31st August,
2023
(AK)
05

W.P.A 9546 of 2019

M/s. Ambuja Cements Limited and another
Vs.
State of West Bengal and others

Mr. Ratnanko Banerji
Mr. Sakya Sen
Mr. Rajarshi Dutta
Mr. Soorjya Ganguli
Mr. Somdutta Bhattacharyya
Ms. Radhika Misra
...for the petitioners.

Mr. Anirban Ray
Mr. Tanoy Chakraborty
Mr. Debapriya Chatterjee
...for the State.

1. The petitioners claim under an Industrial Promotional Assistance (IPA), which is a special package of financial incentive given by the respondent authorities.

2. It is submitted that under such package, incentives were disbursed in favour of the petitioners for a little more than two years, although the total tenure of the scheme was for five years and two months.

4. When the petitioners approached the respondent authorities for the balance disbursal, a decision was taken at the level of the Additional Chief Secretary, Department of Industry, Commerce and Enterprises of the Government of West Bengal, by virtue of which the non-disbursal of further amounts under the package was

stood by, primarily by referring to certain provisions of a 2004 scheme, which has no nexus with the special package granted to the petitioners.

5. Learned senior counsel appearing for the petitioners places reliance on the specific language of the additional package, which is annexed at page-161 of the writ petition.

6. In the said communication from the Special Secretary of the Government of West Bengal, Commercial and Industries Department dated March 2, 2006, the petitioner no.1, it was recorded, had proposed to set up a cement manufacturing unit at Murshidabad in an around Farakka with an investment of Rs. 100 crore. The said proposal was examined and it was decided to extend the package as enumerated therein to the petitioner no.1.

7. The said package contemplated Industrial Promotional Assistance (IPA) at the rate of 75% of the Value Added Tax (VAT) and Central Sales Tax (CST) paid in the previous year for which IPA would be released without any Financial Cap by way of adjustment against VAT and CST liability of that year.

8. Among other provisions, it was also stipulated that the unit will be entitled to all other subsidies as laid down in WBIS 2000, except Interest Subsidy.

9. It is argued that the petitioners also obtained eligibility certificates. That apart, the Sales Tax

Authorities duly approved the claims made by the petitioners.

10. While criticizing the order impugned herein, learned senior counsel appearing for the petitioners argues that the entire premise of the same was erroneous.

11. The Additional Chief Secretary, it is argued, primarily relied on the observations of the Finance Department dated December 28, 2018, which was never served upon the petitioners.

12. As quoted in the impugned order, the said report, inter-alia, observed that the packages granted to three cement manufacturing units including the petitioner no.1 were granted in lieu of Interest Subsidy under the relevant scheme.

13. Thereafter reference has been made to the 2000 and 2004 Schemes, which apparently contemplated a limit of Rs. 100 Lakh per year in respect of Interest Subsidy.

14. Learned senior counsel contends that such reliance on the 2000 and 2004 Schemes was entirely erroneous, since the petitioners do not fall under either.

15. The special package granted to the petitioners, it is argued, was not within the contemplation of either the 2000 or the 2004 Schemes, nor did it relate to Interest Subsidy, as evident from the language of the said package itself.

16. It is reiterated that the package clearly mentioned that the unit would be entitled to all *other subsidies* as laid down in WBIS 2000 except Interest Subsidy.

17. That apart, the impugned order also went on to find that the reference to "without any financial cap" had to be read in the context of the cap of Rs.100 Lakh per year in respect of Interest Subsidy, which found place in the Schemes-in-question, particularly in para 20(e)(iii) of the WBIS 2004, which is not applicable to the present case at all.

18. Thus, it is argued that the impugned refusal of disbursal of the rest of the amount under the special package to the petitioners is required to be set aside and the respondents directed to pay the rest of the amount.

19. Learned senior counsel, while dealing with two judgments cited by the respondents, also argues that the ratio of said judgments is not applicable to the present case, since those relate to change in policy by the authorities, which is not the present case.

20. In the instant matter, it is argued, the respondents actually started disbursing the subsidies under the relevant package to the petitioners and stopped midway.

21. There is nothing to indicate that there was any change of policy as such by the respondents, to attract the ratio laid down in the cited judgments.

22. Learned counsel appearing for the State, at the outset, submits that the special package given to the petitioners has to be read in conjunction with the 2004 Schemes, particularly since the special package granted to the petitioners was on March 2, 2006, when the 2004 scheme was already in force.

23. It is submitted that the letter and spirit of the 2004 Scheme has to be borrowed for a proper interpretation of the special package issued to the petitioners.

24. Learned counsel places elaborately the order impugned herein. It is contended that the observations of the Additional Chief Secretary were justified.

25. By placing reliance on portions of the order, it is argued that the incentive schemes which were formulated to encourage capital investment in the manufacturing sector of the State, which provide for subsidy to cover full 100% of fixed capital investment of the unit, and have to be read in proper perspective and should not be so interpreted as to override the general intention of the relevant incentive scheme considering the socio-economic rationale behind such scheme. The interpretation should not be contrary to the public purposes of the State, so as to severely restrict its resources to provide multi-model citizen-centered services including provision of public goods and other departmental needs for the common man.

26. By borrowing the underlying refrain from the said order, learned counsel for the respondents argues that the policy of a State always is for the benefit of the public at large.

27. It is further argued that incentive schemes, as opposed to taxing statutes, have to be interpreted in favour of the revenue granting authority/State.

28. It is argued by learned counsel for the respondents that the principle of promissory estoppel is not applicable to distribution of State largesse by way of subsidy schemes.

29. In such context, learned counsel for the State places reliance on *Sales Tax Officer and another vs. Shree Durga Oil Mills and another* reported at *(1998) 1 SCC 572* and *Union of India and another vs. V.V.F. Limited and another* reported at *(2020) 20 SCC 57*.

30. Upon hearing learned counsel for the parties, it transpires that the petitioners, undisputedly, claim subsidy/incentive under a special package, which was given to the petitioners on March 2, 2006. The petitioners have annexed eligibility certificates and, as such, were obviously eligible for the package.

31. The said package, in no uncertain terms, specifies that the Industrial Promotional Assistance (IPA) would be at the rate of 75% of VAT and CST paid in the previous year to the year for which IPA would be released *without*

any financial cap by way of adjustment against VAT and CST liability of that year.

32. The emphasis, supplied above, clearly indicates that the package was meant to be without any financial cap. The respondent authorities seek to restrict such expression to the subsequent clause that the financial caps referred to were in respect of adjustment against VAT and CST liability of that year.

33. Be that as it may, since the IPA-in-question pertains exclusively to subsidies regarding VAT and CST paid in the previous year, the context of the financial cap, from which the petitioners were exempted, has to be seen in proper perspective, to mean to apply to the entire package itself.

34. The only restriction in the scheme was by way of clause (ii) which stipulates that the unit will be entitled to all other subsidies as laid down in the WBIS 2000 Scheme except interest subsidy.

35. Hence, it is clear that the WBIS Scheme 2000 is not applicable as a whole to the special package given to the petitioners but was referred to in the package for the purpose of specifying the particular subsidies which were to be in terms of the 2000 Scheme, except, of course, interest subsidy.

36. Thus, nothing in the 2000 Scheme applies to the special package apart from the fact that the subsidies

given to the petitioners were the same subsidies as enumerated in the 2000 Scheme, except interest subsidy.

37. In so far as the applicability of the 2004 Scheme is concerned, the argument of the respondent authorities is even more far-fetched than the 2000 Scheme.

38. There is nothing in the special package given to the petitioners and annexed at page 161 of the writ petition, which even cursorily refers to the 2004 Scheme.

39. Taking a cue from the arguments of the respondents, the said package was given to the petitioners on March 2, 2006, but, yet, the 2004 Scheme, which was already in force then, was never mentioned in any manner in the said package.

40. Hence, the only conclusion which can be drawn is that the 2004 Scheme was never meant to be applicable to the special package of the petitioners in any manner whatsoever.

41. There is no dispute as to eligibility of the petitioners. The question,which arises here, is whether the respondent authorities can claim to have changed their policy midway vis-à-vis the petitioners and the entities covered by the special package only.

42. Nothing in the materials on record or from the arguments of the respondent authorities indicate that there was a declared change of policy or withdrawal of the

special package given to the petitioners at any point of time.

43. In so far as the judgments cited by the respondent authorities are concerned, the same are distinguishable from the facts of the present case on two very important scores.

In both the said judgments, the occasion of challenge was the declared change of policy by way of withdrawal/floating of previous or new policies. The entire gamut of challenge in both the said cases was such change of policy, in which context the Supreme Court repeatedly reiterated that the principle of promissory estoppel does not apply to the authorities or the State, in so far as the same relates to policy decisions of the Government or the authorities.

45. The question of promissory estoppel is not relevant in the present case. The doctrine sought to be invoked by the petitioners is not mere promissory estoppel but a notch higher, that is, estoppel substantially.

46. As opposed to promissory estoppel, in case of a substantial estoppel, an act has actually been done by the respondent authorities, on the premise of which the petitioners have taken action and spent resources, which will be to the detriment of the petitioners in the event the respondent authorities resile from such position.

47. In the present case, not only was a special package specifically granted to the petitioners on March 2, 2006, but the respondent authorities went on continuously acting on the same for more two years by duly disbursing the subsidies in favour of the petitioners.

48. Nothing subsequently has been shown to indicate that the policy decisions of the State in that regard has been altered.

49. The present case is not a case where the State made a promise of giving a subsidy, but subsequently changed the policy decision, thereby depriving prospective applicants for such subsidy from getting the subsidy.

50. The present case is one where an entity, running its business on the specific premise of the promise given out by the State by way of a substantial package, and was granted disbursals in terms of the said package for half of the period of the entire tenure of the said package. The tenure was of five years and two months and for more than two years, the package was honoured by the respondents.

51. Hence, the respondents are squarely bound by the principle of doctrine estoppel in the present case, which goes a shade higher than mere promissory estoppel.

52. That apart, the argument of the respondents regarding the letter and spirit of the 2004 scheme being applicable is absurd.

53. The 2004 scheme is either to be applicable or not applicable in the present case. The said scheme is not a landmark piece of legislation or juristic thought that its letter and spirit should be borrowed to the special package.

54. The 2004 scheme as well as 2000 scheme operate their specific spheres. The present petitioners did not at any point of time apply under any of the said schemes and were never disbursed any subsidy under such schemes.

55. The special package given to the petitioners was clear inasmuch as there would not be any financial cap by way of adjustment against VAT and CST liability of that year.

56. It was also mentioned that the entitlement of the petitioners was regarding all subsidies, which were incidentally mentioned in the 2000 scheme as well, except Interest Subsidy.

57. Hence, the attempt of the respondent authorities to invoke the principles of the 2004 scheme and the caps stipulated therein as well as the principles embodied in the 2000 scheme, per se, is entirely *mala fide* and arbitrary and designed to defeat the petitioners' legitimate claim for the balance amount under the special package.

58. Hence, there is no scope of giving a premium to such arbitrary endeavour of the State.

59. Accordingly, WPA 9546 of 2019 is allowed, thereby directing the respondent authorities to ensure that the balance amount due to the petitioners, to the tune of Rs. 1,18,22,02,436/-, in terms of the break-up given in the supplementary affidavit filed by the petitioners today, to which the petitioners are entitled to under the special package-in-question, be disbursed to the petitioners at the earliest, positively within three months from date.

60. The order dated September 14, 2019 is, thus, set aside.

61. Supplementary affidavit filed in court today be kept on record.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)