidated on the ground of legitimate expectation only if

- (a) it resulted in denial of a guaranteed right, or
- (b) it was arbitrary, or
- (c) it was discriminatory, or
- (d) it was unfair or biased, or
- (e) it demonstrated abuse of power, or
- (f) it involved violation of the principles of natural justice.

The Court was required, in such cases, to lift the veil.

(xii) The issue of whether the impugned restriction was, or was not reasonable had to be decided objectively based on considerations of general public interest. The harshness of restriction was irrelevant. Factors which were regarded as relevant and required to be borne in mind by the Court were

- (a) the purpose of the restriction,
- (b) the urgency of the evil sought to be remedied,
- (c) the disproportionate nature of the imposition if any,
- (d) prevailing conditions and
- (e) the reasonableness of the legitimate expectation.

³⁴ (1993) 3 SCC 499



The effect of the restriction on the economy of the country was held to be a valid consideration.

137. Applying these principles, the Supreme Court held that, at the time of setting up of BASL's mills and commencement of commercial production, the Government had not held out any assurance or promise of purchase tax exemption. Exemption was claimed only on the basis of a notification. BASL ought to have been aware of the fact that every such notification was open to being amended or rescinded at any point of time, in public interest. Inasmuch there was no assurance or promise held out by the Government at the time of setting up of the units of BASL, the Supreme Court held that there was no case for applying the doctrine of promissory estoppel.

138. Having thus held, on principle, the Supreme Court went on, nonetheless, to set aside the decision of the High Court on the ground that, in its pleadings before the High Court, the State had not taken any specific stand justifying the withdrawal of exemption, and that the High Court had referred to official files while arriving at its decision without granting any opportunity to BASL in that regard. Equally, the Supreme Court noted that a specific plea raised by BASL to the effect that the benefit of exemption could not be retrospectively withdrawn, had not been addressed by the High Court. Solely for these reasons, and for returning a finding on these two issues, i.e. the issue of whether the withdrawal of the exemption was justified on facts and whether such withdrawal, by an executive order, could be



retrospective, the Supreme Court remanded the matter to the High Court.

MRF Ltd⁷

Facts

139. Acting on the basis of incentives held out by the Government of Kerala to promote industrial growth and expansion in the State, MRF approached the Government with a proposal to substantially expand and diversify its industrial unit at Vadavathoor, Kerala. On 3rd November 1993, the Government of Kerala issued a Notification providing for exemption from tax on sale and purchase of goods by industrial units located in Kerala engaged in expansion/diversification/modernization. In the interregnum, a Memorandum of Understanding (MoU) was executed between MRF and the Government of Kerala on 6th October 1993 to which, on 10th April 1996, an addendum was issued, specifically confirming the entitlement of MRF to taxes, incentives and exemptions provided in the Notification dated 3rd November 1993 in respect of rubber based goods manufactured by MRF pursuant to expansion of its capacity. Consequent thereupon, MRF invested ₹ 80 crores and carried out substantial expansion of its existing industrial unit and also set up a new unit. An eligibility certificate, certifying MRF's entitlement to exemption and benefits under the SRO dated 3rd November 1993 was also issued by the Director of Industries and Commerce, Government of Kerala on 10th November 1997. Following this, on 30th June 1998, the Board of Revenue issued an exemption order, having found MRF



eligible for sales tax exemption under the SRO dated 3rd November 1993, granting exemption from sales tax, to MRF, for seven years, i.e. from 30th December 1996 to 29th December 2003, involving an aggregate amount of ₹ 74,12,77,529/-.

140. Prior thereto, on 15th January 1998, the Government of Kerala issued SRO 38/98 – which ended up as the focus of controversy – whereunder “conversion of rubber latex into centrifugal latex, raw rubber sheet, ammoniated latex, crepe rubber, crumb rubber, or any other item falling under Entry 110 of the First Schedule to the Kerala General Sales Tax Act, 1963 or treating the raw rubber in any form with chemicals to form a compound of rubber by whatever name called” was deemed not to amount to manufacture for the purposes of SRO 1729/93 dated 3rd November 1993. Further, *vide* SRO dated 31st December 1999, before expiry of the period of seven years envisaged by SRO 30th June 1998, the State of Kerala modified the SRO dated 3rd November 1993, withdrawing the sale tax exemption granted under the said SRO w.e.f. 1st January 2000. The SRO dated 30th December 1999 contained, however, a proviso saving exemption/deferment under SRO dated 3rd November 1993 if sanctioned prior to 1st January 2000.

141. The Assistant Commissioner of Sales Tax issued a notice to MRF on 17th January 2000, proposing to levy purchase tax on MRF on the basis of SRO 38/98, by operation of which the processes carried out by MRF were deemed not to be manufactured for the purposes of SRO 1729/93. MRF responded to the said notice,



pointing out that it had commenced commercial production on 30th December 1996 and was, therefore, entitled to complete exemption under SRO 1729/93. Following this, the Assistant Commissioner dropped the proceedings initiated against MRF.

142. On 19th December 2001, the Assistant Commissioner issued a fresh set of notices to MRF, proposing to penalize MRF under Section 45(A) of the Kerala General Sales Tax Act (“the KGST Act”), on the ground that it was not entitled to exemption from purchase tax under SRO 1729/93, by virtue of SRO 38/98. Objections against the said notices, raised by MRF, having been rejected, MRF approached the High Court of Kerala by way of a writ petition, which was dismissed by a learned Single Judge of the High Court. The Writ Appeal preferred against the said decision also having been dismissed by the Division Bench of the High Court, MRF appealed to the Supreme Court.

143. The primary contention advanced by MRF before the Supreme Court was that, applying the principle of promissory estoppel, the Government of Kerala could not have issued SRO 38/98 on 15th January 1998, effectively withdrawing the benefit conferred by SRO 1729/93 by excluding, from the ambit of the said SRO, the processes undertaken by MRF.

Discussion and findings



144. The Supreme Court held that the certificate of eligibility and exemption order issued in favour of MRF pursuant to SRO 1729/93 entitled MRF to avail tax exemptions for seven years from 30th December 1996 to 29th December 2003, in respect of products manufactured from raw rubber including compound rubber. The date of commencement of commercial production by MRF, as per the eligibility certificate, was 30th December 1996. Having noted the said date of commencement of commercial production and extended, to MRF, the benefit of sales tax exemption for seven years till 29th December 2003, the Supreme Court held that SRO 38/98 could not have curtailed the exemption midway. In any event, SRO 1092/99, it was observed, clarified the matter by saving, *vide* its proviso, industrial units which had been sanctioned exemption/deferment under SRO 1729/93 before 1st January 2000. In view thereof, the Supreme Court held that MRF was, despite SRO 38/98, entitled to seven years' exemption from sales tax/purchase tax in respect of its products as sanctioned under SRO 1729/93.

145. In the process, the Supreme Court addressed, pointedly, the issue of promissory estoppel. It was held, relying on *Pournami Oil Mills*²³, that promissory estoppel was also applicable against statutory notifications. On the power of the authorities to withdraw the exemption or rebate prematurely before the expiry of the period for which such exemption or rebate was granted, the Supreme Court, relying on *Shri Bakul Oil Industries*²⁵ and *Pawan Alloys & Casting*



(P) *Ltd. v. UPSEB*³⁵, held that the power of withdrawal, though it existed, could be exercised only in a manner which would not offend the principle of promissory estoppel. Where, however, (i) enforcement of the promise by applying promissory estoppel would infract a statutory prohibition, or (ii) where the promisor had no power or authority to make the promise, or (iii) where the promise was opposed to the public interest, or (iv) where considerations of equity militated against compelling the promisor to fulfill the promise, such an obligation could not be enforced applying the principle of promissory estoppel.

146. The Supreme Court also addressed the reliance, by the respondent-Government before it, on the earlier decisions of the Supreme Court in *Kasinka Trading*²² and *Rom Industries v. State of J&K*³⁶.

147. *Kasinka Trading*²², it was noted, involved an exemption notification operating for a fixed period. It was further observed that *Kasinka Trading*²² itself distinguished the earlier decisions in *Pournami Oil Mills*²³ and *Shri Bakul Oil Industries*²⁵, observing that these latter decisions dealt with incentive notifications. The following passage from *Kasinka Trading*²², which distinguishes *Shri Bakul Oil Industries*²⁵, is significant:

“Again in *Bakul Oil Industries*²⁵ it was the incentive to set up industries in a conforming area that the exemption had been

³⁵ (1997) 7 SCC 251

³⁶ (2005) 7 SCC 348



granted and the Court held that the Government could withdraw an exemption granted by it earlier only if such withdrawal could be made without offending the rule of promissory estoppel and without depriving an industry entitled to claim exemption for the entire specified period for which exemption had been promised to it at the time of giving incentive. Both these cases therefore cannot advance the case of the appellant and are distinguishable on facts *because the exemption notification under Section 25 of the Act which was issued in this case did not hold out any incentive for setting up of any industry to use PVC resins and on the other hand had been issued in exercise of the statutory powers, in public interest and subsequently withdrawn in exercise of the same powers again in public interest*. In our opinion, no justifiable prejudice was caused to the appellants *in the absence of any unequivocal promise by the Government not to act and review its policy even if the necessity warranted and the 'public interest' so demanded*. Thus, in the facts and circumstances of these cases, the appellants cannot invoke the doctrine of promissory estoppel to question the withdrawal notification issued under Section 25 of the Act.”

(Emphasis supplied)

148. The inherently transitory nature of an exemption notification, issued in exercise of the power to issue notifications as conferred by statute, was also, it was noted, treated as a distinguishing factor by *Nestle India Ltd*⁵, while distinguishing *Kasinka Trading*²². Even in the case of exemption notifications, it had been held, in *Nestle India Ltd*⁵, and in *Dai-Ichi Karkaria Ltd. v. U.O.I.*³⁷ that the withdrawal should not be arbitrary or unreasonable.

149. For the aforesaid reasons, as also because Section 10 of the Kerala GST Act did not empower the Government to retrospectively

³⁷ (2000) 4 SCC 57



withdraw an exemption granted, the Supreme Court allowed the appeal of MRF.

Kalyanpur Cement⁹

Facts

150. Consequent to plummeting of its net worth as a result of recession in the cement industry and various other hardships that it faced, Kalyanpur Cement Ltd. (KCL) registered itself with the Board for Industrial and Financial Reconstruction (BIFR) as a sick unit, and was so declared by the BIFR on 28th May 2002. One of the contentions subject to which rehabilitation of KCL was envisaged by the BIFR was obtaining, by KCL, of sales tax exemption for five years in terms of the 1995 Industrial Policy of the State Government. KCL, therefore, applied to the State Government on 21st November 1997, seeking exemption from sales tax for a period of five years w.e.f. 1st January 1998. On the State Government's failing to act, KCL moved the High Court of Patna under Article 226 of the Constitution of India by way of CWJC 6838/2000, praying that the State of Bihar be directed to issue an appropriate exemption notification under Clause 24 of the Industrial Policy.

151. In its counter affidavit, filed in the said writ petition, it was averred, by the State, that the Minister in the Department of Commercial Taxes had approved a proposal for extension of sales tax related incentives to sick industrial units, along as well as the draft notification to be issued in that regard. The notification, it was



assured, would be issued after approval of the proposal for the relevant notification by the Finance Minister. By a supplementary counter affidavit, however, filed by the Assistant Commissioner, Commercial Taxes, the High Court was informed that the State Government, in a later meeting dated 6th January 2001, had decided not to grant any sales tax incentives to sick industrial units and that, therefore, KCL's application had been rejected.

152. KCL, therefore, amended its writ petition, to challenge the aforesaid decision dated 6th January 2001 of the State Government.

153. The High Court allowed the writ petition of KCL and directed the State of Bihar to issue a notification to give effect to the provisions of the Industrial Policy within a month and, thereafter, place the case of the KCL for taking of a final decision before the State Level Empowered Committee.

154. Aggrieved thereby, the State of Bihar approached the Supreme Court.

155. Among the pleas advanced by KCL was the principle of promissory estoppel.

Discussion and findings

156. The Supreme Court, at the outset, noted that promissory estoppel, in order to apply, required that (i) one party, by word or



conduct, made an unequivocal promise or representation, (ii) the promise or representation was made with the intent that it would be acted upon by the person to whom it was made and (iii) such other person did actually act upon the promise, thereby altering his position. In such circumstances, the promisor could be bound down to his promise if allowing the promisor to resile therefrom would be inequitable. Enforcement of the promise by issuance of a writ was, in such circumstances, permissible. Even so, observed the Supreme Court, the principle of promissory estoppel could not so apply as to require the promisor to enforce the promise in a manner contrary to law, or where the promisor did not possess the authority or power to make the promise in the first place. The Supreme Court further relied on the observations, contained in its earlier decision in ***Kasinka Trading***²², to the effect that the party seeking to enforce the doctrine of promissory estoppel was required to lay, in the petition itself, clear, sound and positive foundation for invoking the doctrine and that bald assertions without supportive material were of no avail in this regard. The doctrine of promissory estoppel, it was observed, could not be invoked in the abstract.

157. With respect to the duty of the court dealing with a plea of promissory estoppel, the Supreme Court again adopted the view, expressed in ***Kasinka Trading***²², that the court was required to consider all aspects including the results sought to be achieved and public good at large, as, while applying the principle of promissory estoppel, the court was doing equity. As such, the fundamental principles of equity were necessarily required to be borne in mind by



the court while invoking and applying the doctrine of promissory estoppel. Where the application of the doctrine of promissory estoppel was inequitable, the Supreme Court held that equity would prevail and the party could not be bound to its promise, assurance or representation.

158. In the case of exemptions which were granted merely as a concession, in exercise of the power conferred by statute to grant exemptions, the Supreme Court, relying on *Bakul Cashew Co.*²¹ and *Shri Bakul Oil Industries*²⁵, observed that an exemption notification, as a concession, could be withdrawn at any time by a subsequent notification.

159. Applying the aforesaid principles to the facts before it, the Supreme Court held that KCL had laid a clear, sound and positive foundation for invoking the doctrine of promissory estoppel, as a definite promise had been made to grant KCL exemption from sales tax for five years, under the Industrial Policy, as sought by KCL. The Supreme Court noted that, in a high-powered meeting, the Minister, after hearing all parties, had clearly stated that the Government of Bihar was keen to rehabilitate KCL and provide all possible support in that regard. In the same meeting, the Minister had stated that the relevant notification for sales tax reliefs would be issued by the second week of January, 2000, and an assurance to the said effect was specifically reduced to writing, *vide* Decision 4 in the said meeting. Following this, the State Government also informed the lead institution on 25th January 2000 in the rehabilitation package (IFCI)



that a draft notification for sales tax relief to KCL under the Industrial Policy stood approved. *Vide* subsequent communication dated 31st March, 2000, the State Government again informed IFCI that the matter was only being delayed owing to the intervening elections. The decision to issue the requisite notification was reiterated in a subsequent meeting held on 29th May 2000 under the Chairmanship of the Minister of Industries, which specifically addressed the problems being faced by KCL. Despite this, as the requisite notification was not issued, the KCL was constrained to approach the court.

160. In these circumstances, the Supreme Court held that an unequivocal and clear cut assurance had been held out to KCL by the State Government. The principle of promissory estoppel, it was held, in such circumstances, afforded the company a concrete cause of action, to call upon the State Government to act in accordance with its promise.

161. The Supreme Court rejected the change of policy, which took place in the meeting dated 6th January 2001, as a legitimate ground to allow the State Government to resile on the promise extended to KCL. KCL having applied for exemption on 21st November 1997 and having been repeatedly assured, over a period of three years since then, that the requisite notification whereunder it would be entitled to sales tax exemption was in the process of being issued, the Supreme Court held that the change in view, which took place on 6th January 2001, could not justify denial, to KCL, of the benefit of sales tax exemption. It was also noted, by the Supreme Court, in this regard,



that the various deliberations, to which reference has already been made hereinbefore, indicated that the draft notification was already approved and in place and the only exercise that remained to be performed was publication of the notification in the official Gazette.

162. In the circumstances, the appeal of the State of Bihar was dismissed.

Devi Multiplex¹⁰

Facts

163. Consequent to the according, to tourism, of the status of an “industry”, the Government of Gujarat announced, on 20th December, 1995, a New Package Scheme of Incentives for Tourism Projects, 1995 (“the Scheme”), which envisaged availability, to tourism, of all fiscal and non-incentives, reliefs and concessions enjoyed by industries. Clause 8 of the Scheme granted, as one of the incentives, a tax holiday of 5 to 10 years in respect of Sales Tax, Turnover Tax, Electricity duty, Luxury Tax and Entertainment Tax, upto 100% of capital investment. Clause 9 required the State Level Committee to issue the Eligibility Certificate for availing of such exemption. Clause 10 of the Scheme, which formed the fulcrum of controversy, deserves to be reproduced:

“10. Procedure for registration of tourism units for incentives.— All tourism units eligible for the Scheme will apply to the Director of Tourism in a prescribed form. The Director of Tourism will scrutinise the application and will



issue temporary and permanent registration adopting the following procedure:

- (a) Director of Tourism shall give provisional registration in the first instance up to 2 years to the eligible unit after scrutinising the application received by him under the Scheme.
- (b) If such a unit is not in a position to start commercial operation during the initial validity period the unit will have to apply with the progress report to the State Level Committee which is authorised to grant extension up to six months at a time or a total period of 2 years after examining the difficulties experienced by the individual unit in implementing the project and also record the reasons thereof in writing.
- (c) The units which are unable to go into operation after it has been given extension under para (b) above will have to apply to the Government with reasons for the delay. Such application will have to be forwarded by the Director of Tourism, who will carry out physical inspection of projects and report to the Government for decision. If the Director of Tourism is satisfied that the steps to implement the project are adequate he shall inform the Government about the same.
- (d) The State Government on examination of details made available by the Director of Tourism may decide to extend or reject the registration depending upon the merit of each case. The decision of the Government in this regard will be final and binding on the party.
- (e) The unit will become eligible to apply for provisional or temporary registration only after taking initial effective steps as stipulated in Para 4.7(a).
- (f) The eligible unit will be registered permanently only after the commencement of commercial operation and completion of the project.”



The Scheme was successively extended upto 30th September 2000 and 30th November 2000, *vide* Resolutions dated 31st July 2020 and 30th September 2000 respectively.

164. Towards implementation of the Scheme and in exercise of the powers conferred by Section 29 of the Gujarat Entertainment Tax Act, 1977 (“the 1977 Act”), the State of Gujarat issued a notification dated 14th February 1997, exempting, wholly, tax on entertainment during the eligible period or upto the period of expiry of limits on incentives, to the extent stated in para 8.1 of the Scheme.

165. Devi Multiplex (“Devi”, hereinafter), which desired to set up a multiplex and availed the benefits of the Scheme, applied for, and was granted, Temporary Registration Certificate (TRC) on 17th September 1999, under cover of a letter dated 4th November 1999.

166. *Vide* Government Resolution (GR) dated 28th June 2000, the State Government required units to whom TRC had been issued and which had not yet commenced commercial activities on or before 31st July 2000, to complete the project within two years of 31st July 2000. However, before the expiry of the said period, two intervening calamitous circumstances intervened. On 26th January 2001, a massive earthquake struck the State of Gujarat, resulting in collapse of a number of buildings and remodeling of the structural safety norms for buildings by the State Government *vide* order dated 27th March 2001. This order required buildings, in the process of construction, to obtain fresh approval from the Municipal Corporation, after



submission of the requisite Structural Stability Certificate. DM submitted the requisite certificate and obtained approval in October 2001, whereafter the construction work resumed. In view of the loss of more than a year owing to the change of building norms, DM applied on 11th December 2001, under Clause 10 of the Scheme, for grant of extension for completing the project.

167. The second calamity which took place was in the form of large scale communal riots on or around 26th February 2002, resulting in disruption of civil life and, according to DM, halting of construction for more than four months.

168. The application dated 11th December 2001, of DM for extension of time to complete the project was considered by the State Level Committee on 4th April 2002, and it was decided to extend the validity period of the TRC granted to DM by six months with effect from 15th April 2002.

169. *Vide* subsequent communication dated 19th August 2002, DM prayed for further extension of six months. The matter was taken up by the State Level Committee in its meeting dated 21st November 2002. The Committee was of the view that the delay in completion of the project of DM was due to earthquake and riots, and that the physical progress of the project was satisfactory. Even so, grant of extension of six months as sought would result in taking the validity period beyond 31st July 2002. This would require modification of the GR dated 28th June 2000, which required units to whom TRC had



been issued to complete the project within two years of 31st July 2000. The Government was, at the time, considering the issue of whether the Scheme was required to be so modified, given the intervening extenuating circumstances. The Committee, therefore, deemed it appropriate to defer the decision on DM's application, pending the decision of the Government on modification of the GR dated 28th June 2000.

170. Nonetheless, on 20th June 2003, the Commissioner of Tourism informed DM that a proposal for amending the GR dated 28th June 2000 was under consideration with the Government. DM was also informed that it was still eligible, as per the TRC issued to it. On that basis, DM commenced commercial operation on 11th July 2003 and applied for grant of Eligibility Certificate on 4th November 2003.

171. It was at this stage that the governmental authorities initiated proceedings against DM. On 22nd July 2004, the Commissioner of Tourism issued a Show Cause Notice to DM proposing rejection of DM's application dated 4th November 2003 for grant of Eligibility Certificate, relying for the said purpose on the GR dated 28th June 2000, which required DM to complete its project on or before 31st July 2002. As the project of DM had not been completed before 31st July 2002, the Show Cause Notice alleged that DM was not eligible for the benefit of the Scheme dated 20th December 1995. The application for grant of Eligibility Certificate was finally rejected by the State Government on 20th July 2005.



172. DM challenged the said decision dated 20th July 2005 before the High Court by way of SCA 18692/2005. However, on the ground that DM had failed to commence commercial operation upto 30th November 2002, the High Court rejected DM's writ petition.

173. DM appealed to the Supreme Court.

Discussions and findings

174. The Supreme Court noted that Clause 10(a) of the Scheme envisaged initial completion of the project by the unit within two years. In the event of difficulties being faced in implementing the project within the said period, Clause 10(b) promised an opportunity to seek extension for a further period of two years. Even after the expiry of aforesaid period of four years, Clause 10(c) allowed the unit to apply the State Government, for further extension. The precondition for availability of these extensions was capital investment, by the unit, of more than ₹ 90 lacs.

175. After referring to the decisions in *Motilal Padampat Sugar Mills*³, *Nestle India*⁵ and *U.O.I. v. Godfrey Philips India Ltd*³⁸, the Supreme Court held that the Scheme categorically promised incentives in the form of five to ten years tax holiday from Sales Tax, Turnover Tax, Electricity duty, Luxury Tax and Entertainment Tax, upto 100% of capital investment, where the unit was registered after

³⁸ (1985) 4 SCC 369



1st August 1995 and had made appropriate investment in fixed capital assets. The Scheme further required the Director of Tourism to grant provisional registration, in the first instance, upto two years, to an eligible unit and, in the event of the unit not being able to commence commercial operation during the said period, authorized the State Level Committee to grant extension upto six months at a time for a further period of two years. Further extension could also be sought by the unit, if it was unable to commence operation even within this extended period of two years and any such application, if submitted by the unit, would be forwarded to the Director of Tourism, who would carry out physical inspection of the project and report to the Government. On the basis of such report, the State Government was required, under the Scheme, to take a decision to extend or reject the registration granted to the unit. These features, held the Supreme Court, formed part of the core of the Scheme, and constituted the incentive for tourism units to invest in the Scheme. Based on the said representation, various units, including DM, had come forward and altered their position. In such circumstances, the Supreme Court held that the Government was bound by the principle of promissory estoppel and could not, therefore, curtail the period for which extension could be sought under the Scheme, for completion of the project and availing of benefits. The Supreme Court placed reliance, in this context, on the observation, in *S.V.A. Steel Re-Rolling Mills Ltd v. State of Kerala*³⁹, that, before laying down any beneficial policy, the State was required to examine the pros and cons and thereof as well as its capacity to give the benefit promised by the

³⁹ (2014) 4 SCC 186



policy. Once such promise was extended, the Supreme Court held that it would be unfair and immoral on the part of the State not to act as per the promise.

176. Further observing that the Scheme formed the basis of a statutory notification under Section 29 of the Act and had, therefore, acquired a statutory status, the Supreme Court held that DM was entitled to the full benefit of Clause 10 of the Scheme, insofar as the period of extension for completion of the project were envisaged and available under the said clause. To the extent GR dated 28th June 2000 curtailed the said period, the Supreme Court held the curtailment to be invalid and violative of the principle of promissory estoppel.

177. The decision of the State Government, predicated on the GR dated 28th June 2000 that the Scheme had come to an end on 30th November 2000 and that, therefore, no extension of time beyond that date could be granted to DM was, therefore, held to be illegal and the judgment of the High Court, affirming the said decision, was quashed and set aside. The State Level Committee was directed to reconsider the application of DM in accordance with Clause 10 of the Scheme.

Manuelsons Hotels¹¹

Facts

178. *Vide* GO dated 11th July 1986, the State of Kerala declared tourism to be an “industry”. Resultantly, persons engaged in tourism



promotion became eligible for concessions and incentives available to industries. Among such incentives was exemption from building tax. This, however, would require amendment of the Kerala Building Tax Act, 1975 (“the KBT Act”), empowering grant of such exemption. The GO, therefore, envisaged taking of separate action to amend the KBT Act.

179. As a necessary follow-through to the aforesaid GO dated 11th July 1986, the Kerala Building Tax Amendment Act, 1990 (“the KBT Amendment Act”), was enacted with effect from 6th November 1990. The objects and reasons for the Amendment Act specifically stated that the KBT Act was being amended to achieve the purpose envisaged by the GO dated 11th July 1986. Section 3-A of the KBT Amendment Act inserted Section 3-A in the KBT Act, which empowered the Government to, by Notification, exempt buildings, constructed during the period to be specified in such Notification and conforming to specifications to be prescribed in the Kerala Building Tax Rules, 1974 (“the KBT Rules”), from building tax. Consequent thereon, the categories of buildings in respect of which the Government could, by Notification issued under Section 3-A of the KBT Act, exempt payment of building, were enumerated in clauses (i) to (ix) of the Rule.

180. Section 3-A of the KBT Act was, however, omitted w.e.f. 1st March, 1993. Relying on the said omission, the Government of Kerala, vide letter dated 6th February 1997, denied, to Manuelsons Hotels Pvt Ltd (‘MH’, hereinafter), the benefit of exemption from



under the GO dated 11th July 1986. This was followed by a notice, dated 28 April 1997, calling upon MH to submit its statutory return under the KBT Act.

181. MH challenged the notice before the High Court of Kerala which, vide judgment dated 20 July 1998, remanded the matter to the Committee, directing a reconsideration of MH's application in the light of the decisions in *Motilal Padampat Sugar Mills*³ and *Shrijee*²⁶.

182. On the Government authorities once again rejecting MH's application for exemption from building tax, MH re-approached the High Court by way of Writ Petition 9820/1999, which was dismissed by the High Court vide judgment dated 5th December, 2006. The High Court predicated its decision on three considerations, the first being that no exemption notification had, in fact, been issued under Section 3-A of the KBT Act during its currency, the second that a mere promise to amend the law could not be treated as a promise to exempt payment of building tax, and the third that, in any event, as Section 3-A of the KBT Act stood omitted w.e.f. 1st March 1993, no question of exempting MH from payment of building tax survived for consideration. Aggrieved, MH appealed to the Supreme Court.

183. The Supreme Court, citing its earlier decisions in *Motilal Padampat Sugar Mills*³ and *Nestlé*⁵, noted that a direction, to the executive authorities, to abide by the promise held out by them to the citizen had been issued in *Motilal Padampat Sugar Mills*³, though issuance of a Notification was necessary for grant of benefit in the



said case, and no such Notification had, in fact, been issued. The Supreme Court based the rationale for this decision on the doctrine of equity “that one must regard as done that which ought to be done”. Premised on this concept, the Supreme Court held that the view, of the High Court, that the relief could not be granted to *Manuelsons*¹¹ as the requisite Notification, under the KBT Act, had not been issued, was erroneous.

184. The view expressed in *Motilal Padampat Sugar Mills*³, it was noted, had been echoed by the Supreme Court in *Pournami Oil Mills*²³. On similar lines, it was observed that, in *Nestlé*⁵, the Supreme Court had observed that the issuance of the requisite Notification was a mere ministerial act. Summarizing the position that emerged from its earlier decisions, the Supreme Court, in para 19 of the report in *Manuelsons Hotels*¹¹, relying on the decision of the Australian High Court in *Commonwealth of Australia v. Verwayen*⁴⁰, held thus:

“19. In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject-matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court *Commonwealth of Australia v. Verwayen*⁴⁰, by Deane, J. in the following words:

“1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine

⁴⁰ (1990) 170 CLR 394 (Aust)



of substantive law, the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.

2. *The central principle of the doctrine is that the law will not permit an unconscionable—or, more accurately, unconscientious—departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.*

3. Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.

4. The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party:

- (a) has induced the assumption by express or implied representation;
- (b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption;



- (c) has exercised against the other party rights which would exist only if the assumption were correct;
- (d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so.

Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within Category (a), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within Category (b), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.

5. *The assumption may be of fact or law, present or future. That is to say, it may be about the present or future existence of a fact or state of affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct).*

6. The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, “equitable estoppel” should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).



7. Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. *In some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the defendant in an action for a declaration of trust is estopped from denying the existence of the trust).*

8. *The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law doctrine.* In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed.”

(Emphasis in original)

The Supreme Court held the afore-extracted statement of the law, in *Verwayen*⁴⁰ to represent the legal position as obtained in India as well, the only difference being that, in India, promissory estoppel could constitute the basis of an independent cause of action in which detriment was not required to be proved, and it was enough to show that the party had acted upon the representation made. The Supreme



Court held, in para 20 of the report, the decision in *Verwayen*⁴⁰ to be important for two reasons, thus:

“The importance of the Australian case is only to reiterate two fundamental concepts relating to the doctrine of promissory estoppels – one, that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And two, that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party.”

185. The Supreme Court also observed, with regard to the submission, advanced before it, that issuance of a notification was an exercise pertaining to the domain of subordinate legislation and that, therefore, no writ of mandamus can issue, directing issuance of a notification, that, even if it tantamounted to subordinate legislation, “being in the domain of exercise of discretionary power, (it) is subject to the same tests in administrative law, as his executive or administrative action, as to its validity – one of these tests being the well-known Wednesbury principle – under which a court may strike down an abuse of such discretionary powers on grounds that is relevant circumstances had been taken into account all relevant circumstances have not been taken into account (for example).”

186. The Supreme Court also held the reliance, by the respondent-State, on the earlier decisions in *Kasinka Trading*²² and *Shree*



*Sidhbali Steels Ltd v. State of U.P.*⁴¹ to be misguided, as these decisions dealt with exemption notifications. *Shree Sidhbali Steels*⁴¹ it was observed, relied on the earlier decision in *State of Rajasthan v. J.K. Udaipur Udyog Ltd*⁴², but failed to notice that the said decision itself distinguished between a case in which promissory estoppel was pleaded on the basis of the notified Scheme and in which it was merely on the basis of an exemption notification which held out no promise. *Shree Sidhbali Steels*⁴¹, it was held, “was concerned only with whether a benefit given by a statutory notification can be withdrawn by the Government by another statutory notification in the public interest if circumstances change”.

187. Applying these principles to the facts before it, the Supreme Court held, in para 36 of the report, that the non-exercise of the discretionary power, vested in the State Government to issue a notification under Section 3-A of the KBT Act was “clearly vitiated on account of the application of the doctrine of promissory estoppel”, applying the law laid down in *Motilal Padampat Sugar Mills*³ and *Nestle*⁵. The Supreme Court reasoned thus:

“...This is for the reason that *non-exercise of such power is itself an arbitrary act which is vitiated by non-application of mind to relevant facts, namely, the fact that a G.O. dated 11-7-1986 specifically provided for exemption from building tax if hotels were to be set up in the State of Kerala pursuant to the representation made in the said G.O.* True, no mandamus could issue to the legislature to amend the Kerala Building Tax Act, 1975, for that would necessarily involve the judiciary in transgressing into a forbidden field under the constitutional scheme of separation of powers. However, on

⁴¹ (2011) 3 SCC 193

⁴² (2004) 7 SCC 673



facts, we find that Section 3-A was, in fact, enacted by the Kerala Legislature by suitably amending the Kerala Building Tax Act, 1975 on 6-11-1990 in order to give effect to the representation made by the G.O. dated 11-7-1986. We find that the said provision continued on the statute book and was deleted only with effect from 1-3-1993. This would make it clear that from 6-11-1990 to 1-3-1993, the power to grant exemption from building tax was statutorily conferred by Section 3-A on the Government. And we have seen that the Statement of Objects and Reasons for introducing Section 3-A expressly states that the said section was introduced in order to fulfil one of the promises contained in the G.O. dated 11-7-1986. We find that the appellants, having relied on the said G.O. dated 11-7-1986, had, in fact, constructed a hotel building by 1991. *It is clear, therefore, that the non-issuance of a notification under Section 3-A was an arbitrary act of the Government which must be remedied by application of the doctrine of promissory estoppel, as has been held by us hereinabove. The ministerial act of non-issue of the notification cannot possibly stand in the way of the appellants getting relief under the said doctrine for it would be unconscionable on the part of the Government to get away without fulfilling its promise. It is also an admitted fact that no other consideration of overwhelming public interest exists in order that the Government be justified in resiling from its promise.* The relief that must, therefore, be moulded on the facts of the present case is that for the period that Section 3-A was in force, no building tax is payable by the appellants. However, for the period post-1-3-1993, no statutory provision for the grant of exemption being available, it is clear that no relief can be given to the appellants as the doctrine of promissory estoppel must yield when it is found that it would be contrary to statute to grant such relief. To the extent indicated above, therefore, we are of the view that no building tax can be levied or collected from the appellants in the facts of the present case. Consequently, we allow the appeal to the extent indicated above and set aside the judgment of the High Court.”

(Emphasis supplied)



188. Resultantly, the Supreme Court set aside the judgment of the High Court to the extent of upholding the entitlement of the MH to exemption from building tax during the period 6th November 1990 to 1st March 1993.

Union of India v. VVF Ltd⁴³

Facts

189. Consequent to the earthquake which had devastated large parts of the Kutch in Gujarat on 26th January 2001, the Government of India announced an incentive scheme for setting up of new industries in the earthquake affected area *vide* Notification 39/2001-CE dated 31st July 2001. The notification granted partial exemption from payment of central excise duty, by allowing refund of the duty paid to the extent it was paid in cash/through PLA (Personal Letter Account) for a period of five years from the date of commercial production by the unit. On the basis of the incentive thus held out, VVF Ltd. and other assesseees before the Supreme Court, who would, collectively be referred to, hereinafter, as “VVF”, set up new industrial units in Kutch and made substantial investments towards plant and machinery.

190. The extend of exemption available under Notification 39/2001-CE was substantially curtailed by Notification 16/2008-CE dated 27th March 2008, which provided that the benefit of refund of duty, as

⁴³ (2020) SCC 57



available under Notification 39/2001-CE would be limited to value addition which was notionally fixed @ 34%. As a result, where, under the earlier Notification 39/2001-CE, the assesseees were entitled to refund of the entire central excise duty paid by way of cash/through PLA, the subsequent Notification 16/2008-CE restricted the amount available to 34% of the total duty paid.

191. Notification 16/2008-CE was assailed by VVF before the High Court of Gujarat, on the ground that the curtailment of the benefit available under Notification 39/2001-CE midway was violative of principle of promissory estoppel.

Discussion and findings

192. Relying on its earlier decision in *Kasinka Trading*²², the Supreme Court held that the principle of promissory estoppel could not be invoked in the abstract and that Courts were bound to consider all aspects while dealing with such a plea, including the objective sought to be achieved and public good at large. While addressing such a plea, it was held that the fundamental principles of equity were always to be required to be borne in mind by the Courts. Where the facts and circumstances of the case indicated that it would be inequitable to hold the Government to the promise made by it, the Supreme Court observed that no such writ could issue.

193. The Supreme Court also reiterated the principle, enunciated in various decisions to which reference has already been made



hereinabove, that an exemption notification did not render dutiable items as non-dutiable, but merely suspended the levy and collection of duty, in public interest. By its very nature, therefore, such suspension could be lifted at any time, in exercise of the power vested by the statute on the authority in that behalf.

194. Further citing *Shrijee Sales Corporation*²⁶, *Shree Durga Oil Mills*²⁸, *Mahaveer Oil Industries*³⁰ and *Shree Sidhballi Steels Ltd*⁴¹, the Supreme Court held, in paras 24.1 to 24.4 of the report, that the facts set out before it made out a case of public interest as the prevailing consideration while deciding to withdraw the exemption granted by the earlier notification dated 31st July 2001. The Supreme Court further held that, as the subsequent notification dated 27th March 2008 did not divest new industrial undertakings of their right to claim refund of excise duty, but merely limited the refund available to the excise duty paid on actual value addition, the doctrine of promissory estoppel would not apply. As such, it merely provided the manner and method of calculating the quantum of duty which was required to be refunded to the manufacturers. It was, therefore, to that extent, only clarificatory in nature and did not divest the beneficiaries of the earlier notification dated 31st July 2001 of any right vested in them.

195. Holding, therefore, the High Court had erred in law in applying the principle of promissory estoppel, the Supreme Court allowed the appeals of the Union of India.



State of Jharkhand v. Brahmputra Metallics Ltd.¹²

Facts

196. The issue for consideration before the Supreme Court in this case, as set out in para 4 of the report, was “whether the respondent is entitled to claim a rebate or deduction of 50% of the amount assessed towards electricity duty for FYs 2011-12, 2012-13 and 2013-14.”

197. Brahmputra Metallics Ltd. (“BML” hereinafter) commenced commercial production of sponge iron and mild steel billets on 31st May 2013. According to a certification of registration, granted to BML on 22nd November 2011, it was liable to pay duty for distribution and/or consumption of electrical energy with effect from 1st October 2011. On 16th June 2012, the State of Jharkhand notified the Industrial Policy, 2012 (“the IP 2012”). Captive power plants, established for self consumption or captive use were, by Clause 32.10 of the IP 2012, granted exemption from payment of electricity duty to the extent of 50% for a period of five years. Clause 38(b) of the IP 2012, which was the determinative clause in the dispute, read thus:

“38. Monitoring and Review

- (b) All concerned departments and organizations would issue necessary follow up notifications within a month to give effect to the provisions of this Policy. The implementation of this policy will be duly monitored by Government at the level of Chief Secretary at least once in a



quarter, so that the State Government may carry out a mid - term review of this Policy.”

198. Though Clause 38(b) of the IP 2012 required follow up notifications, to give effect to the provisions of the IP 2012 to be issued within a month, that did not take place. The notification, which was required to be issued under Section 9 of the Bihar Electricity Duty Act, 1948 (“the Bihar Act”) came to be issued only on 8th January, 2015, and was made effective prospectively. The notification read thus:

“S.O.67 dated 8 January, 2015 - In the light of Para 32.10 of Jharkhand Industrial Policy, 2012 and in exercise of the powers conferred by the Section 9 of the adopted Bihar Electricity Duty Act, 1948, the Governor of Jharkhand is pleased to exempt new or existing industrial units setting up captive power plant for self consumption or captive use (in respect of power being used by the plant) from the payment of 50% of Electricity Duty from the date of the commissioning of the power plant.

This notification shall be effective from the date of issue and shall remain effective till the period mentioned in the relevant provisions of the Jharkhand Industrial Policy, 2012.”

199. The challenge, at the instance of BML and other affected assesses, before the High Court of Jharkhand, was to the extent the notification dated 8th January 2015 was made effective prospectively. The Government having provided for exemption from payment of 50% electricity duty for a period of five years, *vide* Clause 32.10 of the IP 2012, BML contended that the prospectivity accorded to the exemption notification dated 8th January 2015 effectively resulted in its becoming disentitled to the benefit of the incentive held out by the



IP 2012 for the period from 31st May 2013 (being the date of commencement of commercial production by BML) till 8th January 2015. BML contended that, applying the principle of promissory estoppel, it was entitled to exemption, from payment of electricity duty, to the extent and as envisaged by Clause 32.10 of the IP 2012, for the entire period of five years from the date of commencement of commercial production of BML i.e. from 31st May 2013.

200. The High Court found the case to be one of sheer lethargy on the part of the governmental authorities in issuing the requisite notification, under Section 9 of the Bihar Act, within a month of the IP 2012, as required by Clause 38(b) thereof. Eligible industrial units, it was held, could not be denied the benefit of the exemption held out by Clause 32.10 of the IP 2012 merely on account of the lethargy on the part of the state government. Such denial, held the High Court, was violative of the principle of promissory estoppel. For these reasons, the High Court held the notification dated 8th January, 2015 to deemed to be in effect from the date of the IP 2012 i.e. 1st April 2011.

201. Aggrieved, the State of Jharkhand appealed to the Supreme Court.

Discussion and findings

202. The Supreme Court upheld the decision of the High Court in its entirety. Clause 38(b) of the IP 2012 was held, by the Supreme Court,



to be indicative of the recognition, by the IP 2012 itself, of immediate need of issuance of the requisite notification. The notification came to be belatedly issued only owing to the bureaucratic lethargy of the state government. Though, ordinarily, the Government is possessed of the discretion to decide the date from which any beneficial dispensation, under a policy, would be made effective, such latitude did not exist in the present case, as the IP 2012 expressly required the requisite implementing notification to be issued within a month. This, according to the Supreme Court, amounted to a solemn commitment made by the State of Jharkhand. All that remained for the commitment to achieve fruition was the issuance of the requisite notification by the State under Section 9 of the Bihar Act. The intention of the state to implement the policy by issuing the requisite notification, held the Supreme Court, was apparent. The State Government did, in fact, issue the notification. There was, however, no justification forthcoming, whatsoever, for the delay of 2½ years in issuing the notification, from July 2012 till January 2015. This violated the solemn representation held out by the IP 2012, of exemption for a period of five years from the date of commencement of commercial production.

203. The Supreme Court, therefore, held that the case before it was not one in which the Government was seeking to resile from the promise held out by it on the ground of over urging public interest, but merely one of bureaucratic lethargy, as a consequence of which eligible industrial units were being deprived the benefit of an exemption, promised to them by the IP 2012.



204. The Supreme Court also entered into a detailed analysis of the principles of promissory estoppel and legitimate expectation. The observations of the Supreme Court on promissory estoppel essentially echoed the views already expressed by earlier decisions, to which I have already alluded earlier in this judgment.

205. On the aspect of legitimate expectation, the Supreme Court held the principle to be much broader in scope than that of promissory estoppel. The Supreme Court adopted, with approval, the enunciation, in *Punjab Communications Ltd.*³³, that the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way”. It was further observed that “reliance must have been placed on the said representation and the representee must have thereby suffered detriment”.

206. The Supreme Court, thereafter, alluded to earlier decisions on the aspect of legitimate expectation, namely *National Buildings Construction Corpn v. S. Raghunathan*⁴⁴, *Monnet Ispat and Energy Ltd v. UOI*⁴⁵, *UOI v. Lt. Col. P.K. Choudhary*⁴⁶, *FCI v. Kamdhenu Cattle Feed Industries*⁴⁷ and *NOIDA Entrepreneurs Assn. v.*

⁴⁴ (1998) 7 SCC

⁴⁵ (2012) 11 SCC 1

⁴⁶ (2016) 4 SCC 236

⁴⁷ (1993) 1 SCC 71



NOIDA⁴⁸. From these decisions, the Supreme Court culled out various principles on the aspect of legitimate expectation. Holding that policy statements made by the Government could not be disregarded unfairly or applied selectively and that unfairness in the form of unreasonableness was akin to violation of natural justice, the Supreme Court noted the observation in **National Buildings Construction Corpn**⁴⁴ that claims based on legitimate expectation required reliance on representations and resulting detriment to the claimant in the same way as did promissory estoppel. This observation, however, it was noted, was in the ambit of the principle of legitimate expectation as understood in English law. As against this, the Supreme Court approved the view expressed in its earlier decision in **Monnet Ispat & Energy Ltd**⁴⁵, that whereas, for applying the doctrine of promissory estoppel, there had to be a promise, based on which the promisee acted to its prejudice, the doctrine of legitimate expectation only involved, as its primary consideration, reasonableness and fairness of state action. Elaborating on the circumstances in which legitimate expectation could form the basis of an actionable claim, the Supreme Court approved the principle enunciated in **Lt. Col. P.K. Choudhary**⁴⁶ that “if denial of legitimate expectation in a given case amounts to denial of a right that is guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or in violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 of the Constitution but a claim based on mere legitimate expectation without anything more cannot *ipso facto* give a right to invoke these

⁴⁸ (2011) 6 SCC 508



principles.” The doctrine of legitimate expectation could not, therefore, be claimed as a right in itself, but would constitute the basis of a cause of action where this denial led to violation to Article 14 of the Constitution of India. The Supreme Court also endorsed the view, expressed in *FCI*⁴⁷, that “the mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness. a necessary concomitant of the rule of law.” Every arbitrary decision, it was held, contradicted the principle of legitimate expectation. As such, the doctrine of legitimate expectation was one of the ways in which the guarantee of non-arbitrariness, enshrined in Article 14 of the Constitution of India, finds concrete expression.

207. Applying these principles to the facts of the case before it, the Supreme Court noted that the IP 2012 not only held out a solemn representation, but also spelt out (i) the nature of the incentives, (ii) the period during which the incentives would be available, and (iii) the time limit within which follow-up action would be taken by the State government through its departments for implementing the Industrial Policy 2012.

208. Having held out such a solemn representation, the Supreme Court held that it would be manifestly unfair and arbitrary to deprive industrial units within the state of their legitimate entitlement. The



Supreme Court reiterated the fact that, in fact, the State Government did issue the requisite notification, albeit belatedly. The pleadings before the High Court and the Supreme Court were silent on the reasons for the said delay and provided no justification therefor. In such circumstances, without disclosing the reasons for not issuing the requisite notification under Section 9 of the Bihar Act, to give effect to the promise held out by the IP 2012, within the period of one month envisaged in Clause 38(b) of the IP 2012, the Supreme Court held that the state could not seek to defeat the claim of BML on the ground that BML had no vested right. Unfairness and want of transparency in the manner in which the state had acted, by belatedly issuing the requisite notification, it was held, resulted in the state being deprived of its right to contest the petitioners' claim on merits. In view of the fact that, on the basis of the representation made by the IP 2012, which resulted in a legitimate expectation in the minds of industrial units which were entitled to its benefit, of 50% rebate/deduction in electricity duty for five years from the date of commercial production, the Supreme Court held that the failure on the part of the State Government to issue the necessary notification within time, without any justification, would not divest such industrial units of their right.

209. In view thereof, the Supreme Court affirmed the decision of the High Court and, accordingly, dismissed the appeal of the State.

Principles emerging from the aforesaid decisions



210. A reading of the judgments divested hereinabove reveals the following principles as emerging therefrom:

(i) Promissory estoppel envisages that where one party, by its word or conduct, makes a clear and unequivocal promise to another, intending to create legal relations or to effect a legal relationship to arise in future with the knowledge or intention that the promise would be acted upon by the other person/persons to whom it was made and the other party acts on the promise, the promisor is obliged to fulfill the promise and is estopped from resiling from it. This principle applies irrespective of whether there exists, or does not exist, any prior legal relationship between the parties.

(ii) Promissory estoppel, despite its nomenclature, is not a specie of estoppel. It is a principle of equity conceived to mitigate injustice resulting if the law were to be applied with its strict rigor.

(iii) Promissory estoppel is applicable to statutory as well as executive obligations. Promissory estoppel is also applicable in respect of actions taken in public or sovereign capacity, if its application is found necessary to prevent fraud or manifest injustice.



(iv) For promissory estoppel to apply, it is a pre-condition that enforcement of the promise must be necessary to avoid injustice.

(v) Promissory estoppel, in order for it to apply, does not require the prior existence of any contractual or other legal relationship between the parties.

(vi) Promissory estoppel does not require any passing of consideration for enforcement of the promise.

(vii) Resultant detriment, if the promise is not abided by, is not a *sine qua non* for promissory estoppel to apply. However, the possibility of injustice resulting, were the promise not to be fulfilled, has to be manifestly established. What is relevant, therefore, is the prejudice which a person would suffer if the promisor were permitted to resile from the promise.

(viii) Promissory estoppel applies even where the promise is otherwise invalid, as not having been made in the manner authorized by the law.

(ix) If promissory estoppel applies, and fulfilment of the promise requires issuance of a Notification or taking of other legislative or executive action by the Government, and the concerned statute empowers the Government to do so, the Government can be compelled to issue the requisite notification,



or take the requisite action, necessary to ensure fulfilment of the promise.

(x) In order for promissory estoppel to apply, the representation/promise must be clear and unambiguous. It must be certain to every intent. A promise is something far greater than a mere assurance. The distinction between a promise and a mere assurance has, therefore, to be borne in mind while examining the applicability, to the facts of a particular case, of the principle of promissory estoppel.

(xi) Promissory estoppel is required to be specifically pleaded, supported by clear, sound and positive material.

(xii) Exemption notifications, granting exemption from tax, issued in exercise of the power conferred on the Government in that regard by the concerned taxing statute, do not extend promises. They are merely issued in public interest, keeping in view the fiscal situation obtaining at that time, balancing the interests of the Government and the citizens. The power to exempt also carries, with it, as its sequitur, the power to withdraw an exemption. As such, the mere withdrawal of an exemption granted by notification, even if it is undertaken prior to the expiry of the stipulated period for which the exemption was granted, is not hit by the doctrine of promissory estoppel.

(xiii) Where, however, the conditions required for availability of exemption, under the exemption notification, have been



satisfied and the right to exemption has therefore accrued in favour of the tax payer, that right cannot be divested midway by amending the notification.

(xiv) There is, therefore, a qualitative difference between an incentive and an exemption. An incentive, granted by a policy, holds out a promise and, therefore, absent public interest or any other relevant consideration, the incentive cannot be withdrawn before the expiry of the period for which it is granted. On the other hand, an exemption notification merely suspends the liability to pay tax during the period the exemption is in force. It can, therefore, be withdrawn at any time, in public interest.

(xv) Executive necessity, by itself, is no defence to a plea of promissory estoppel. The authority seeking to resile or withdraw from the promise has, therefore, to clearly set out the grounds on which it seeks to withdraw from the promise, along with requisite facts and figures.

(xvi) Promissory estoppel, however, yields to equity. A government or authority will not be directed to comply with a promise build out by it, applying the principles of promissory estoppel, where it would be inequitable to do so.

(xvii) Promissory estoppel also yields to public interest, which is always entitled to greater precedence than private interest.



(xviii) At the same time, mere change of policy is not a ground to contest a plea of promissory estoppel as evincing existence of public interest. Change of policy can be urged as a defence only where the circumstances in which the decision to change the policy took place are disclosed to the court and, on examination thereof, it is seen that the change was necessitated in public interest. The burden of proof, in such a situation, is on the authority defending the action, and is of an extremely high degree. The element of public interest must be overwhelming. The change in policy, to constitute a defence to a plea of promissory estoppel, must, additionally, be fair and non-arbitrary, as otherwise it would violate Article 14 of the Constitution of India. As to whether the change in policy is fair, non-arbitrary and in public interest would depend on the facts and circumstances of the case. Where the change in policy is based on a discernable principle, it would be presumed not to be arbitrary in nature. In such an event, the Court would refrain from interfering with the executive decision to change the policy. The court would interfere with a decision to change the existing policy only where the change is inconsistent with any expressed or implied statutory provision creating the power to which the policy relates, or is wanting in reasonableness and good faith. The court is required to bear in mind the fact that differences in opinion are possible and permissible. The question to be addressed by the Court where change in policy is urged as the ground to justify discontinuance of a beneficial dispensation before its expiry is whether the exercise of power,



in the decision to change the policy, is proper or improper. Where the exercise of power is found to be proper, the Court would not substitute its own standard of reasonableness to interfere with the decision of the executive to change the policy. Equally, where the change in policy is in accordance with Wednesbury standards of reasonableness, the Court would not interfere. The Court would interfere only where the change is irrational or perverse or such as no reasonable person would have made.

(xix) Where an incentive is granted for a specified period of time and is discontinued before expiry of the said period and later restored, the fact that the incentive was later restored is a strong indicator against any argument that the denial of incentive for the interregnum period is justified in public interest. In such a case, the government or authority would be required to produce cogent material to indicate that the withdrawal of the benefit for a limited period was in fact in public interest.

(xx) Even in the absence of public interest, the Government can resile from a promise held out by it provided, before doing so, prior notice is granted to the persons affected, and the person/persons affected are in a position to restore the *status quo ante*.



(xxi) Among the considerations which entitle an executive or governmental authority to resile from its promise are deleterious effect of continuance of the promise on the economy of the country, other matters having a bearing on the general interest of the state, or misconduct of the party or parties to whom the promise was extended.

(xxii) Where public interest is pleaded as the ground to justify resiling from a promise or representative held out by the executive authority, it has to be specifically pleaded with requisite facts, as would enable a court to determine which way equity lay. The decision in this regard vests with the court, and the government cannot treat itself as the sole judge of its liability.

(xxiii) Promissory estoppel cannot be used to debar a government or authority from enforcing a statutory prohibition.

(xxiv) Promissory estoppel cannot be used to enforce a promise which is contrary to law.

(xxv) Promissory estoppel cannot be used to direct a government or executive authority to do something which it is not empowered to do, as it would amount to directing the authority to act contrary to law.

(xxvi) A promise held out by an incompetent authority cannot be enforced applying the principles of promissory estoppel.



(xxvii) Where the withdrawal of the benefit is justified in public interest, no prior hearing is necessary.

(xxviii) The court is required to examine a plea of promissory estoppel keeping in view the result sought to be achieved by changing the policy or withdrawing the benefit granted, in the background of public good at large.

(xxix) Where a case for interference on the ground of promissory estoppel is found to exist, in order for the promise to be and the effectuation of the promise requires executive or legislative action on the part of the governmental authorities such as issuance of a notification, the court can, applying the principles of promissory estoppel, compel the government to issue the notification or enact the required legislation. Where, however, abiding by the promise requires the government or the executive authority to perform an act which it is not statutorily empowered to perform, no mandamus can be issued on the principles of promissory estoppel. For example, if a policy holds out an incentive to the industry, for the purpose of which issuance of a notification by the government is necessary, and the applicable statute does not empower the government to issue such a notification, the court cannot direct issuance of the notification on the basis of promissory estoppel. Nor can the court direct extending the benefit held out by the promise without issuance of a notification. In such a situation, the



citizen cannot obtain relief merely on the basis of the promise held out in the policy.

(xxx) Apart from promissory estoppel, the action of the government in failing to make available a beneficial dispensation contained in a legislative or executive instrument can also be assailed on the ground of legitimate expectation.

(xxxi) Legitimate expectation is distinct from promissory estoppel. Where promissory estoppel is founded on the existence of a promise and envisages compelling the authority which has held out the promise to abide by, legitimate expectation is essentially directed against arbitrariness in state action. It is founded on the premise that every citizen is entitled to legitimately expect that the executive would not act arbitrarily, where the citizens' interests are concerned.

(xxxii) Legitimate expectation, therefore, constitutes a ground to interfere where the decision is arbitrary, unreasonable or not taken in public interest. Public interest, therefore, is also a defence to a plea predicated on the principles of legitimate expectation.

(xxxiii) In order to invalidate an executive action on the ground of legitimate expectation, the court must be satisfied that the impugned action is arbitrary, or discriminatory, or unfair, or biased, or violative of the principles of natural justice, or



amounts to gross abuse of power or denies to the citizen a guaranteed right. The court may be required in such a case to lift the veil.

(xxxiv) In such a situation, the reasonableness of the impugned restriction has to be adjudged objectively based on general public interest. The harshness of the restriction becomes irrelevant. The court is required to keep in mind (a) the purpose of the restriction, (b) the urgency of the evil that is sought to be remedied, (c) the disproportionality of the imposition, (d) the prevailing conditions and (e) the reasonableness of the plea of legitimate expectation in the backdrop of these considerations. It is only where, keeping all these considerations in mind, a case for interference on the ground of legitimate expectation is made out, that the court would interfere.

Application of the law to the facts in the present case

211. What remains is to apply the aforementioned legal principles to the facts in the case before the court.

Public interest in the restructuring of the TUFs

212. A reading of paras 1 to 6 of the MOT Resolution dated 28th April, 2011, which brought into existence the restructured TUFs makes it clear that the decision to restructure the TUFs was clearly



prompted by public interest. For ready reference, paras 1 to 6 of the Resolution dated 28th April, 2007 are reproduced thus:

“1. This Government Resolution lays down the financial and operational parameters and implementation mechanism for the Restructured Technology Upgradation Fund Scheme for the "period from the date of this resolution to 31.03.2012, with an overall subsidy cap of R.s 1972 crores during this period.

2. TUFs was introduced in 1999 to catalyse investments in all the sub-sectors of textiles and jute industry by way of 5% interest reimbursement. The scheme was initially approved from April, 1999 to March 31st, 2004. Subsequently, the scheme was extended in 2004 and again in 2007 with modifications. Investments "under TUFs had gained notable momentum in the past 3 years. Since its inception, Rs.1196 crores of subsidy has been released of which Rs. 8883 crores has been released during the last 3 years. TUFs has catalyzed investments of Rs. 2.08 lac crores during its operational life span of over 11 years.

3. An independent evaluation of the Scheme by a professional consultant, M/S CRISJL, has revealed that TUFs has facilitated an increase in productivity; cost-and waste reduction; and improved quality across the value chain. However, the gains made have varied across segments, with the processing and power loom sectors emerging as major areas of concern. To ensure optimum value addition across the value chain, the evaluation study recommended that TUFs may be completely restructured to channelize investments towards hitherto low focus areas.

4. Based on the findings of the evaluation study, Government took a policy decision to completely restructure the Scheme, to channelize investments in hitherto low existing scheme was discontinued and new sanctions under the Scheme were stopped from 29.6.2010 under intimation to all the lending agencies. However, for loans sanctioned during 01.04.1999 to 28.06.2010, the then existing parameters and guidelines will continue to apply and Textiles Commissioner



would ring fence the committed government liabilities for this period.

5. The objective of the present Scheme is to leverage investments in technology upgradation in the Textiles and Jute Industry, with a special emphasis "on balanced development across the value chain. The major objectives of the present restructured TUFS scheme are as follows;- (a) Address the issues of fragmentation and promote forward integration by providing 5% IR for spinning units with matching capacity in weaving/knitting/processing/garmenting; (b) promoting investments in sectors with low investment like processing; (c) reducing the repayment period to 7 years with 2 years moratorium to promote financial efficiency; (d) Technology upgradation in weaving by providing higher capital subsidy for establishment of new shuttle less looms. This would help to reduce and eventually phase out secondhand looms (e) Ensuring greater participation of SSI units by increasing the limits under this category; (f) The eligibility of restructured/ rescheduled cases to be restricted to initial loan repayment schedule and ballooning of subsidy in rescheduled cases to be avoided (f) revamped scheme to be structured in such a way that the subsidy out go is not open ended and has a definite cap of Rs. 1972 crores.; (g) Greater administrative and monitoring controls to be introduced with pre-authorization of all eligible claims by the Textiles Commissioner Mumbai, before approvals and intensive monitoring by the Inter Ministerial Steering Committee chaired by Secretary Textiles.

6. Now in the preface and recognition of the above, the Government resolves that the Restructured Technology Upgradation Fund Scheme for the textiles & jute industries will be in operation with effect from the date of this resolution upto 31.03.2012. The financial and operational parameters of the Restructured" TUFS in' respect of loans sanctioned under the scheme would be as follows: -

- i). A reimbursement of 5% on the interest charged by the lending agency on a project of technology upgradation in conformity with the Scheme. However, for spinning machinery the scheme will provide -4% for new stand alone / replacement/modernisation of



spinning machinery; and 5% for spinning units with matching capacity in weaving / knitting / processing/garmenting.

ii). Cover for foreign 'exchange rate fluctuation / forward cover premium not exceeding 5% for all segments except for new stand alone / replacement

iii). Additional option to the powerlooms units and independent preparatory units to avail of 20% Margin Money subsidy under Restructured TUFs in lieu of 5% interest reimbursement on investment in TUF compatible specified machinery subject to a capital ceiling of Rs. 500 lakh and ceiling on margin- money subsidy of Rs.60 lakh. However, for brand new shuttleless looms the ceiling on margin money subsidy will be Rs.1 crore. A minimum of 15% equity contribution from beneficiaries will be ensured.

iv). An option to SSI textile and jute sector to avail of 15% Margin Money subsidy in lieu of 5% interest reimbursement on investment in TUF compatible specified machinery subject to a capital ceiling of Rs. 500 lakh and ceiling on margin money subsidy of Rs.45 lakh. A minimum of 15% equity contribution from beneficiaries will be ensured.

v). 5% interest reimbursement plus 10% capital subsidy for specified processing, garmenting and technical textile machinery.

vi). The Common Effluent Treatment Plants (CRTPs) will not be covered under Restructured TUFs.

vii). 5% interest reimbursement plus 10% capital subsidy for brand new shuttleless looms.

viii). Interest subsidy/capital subsidy/Margin Money subsidy on the basic value of the machineries excluding the tax component for the purpose of valuation.



ix). 25% capital subsidy in lieu of 5% interest reimbursement on purchase of new machinery and equipments for the pre-loom & post-loom, operations, handlooms/up-gradation of handlooms and testing & Quality Control equipments, for handloom production units.

x). 25% capital subsidy in lieu of 5% interest reimbursement on benchmarked machinery of silk sector as applicable for Handloom sector.

xi). The Scheme will cover only automatic shuttleless looms of 10 years' vintage and with a residual life of minimum 10 years. The value cap of the automatic shuttleless looms will be decided by the Technical Advisory-cum-Monitoring Committee (TAMC).

xii). Investments like factory building, pre-operative expenses and margin money for working capital will be eligible for benefit of reimbursement, under the scheme meant for apparel sector and handloom with 50% cap. In case apparel unit / handloom unit is engaged in any other activity, the eligible investment manufacturing of apparel / handlooms.

xiii). Interest reimbursement will be for a period of 7 years including 2 years implementation/ moratorium period.

xiv). The subsidy in restructured cases will be restricted to the quantum approved in the initial loan repayment schedule by the lending agency and submitted to the Office of the Textile Commissioner in the prescribed format.

xv). Common Effluent Treatment Plant (CETP) and, other investments like, energy saving devices, in-house R&D, IT including ERP, TQM including adoption of ISO / BIS standards, CPP and electrical installations etc. will not be eligible under Restructured TUFS. .



xvi). There will be an overall subsidy cap of Rs. 1972 crores from the date of this Resolution to 31.03.2012, which is expected to leverage an investment of Rs.46900 crore, with sectoral investment shares of 26% for spinning, 13% for weaving, 21% for processing, 8% for garmenting and 32% for others.;

xvii). The Scheme will be administered with a two stage monitoring mechanism as detailed in Para IV. The sectoral caps may be reviewed for modification by the IMSC (Inter Ministerial Steering Committee), based on the recommendations of TAMC.”

213. While acknowledging that the earlier TUFS was successful, para 3 of the Resolution documents the fact that the gains made by the earlier TUFS had varied across segments, with the processing and power-looms sectors emerging as major areas of concern. A study by a professional consultant, CRISIL, had recommended, in the circumstances, complete restructuring of the TUFS, in order to channelize investments towards hitherto low focused areas and to ensure optimum value addition across the value chain. Keeping in mind the findings of the evaluation study, para 4 of the Resolution records the policy decision taken by the Government “to completely restructure the scheme, to channelize investments in hitherto low investment segments to facilitate a balanced growth across the value chain and to ensure the subsidy outgo is not open ended and has a definite cap.” The specific changed dispensations, under the restructured TUFS vis-à-vis the earlier TUFS, stand enumerated in paras 5 and 6 of the Resolution.



214. A comparison of paras 5 and 6 of the Resolution dated 28th April 2011 with the Resolution dated 31st March 1999 hereunder the earlier TUFs was brought into existence, reveals that the restructured TUFs is significantly different in several aspects as compared to the earlier TUFs. It is, therefore, truly a restructured scheme, and not merely a continuation of the earlier TUFs. It is obviously for this reason that para 4 of the Resolution dated 28th April 2011 envisages complete discontinuance of the earlier TUFs and para 6 specifically states that the restructured TUFs would be in operation with effect from the date of Resolution, i.e. with effect from 28th April 2011 upto 31st March 2012. Be it noted, here, that it is not the petitioner's case that the restructured TUFs should be made effective from any date prior to 28th April 2011.

215. These assertions, as contained in the aforesaid MOT Resolution dated 28th April 2011 are also reflected, briefly, in paras 2 to 4 of the counter affidavit filed by the respondent in the present petition, which read thus:

“2. An independent evaluation of the Scheme by a professional consultant, M/s CRISIL, has revealed that TUFs has facilitated an increase in productivity: cost and waste reduction; and improved quality across the value chain. However, the gains made have varied across segments, with the processing and powerloom sectors emerging as major areas of concern. To ensure optimum value addition across the value chain, the evaluation study recommended that TUFs may be completely restructured to channelize investments towards hitherto low focus areas.

3. Based on the findings of the evaluation study, Government took a policy decision to completely restructure the Scheme, to channelize investments in hitherto low



investment segments to facilitate a balanced growth across the value chain; and to ensure the subsidy outgo is not open ended and has a definite cap. Accordingly, the existing scheme was discontinued and new sanctions under the Scheme were stopped from 29.06.2010 under intimation to all the lending agencies. A copy of Circular No. 2 (2010-11) series dated 30th June 2010 is already annexed with the Petition as Annexure P-13.' It is submitted that for loans sanctioned during 01.04.1999 to 28.06.2010, the then existing parameters and guidelines continued to apply.

4. On 29th March, 2011 the Cabinet Committee on Economic Affairs (CCEA) approved the restructuring and enhancement of the plan allocation (from Rs.8000 crores to Rs.15405 crores) for the TUFs in the Eleventh Plan Period for the period 28.04.2011 to 31.03.2012. In pursuance of the Expenditure Finance Committee (EFC) recommendations that no new sanctions under TUFs will be made till CCEA approval is obtained, Ministry of Textiles had suspended new sanctions under TUFs w.e.f. 29.06.2010 to 27.04.2011 (Black-out Period). Circular No.2 (2010-2011 series) dated 30.06.2010 issued by the Office of the Textile Commissioner notified the same. The restructured TUFs came into force w.e.f. 28.04.2011. The same was notified by the Government of India, Ministry of Textiles vide Resolution No.6/5/201 1-TUFs dated 28.04.2011, and which lays down the financial and operational parameters and implementation mechanism for the Restructured Technology Upgradation Fund Scheme (R-TUFs) for the period from the date of the resolution till 31.03.2012, with an overall subsidy cap of Rs.1972 crores during this period. A copy of the resolution dated 28 April 2011 passed by the Ministry of Textiles is already on record as Annexure P-14.”

216. Applying the principles laid down in the judicial decisions cited hereinabove and enumerated in para 209 *supra*, it is clear that no case exists, for interfering with the decision of the respondent to introduce the restructured TUFs with effect from 28th April, 2011, as the decision was unquestionably prompted by public interests, keeping



overall industry interests in mind, and with a view to maximize the reach of the benefit and ensure uniformity in its dispensation.

No application by petitioner under restructured TUFS

217. The Resolution dated 28th April, 2011 required eligible industrial units to apply for obtaining benefits thereunder, which were available for the period 28th April 2011 to 31st March 2012. The petitioner does not claim to have applied under this Resolution, apparently under the impression that the application made by the petitioner under the earlier TUFS, on 15th May 2010, pursuant to which the loan had been sanctioned on 18th September 2010, was sufficient to entitle it to the benefit of the restructured TUFS. This, obviously, is not the case, as the restructured TUFS is fundamentally a new scheme, requiring an independent application by person seeking the benefit thereof. No application having been made by the petitioner for the benefit of the restructured TUFS, as envisaged by the Resolution dated 28th April 2011, the petitioner cannot claim the benefit of the restructured TUFS. As already noted, Ms. Diya Kapur, too, did not, during her arguments, seek extension, to the petitioner, of the benefit of the restructured TUFS under the Resolution dated 28th April 2011.

Can the petitioner claim the benefit of the earlier TURS till 31st March 2012 on par with persons who had been sanctioned loans thereunder prior to 30th June 2010?



218. The petitioner's case, as urged before the Court by Ms. Diya Kapur, is that the petitioner could not be denied the benefit of the earlier TUFS, as it had applied for the benefit of the earlier TUFS on 15th May 2010, prior to the TUFS being put in abeyance on 30th June 2010. The contention of Ms. Kapur is that MOT Circular dated 30th June 2010 did not discontinue the earlier TUFS but was merely in the nature of an advisory to the bank and lending agencies not to issue fresh sanctions till clearance was received from the CCEA for approving additional allocations of funds. She submits that her client applied for the benefit of the earlier TUFS prior to issuance of the Circular dated 30th June 2010, at a time when the earlier TUFS was in force and was to continue to apply till 31st March 2012, as promised by the Circular No. 4 of the Textile Committee, issued on 11th March 2008. The fact that the loan was sanctioned by the bank only on 18th September 2010, she submits, cannot be a ground to disentitle her client to the benefit of the earlier TUFS. She emphasizes in this context, the fact that applicants who had applied under the earlier TUFS and had been sanctioned loans under the earlier TUFS prior to 30th June 2010 were being extended the benefit of the earlier TUFS till 31st March 2012 even as per the Resolution dated 28th April 2011, bringing into existence the restructured TUFS.

219. The earlier TUFS, as also the restructured TUFS, envisaged application by a person seeking the benefit thereof, scrutiny of the application and, thereafter, sanctioning of the loan by the funding agency. Mere application does not, therefore, vest any person with a right to seek the benefit of the TUFS. There is a jurisprudential



distinction between the satisfaction of the conditions subject to which a right to a beneficial dispensation arises, and the point or stage at which such right vests on the beneficiary, in law. There is no universal principle that, immediately on fulfilment of the pre-conditions subject to which a beneficial dispensation would become available, the applicant is, *ipso facto*, entitled to its benefit. Qua the earlier TUFs, while Part II of the Resolution dated 31st March 1999 set out the eligibility criteria for entitlement to the benefit of the Scheme, Part III specifically dealt with “Loans Under the Scheme”, and Clause 1(a) thereunder envisaged that “loans *sanctioned by the lending agency till the last date of duration of the scheme period will be eligible* under the scheme”. The lending agency was required, under the earlier TUFs – as also under its restructured *avatar* – to carry out a detailed verification of the eligibility of the TUFs applicant, before sanctioning the loan.

220. A right to the benefit of the earlier TUFs, therefore, vested *only on sanction of the loan by the lending agency, after due verification*.

221. There is, therefore, a discernable and intelligible differentia between persons such as the petitioner who may have applied for the benefit of the earlier TUFs prior to 30th June 2010 but were sanctioned loans after the said date, and those who had applied *and were sanctioned* loans under the earlier TUFs prior to 30th June 2010. The right that vested in the latter category of applicants, to the benefit of the earlier TUFs, vested *prior to 30th June 2010*, when the earlier TUFs was entirely in operation, allocations stood sanctioned, and the



banks/lending agencies were within their rights in sanctioning loans – subject, of course, to eligibility. As against this, the sanction of the loan to persons such as the petitioner, which was the determinative event for vesting of the right to the benefit of the earlier TUFS, took place *after 30th June 2010*, when there was no allocation of reimbursement by the CCEA and the banks and lending agencies had been specifically advised not to sanction loans. The TUFS, therefore, was, as it were, in a state of suspended animation at the time when the loan was sanctioned in favour of the petitioner. The petitioner cannot, therefore, directly seek parity with persons who had applied and had been sanctioned loan under the earlier TUFS prior to 30th June 2010.

Circular dated 30th June 2010 and its import

222. Apropos the Circular dated 30th June 2010, there is substance in Ms. Diya Kapur's contention that the Circular did not discontinue the existing TUFS. To that extent, the recital, in the Resolution dated 28th April 2011 (which brought into the existence of restructured TUFS) to the effect that the earlier TUFS stood discontinued on 30th June 2010 and the emphatic contention, of Mr. Vivek Goyal, learned CGSC to that effect, is misguided. Clearly, the Circular dated 30th June 2010 does not discontinue the earlier TUFS. It merely directs – in fact, it merely advises – lending agencies and banks not to sanction new loans till clearance was received from the CCEA for additional allocation of funds.

Earlier TUFS not available after 28th April 2011



223. Having said so, it is equally true that the earlier TUFs, in respect of persons who had not been sanctioned loan thereunder, cannot be said to have continued to remain in effect even beyond 28th April 2011. This is because, on 28th April 2011, a fresh Resolution was issued, bringing into existence a restructured TUFs, which envisaged fresh applications, under the said Resolution for the benefit of the restructured TUFs. Inasmuch as this was an entirely new Scheme, which effectively superseded the earlier TUFs, even while saving the rights of those who had been sanctioned loans under the earlier TUFs, it cannot be said that the earlier TUFs continued to remain in operation beyond 28th April 2011. Clause 4 of the Resolution dated 28th April 2011, whereby the restructured TUFs came into operation, in fact, expressly states that the earlier TUFs stood discontinued. Though, as already noted, the statement is not correct insofar as it treats the earlier TUFs as having been discontinued *on 29th June 2010*, there can be no manner of doubt that the MOT was not continuing the earlier TUFs once the restructured TUFs was in place. At the very latest, therefore, the earlier TUFs was no longer available, except to the extent its effect stood saved in the restructured TUFs, once the restructured TUFs had been put into place.

224. Any right of the petitioner to the benefit of the earlier TUFs would, therefore, enure only upto 28th April 2011, and not beyond that date.



Right of petitioner to benefit of earlier TUFS till 28th April 2011

225. The question that then arises is whether the petitioner was entitled to the benefit of the earlier TUFS till 28th April 2011.

226. The petitioner had applied under the earlier TUFS prior to 30th June 2010. The Circular dated 11th March 2008 clearly extended the promise held out by the earlier TUFS, for 5% reimbursement of interest on loans extended by banks, till 31st March 2012. In respect of persons such as the petitioner, who had not been sanctioned the loan prior to 30th June 2010, the *terminus ad quem*, till which the benefit of the TUFS would be available, would not be 31st March 2012, but would be 28th April 2011. This is, *inter alia*, for the reasons that the loan was not only sanctioned after 30th June 2010 but was sanctioned at a point of time when the benefit of the earlier TUFS had been placed in abeyance and there was a specific advice to lending agencies and banks not to sanction loans under the earlier TUFS. If, therefore, a loan was sanctioned under the earlier TUFS, in stark violation of the directive contained in the Circular dated 30th June 2010, it would not be permissible to treat the sanction as a valid sanction for the purpose of extending, to the petitioner, the benefit of the earlier TUFS on par with those who have been sanctioned loans under the earlier TUFS prior to 30th June 2011.

227. Having said that, can the petitioner be deprived of all benefit, despite (i) the earlier TUFS having been specifically extended till 31st March 2012, *vide* MOT Circular No 4 dated 11th March 2008, (ii) the



petitioner having performed the necessary acts for rendering it eligible for the benefit of the earlier TUFS, (iii) the petitioner having applied, for the benefit of the earlier TUFS, prior to 30th June 2010, and (iv) the petitioner having in fact been sanctioned loan, under the earlier TUFS, by the Bank, albeit belatedly, on 18th September 2010? In deciding this question, the Court has to be mindful of the fact that, when applying the principle of promissory estoppel in a case such as this, the Court acts as a court of equity, and that the principle of promissory estoppel is *essentially intended to further equity, and avoid the strict rigour of the law*. Even otherwise, equity inheres, at all times, in Article 226 of the Constitution of India.

228. The earlier TUFS continued to remain in force, even insofar as the persons such as the petitioner, who had applied under the earlier TUFS prior to 30th June 2010, and was sanctioned loans thereunder only after the said date, till 28th April 2011. No valid ground has been urged to justify denial to persons such as the petitioner who had applied for the benefit of the earlier TUFS prior to 30th June 2010 and actually sanctioned loans under the earlier TUFS albeit after that date but prior to 28th April 2011, of the benefit of the earlier TUFS *till 28th April 2011*.

229. The averments contained in the petition which already stand reproduced hereinabove clearly indicate that, acting on the basis of the promise held out in the earlier TUFS and extended till 31st March 2012 by Circular No. 4 dated 11th March 2008 of the Textile Committee, the petitioner had invested considerable amounts and had,



therefore, “altered its position”. If, therefore, the respondent is to be permitted not to comply with the promise held out under the earlier TUFs and continued by the Circular dated 11th March 2008, at least till 28th April 2011, that can only be if a clear case of public interest is made out with the requisite facts and figures.

230. In this context, it is essential to refer to the stand taken by the MOT in para 5 of its counter-affidavit, filed in response to the writ petition, vis-à-vis the documents annexed thereto. Para 5 of the counter-affidavit avers thus:

“5. That on 5th May 2011 the petitioner herein made a representation for extension of benefits under the restructured TUFs for projects falling within the black out period. In response to the Petitioner’s representation, the answering respondent had sent a letter No. 6/3/2012-TUFS dated 09.02.2012, stating that the Inter-Ministerial Steering Committee (IMSC) had decided that the issue would be taken up with the competent authority to seek financing of TUFs blackout period cases. It is submitted that whether or not to allow the benefit of TUFs during the blackout period was a matter of high policy, *involving huge financial outlay and as such the above decision was taken*. A copy of the Ministry of Textiles letter No. 6/3/2012-TUFS dated 09.02.2012 sent to the Petitioner is annexed herewith as **Annexure R-1**.”

“Huge financial outlay” does not, however, emerge as a consideration for rejecting the petitioner’s application for extension of TUFs benefits, from the documents to which the counter-affidavit alludes – or, indeed, from any other document, though Mr Goyal sought to stress the point. Rather, the letters dated 9th February 2012 and 1st May 2012 from the MOT to the petitioner (reproduced in paras 17 and



18 *supra*) suggest otherwise. The concluding paragraph of the letter dated 9th February 2012 indicates that the IMSC, and MOT, were inclined to extend the benefit of the TUFS to the petitioner during the “blackout period”, and were intending to take up the matter with the competent authority “*to seek financing of TUFS blackout period cases*”. The subsequent letter dated 1st May 2012, however, reveals that, when contacted by the MOT in this regard, the MOF opined that “the investments were made by the entrepreneurs on their own assessment of financial viability, *when the Scheme was not in operation*”. “Hence”, says the letter, coverage of the blackout period for TUFS benefits has not been agreed to.

231. The view of the Ministry of Finance, as expressed in the letter dated 1st May 2012 cannot, in my opinion, withstand legal scrutiny. The Ministry of Finance has not, apparently, rejected the petitioner’s request on the ground of financial outlay, huge or otherwise. Rather, the rejection is solely on the ground that the petitioner, and other entrepreneurs who made investments during the blackout period, did so on their own assessment of financial viability, *when the Scheme was not in operation*.

232. As already held by me hereinabove, the earlier TUFS cannot, legally, be said *not to have been operation after 30th June 2010*, as the letter dated 30th June 2010 does not discontinue the earlier TUFS, or even, strictly speaking, place it in abeyance. All that it does is to advice Banks and lending agencies not to sanction fresh loans, *till approval of additional allocations by the CCEA*. This is altogether



different from a decision to *discontinue* the Scheme. The assertion, in the view of the MOF, that investments had been made by entrepreneurs such as the petitioner *when the Scheme was not in operation* is, therefore, not correct.

233. Rather, the petitioner made investments, for the purposes of obtaining the benefit of the earlier TUFS, prior to 30th June 2010, and had even applied for the benefit of the Scheme prior thereto. The MOF does not appear to have taken this factor into consideration, Equally, the MOF has not examined the aspect of promissory estoppel, which is determinative in the present case.

234. The ground on which the MOF has chosen to reject the petitioner's application, as reflected in the letter dated 1st May 2012 from the MOT to the petitioner cannot, therefore, be said to be sustainable in law.

235. No clear case of public interest, as would justify denying, to the petitioner, the benefit of the earlier TUFS till 28th April 2011, can be said to have been made out either in the recitals contained in the Resolution dated 28th April 2011 or in the averments contained in the counter affidavit filed by the Union of India.

236. No justification exists, therefore, to deny the petitioner the benefit of the earlier TUFS till 28th April 2011.

Conclusion



237. Applying the law laid down in aforesaid decisions, therefore, I am of the opinion that the petitioner is entitled to the benefit of the earlier TUFs till 28th April 2011. As the earlier TUFs stood discontinued on 28th April 2011, when the restructured TUFs came into existence and the petitioner never applied under the restructured TUFs, the petitioner cannot claim any benefit of the restructured TUFs under the Resolution dated 28th April 2011. Equally, as on 28th April 2011, the restructured TUFs had come into existence thereby discontinuing the earlier TUFs, the petitioner cannot seek the benefit of the earlier TUFs beyond 28th April 2011. The petitioner cannot claim parity, in this regard, with persons who had been sanctioned loans under the earlier TUFs prior to 30th June 2010, as the sanction of the loan in the petitioner's favour took place after 30th June 2010 when the earlier TUFs was in effect (as it had not been discontinued) but there was an advisory to banks not to grant loans under the earlier TUFs beyond that date. However, as letter dated 30th June 2010 was clearly ambiguously worded, and neither constitutes a discontinuation of the earlier TUFs, nor amounts to a categorical direction to banks not to sanction loans beyond 30th June 2010 under the earlier TUFs, but is merely worded as an advisory awaiting the allocation of additional funds by the CCEA, I am of the opinion that the only manner in which the interests of justice, equity and fair play could be protected, even while abiding by the letter of the law, is to hold the petitioner entitled to the benefit of the earlier TUFs till 28th April 2011.

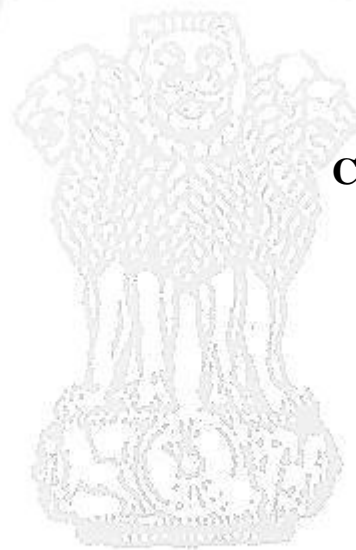


238. The petition is, accordingly, allowed to the aforesaid limited extent. The petitioner shall be treated as entitled to the benefit of the earlier TUFS till 28th April 2011. The petitioner is not entitled to the benefit of the earlier TUFS beyond 28th April 2011 or to the benefit of the restructured TUFS which came into existence on 28th April 2011.

239. The writ petition stands partially allowed accordingly, with no orders as to costs.

C.HARI SHANKAR, J

JULY 4, 2022
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