IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 3423 of 2015

M/s Balmukund Sponge and Iron Limited, A company registered under the Companies Act, 1956, having its Head Office at Near Vishwanath Nursing Home, Bajrang Chowk, Giridih, P.O. and P.S. Giridih, District Giridih (Jharkhand), Through its Manager Ramesh Kumar Verma, Son of late S.N. Verma, resident of Giridih, P.O. and P.S. Giridih, District Giridih. **… … Petitioner**

Versus

1. The State of Jharkhand, through the Secretary, Industries Department, Nepal House, Doranda, P.O. and P.S. Doranda. District Ranchi 834 002.
2. Director of Industries, Nepal House, Doranda, P.O. and P.S. Doranda, District Ranchi 834 002.
3. General Manager, District Industries Centre, Giridih, P.O. and P.S. Giridih. District Giridih **… … Respondents**

With

W.P.(C) No. 3430 of 2015

M/s Balmukund Sponge and Iron Limited, A company registered under the Companies Act, 1956, having its Head Office at Near Vishwanath Nursing Home, Bajrang Chowk, Giridih, P.O. and P.S. Giridih, District Giridih (Jharkhand), Through its Manager Ramesh Kumar Verma, Son of late S.N. Verma, resident of Giridih, P.O. and P.S. Giridih, District Giridih. **… … Petitioner**

Versus

1. The State of Jharkhand, through the Secretary, Industries Department, Nepal House, Doranda, P.O. and P.S. Doranda. District Ranchi 834 002.
2. Director of Industries, Nepal House, Doranda, P.O. and P.S. Doranda, District Ranchi 834 002.
3. General Manager, District Industries Centre, Giridih, P.O. and P.S. Giridih. District Giridih **… … Respondents**

With

W.P.(C) No. 3431 of 2015

M/s Balmukund Sponge and Iron Limited, A company registered under the Companies Act, 1956, having its Head Office at Near Vishwanath Nursing Home, Bajrang Chowk, Giridih, P.O. and P.S. Giridih, District Giridih (Jharkhand), Through its Manager Ramesh Kumar Verma, Son of late S.N. Verma, resident of Giridih, P.O. and P.S. Giridih, District Giridih. **… … Petitioner**

Versus

1. The State of Jharkhand, through the Secretary, Industries Department, Nepal House, Doranda, P.O. and P.S. Doranda. District Ranchi 834 002.

2. Director of Industries, Nepal House, Doranda, P.O. and P.S. Doranda, District Ranchi 834 002.
3. General Manager, District Industries Centre, Giridih, P.O. and P.S. Giridih. District Giridih … … **Respondents**

With

W.P.(C) No. 3432 of 2015

M/s Balmukund Sponge and Iron Limited, A company registered under the Companies Act, 1956, having its Head Office at Near Vishwanath Nursing Home, Bajrang Chowk, Giridih, P.O. and P.S. Giridih, District Giridih (Jharkhand), Through its Manager Ramesh Kumar Verma, Son of late S.N. Verma, resident of Giridih, P.O. and P.S. Giridih, District Giridih. … … **Petitioner**

Versus

1. The State of Jharkhand, through the Secretary, Industries Department, Nepal House, Doranda, P.O. and P.S. Doranda. District Ranchi 834 002.
2. Director of Industries, Nepal House, Doranda, P.O. and P.S. Doranda, District Ranchi 834 002.
3. General Manager, District Industries Centre, Giridih, P.O. and P.S. Giridih. District Giridih … … **Respondents**

With

W.P.(C) No. 3433 of 2015

M/s Balmukund Sponge and Iron Limited, A company registered under the Companies Act, 1956, having its Head Office at Near Vishwanath Nursing Home, Bajrang Chowk, Giridih, P.O. and P.S. Giridih, District Giridih (Jharkhand), Through its Manager Ramesh Kumar Verma, Son of late S.N. Verma, resident of Giridih, P.O. and P.S. Giridih, District Giridih. … … **Petitioner**

Versus

1. The State of Jharkhand, through the Secretary, Industries Department, Nepal House, Doranda, P.O. and P.S. Doranda. District Ranchi 834 002.
2. Director of Industries, Nepal House, Doranda, P.O. and P.S. Doranda, District Ranchi 834 002.
3. General Manager, District Industries Centre, Giridih, P.O. and P.S. Giridih. District Giridih … … **Respondents**

CORAM : HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner(s) : Mr. Sumeet Gadodia, Advocate
: Ms. Shilpi Sandil Gadodia, Advocate
: Mr. Prakhar Harit, Advocate
: Ms. Shruti Shekhar, Advocate
: Mr. Nillohit Choubey, Advocate
: Mr. K. Hari, Advocate
: Ms. Namisha Mohan, Advocate

: Ms. Saanya Kumari, Advocate
For the Resp. State : Mrs. Darshana Poddar Mishra, A.A.G-I
: Ms. Sweta Shukla, AC to AAG-II
: Mr. Ankit Kumar, AC to GP II

12/ **20.12.2024** **Lastly heard on 29.10.2024**

1. The batch of writ petitions have been filed by the same petitioner for similar reliefs but relating to different financial years. All relate to claim of 'interest subsidy' in terms of clause 29.5 of Jharkhand Industrial Policy, 2001. Similar points are involved in all the writ petitions and arguments have been advanced from the records of W.P.(C) No. 3423 of 2015. The corresponding years with respect to each writ petition are as under: -

Writ petition	Year	Date of application	Details of rejection order
W.P.(C) No. 3423 of 2015	2010-11	24.09.2011	Memo no. 673 dated 05.03.2014
W.P.(C) No. 3430 of 2015	2009-10	30.07.2010	Memo no. 221 dated 27.01.2011
W.P.(C) No. 3431 of 2015	2012-13	28.09.2013	Memo no. 673 dated 05.03.2014
W.P.(C) No. 3432 of 2015	2011-12	25.09.2012	Memo no. 673 dated 05.03.2014
W.P.(C) No. 3433 of 2015	2008-09	22/23.12.2009	Memo no. 221 dated 27.01.2011

2. **W.P.(C) No. 3423 of 2015** has been filed for the following reliefs: -

> *"(1) For issuance of an appropriate writ/order/ direction, including Writ of Mandamus, directing the Respondents to process the application of the petitioner for grant of Interest Subsidy in terms of Clause 29.5 of the Jharkhand Industrial Policy, 2001 and to consequently sanction and make payment of the admissible amount of Interest Subsidy payable to the petitioner amounting to Rs. 1.00 crore for the financial year 2010-11.*
> *(ii) For issuance of further appropriate writ/order/ direction, including Writ of Declaration, declaring that in absence of any Special Package framed for Mega Industrial Unit, the benefits/subsidies as contemplated under the Jharkhand Industrial Policy, 2001 to a new Industrial Unit, is also admissible to a Mega Industrial Unit, including*

Interest Subsidy under Clause 29.5 of the Jharkhand Industrial Policy, 2001.

(iii) For issuance of any other appropriate writ(s)/ order(s)/direction(s) as Your Lordships may deem fit and proper in the facts and circumstances of the case.

(iv) For issuance of appropriate writ/order/direction for quashing/setting aside the order contained in Memo No.673 dated 5.3.2014 as contained in Annexure-C to the counter affidavit, wherein the claim of Interest Subsidy of the petitioner has been rejected on the sole ground that no negotiation has been held with the petitioner-Company for payment of Interest Subsidy, is being wholly arbitrary and illegal and contrary to the spirit of the Jharkhand Industrial Policy, 2011."

Arguments of the petitioner.

3. The arguments of the petitioner were initially recorded in the order dated 28.10.2024, which is quoted as under: -

"Learned counsel for the parties are present.

2. *Learned counsel for the petitioner submits that the petitioner having made investment of more than Rs. 50 crores was held to be notentitled for interest subsidy in terms of Jharkhand Industrial Policy, 2001 on the ground that there has been no negotiation to enable the parties to crystalize the entitlement of interest subsidy which could be payable to the petitioner.*

3. *The learned counsel submits that irrespective of the entitlement of the petitioner under Clause 29.11 of the Jharkhand Industrial Policy, 2001 he would argue that the petitioner would be entitled for interest subsidy in terms of Clause 29.5 of the said policy, inasmuch as, Clause 29.5 does not envisage any quantum of maximum investment for entitlement and it only envisages maximum benefit which is to the extent of Rs. 1 crore.*

4. *It is placed on record that the petitioner has not received any benefit of interest subsidy under Clause 29.11 of the said policy and isnow insisting upon benefit of interest subsidy under Clause 29.5. Ithas also been submitted that under Clause 29.11, the petitioner has received capital investment subsidy for which special scheme was framed which has nothing to do with interest subsidy.*

5. *Learned counsel for the petitioner has relied upon*

Clause 29.2 of the Jharkhand Industrial Policy, 2001 to submit that the nature of incentives has already been enlisted therein which includes capital investment subsidy and also interest subsidy amongst others. He submits that once under the special package, the petitioner has been granted capital investment subsidy, certainly he would not be entitled for any further capital investment subsidy under Clause 29.3 of the said policy, but so far as interest subsidy is concerned, the petitioner has not availed any such subsidy under Clause 29.11 and therefore, the petitioner would be entitled for benefit under Clause 29.11 of the said policy.

6. *Learned counsel for the respondent- State submits that she would examine this matter and advance her arguments on this point tomorrow.*

7. *Post this case tomorrow i.e. on 29th October 2024 for further hearing at 12.00 noon."*

4. Arguments of the respondents recorded in order dated 29.10.2024 is as under: -

a. The provision of incentive under clause 29.11 of the Jharkhand Industrial Policy, 2001 is a special provision and the petitioner has availed the 'capital investment subsidy' under the special provision although the petitioner, being a mega industry, was not entitled to claim capital investment subsidy under clause 29.3, which was available only to Small and Medium Scale Industries.

b. The petitioner was treated as 'mega industry' and also made application under clause 29.11 claiming to be a mega industry. The petitioner cannot be permitted to choose best of both the schemes, partly under the general provisions as applicable and partly under the special provision under clause 29.11 applicable for mega industries.

c. There is no overlap between a regular scheme under clause 29.3 onwards and that of special scheme under clause 29.11 and they are mutually exclusive. She has referred to clause 29.3 and 29.11 to show that the petitioner was granted capital investment subsidy and was treated as a mega unit under clause 29.11 and for the purposes of other incentives to be granted to

mega industries under clause 29.5, 29.6 and 29.9 of the Industrial Policy, 2001 decision was to be taken upon negotiation. She has submitted that admittedly the negotiations were not held. She submits that the petitioner cannot be permitted to resort to clause 29.5 to claim interest subsidy as the petitioner is covered by the special scheme provided under Clause 29.11 and entitled to interest subsidy only upon negotiation. She has also referred to the notification dated 2nd of August, 2005 which notified the rules, namely, Jharkhand Mega Project Incentive Rules, 2005 and submitted that under this rule the petitioner has claimed the benefit under Clause 29.11 and he is governed by the said rule.

d. Clause 29.2 has been referred to submit that the same is just a list of the benefits under the Industrial Policy of 2001 and the entitlement with basic details have been mentioned in clause 29.3 onwards. A mega unit has itself been defined under clause 29.11. She has submitted that no incentive can be extended to the petitioner merely by referring to clause 29.2 unless the petitioner satisfies the condition as per the notification itself, particularly clause 29.11 and the scheme framed thereunder.

e. The resolution dated 10.06.2003 is a follow up notification to give effect to clause 29.11 and under clause (ii) of the notification, it has been clearly stipulated that the application was to be filed by the industries for negotiating in terms of the resolution dated 10.06.2003 meant for mega industries and for that purpose it was the petitioner who was supposed to file an application which could be subject matter of negotiation and the matter was to be decided through negotiation. It was only upon receipt of the proposal there could be negotiation. She has submitted that there is no averment in the entire writ petition that the petitioner ever filed any application for grant of incentive which could have been a matter of negotiation.

She has submitted that pursuant to the resolution dated 10.06.2003 the required rules to give effect to clause 29.11 were also framed and notified on 02nd August, 2005.

f. She has submitted that the present case is not a case of inaction on the part of the State. Rather, it is a case of inaction on the part of the petitioner in not submitting any claim for interest subsidy under the aforesaid resolution dated 10.06.2003 read with the aforesaid Rules of 2005 framed to implement clause 29.11 of the Policy of 2001. The learned counsel has submitted that the petitioner is not entitled to any benefit applying the principles of promissory estoppel/legitimate expectation.

g. It is not a case where the petitioner has not availed any benefit pursuant to the promise extended by the State inasmuch as the petitioner being a mega industry has already availed the benefit of capital investment subsidy under clause 29.11 pursuant to the Policy of 2001 which is otherwise available only to small and medium scales industries as per the general provisions of the policy.

h. The grievance of the petitioner is that the petitioner has been able to avail only part benefit under the clause 29.11. In such circumstances, the principle of promissory estoppel/ legitimate expectation does not come into play. This submission has been made without prejudice to the submission that there was complete inaction on the part of the petitioner and not on the part of the State.

i. As per the impugned order, the case of only four persons were rejected and so far as the other persons are concerned general statement has been made in the writ petitions. The learned counsel for the State has referred to the counter affidavit to the amended writ petition filed on 19.09.2024 in particular paragraph 12, 16, 17, 18, 19 thereof to submit that the permission was to be taken prior to the commencement of

investment which also has not been done by the petitioner. During the course of argument, it is not in dispute that the date of commencement of production in the unit of the petitioner is 08.08.2008.

5. Rejoinder arguments of the petitioner as recorded in order dated 29.10.2024 is as under: -

a) Under clause 29.3 of the Industrial Policy, the petitioner was not entitled for capital investment incentive as the same was admissible to small and medium scale industries but the petitioner never claimed benefit under clause 29.3. Rather, the relief was granted under clause 29.11 applicable for Mega Industries. He has further submitted that no limitation of extending the benefit only to small and medium scale industries has been prescribed with respect to interest subsidy under clause 29.5 which only prescribes the maximum limit of permissible benefit irrespective of the fact as to whether the unit falls under small and medium scale or is a mega unit.

b) The learned counsel has referred to clause 29.2 and has submitted that the incentive under various heads under 29.2 is available to all the industrial units which come into commercial production during the period prescribed under the Industrial Policy, 2001 and there is no exclusion with respect to mega unit. He has also submitted that exclusion having not been made in specific clauses of the policy i.e. 29.2 and 29.5, such exclusion cannot be read into these provisions merely because the petitioner has been granted the benefit of capital investment incentive under clause 29.11 being a mega unit.

c) The order issued by the Industry Department as contained in memo No. 1885 dated 10.06.2003 gives a formula for the purposes of grant of capital investment subsidy but no such formula has been prescribed for the remaining portion of benefit under the clauses 29.5, 29.6 and 29.9 and these are left for negotiation.

d) The policy was framed by the State Government and no follow up notification was issued in connection with grant of benefit under the policy in terms of clause 29.5 and no follow up rules were framed for such purpose and therefore the petitioner cannot be deprived of the benefit of the policy merely because the State has not acted upon in terms of the Policy by framing rules and issuing notification.

e) The learned counsel has relied upon the judgment passed by the Hon'ble Supreme Court in the case of ***State of Bihar and Others v. Suprabhat Steel Ltd. and Others*** reported in ***(1999) 1 SCC 31*** and submits that similar view has been taken by the Hon'ble Supreme Court in the case of ***State of Orissa and others vs. Tata Sponge Iron Limited*** reported in ***(2007) 8 SCC 189.***

f) The learned counsel has further submitted that the aforesaid notification dated 02nd of August, 2005 has given the incentive and is known as Jharkhand Mega Project Incentive Rules, 2005 and the application for claiming capital investment subsidy by mega project is a part of such rule but no application was prescribed under the said rule with respect to other incentives to mega industries. Therefore, the petitioner had applied under Jharkhand Industrial Policy Rules 2003 to claim benefit under clause 29.5 of the Industrial Policy. He has referred to rule 4.3 of Jharkhand Industrial Policy Rules 2003. A copy of the said rules has been produced before this Court. He submits that such rule has been notified vide memo no. 968 dated 26.03.2003. He submits that not only the rules were framed but the procedure to be followed for the purpose of grant of interest subsidy were also provided. He has also submitted that the interest subsidy in terms of clause 29.5 was also quantified by the respondents but was denied solely on the ground that there was no negotiation for giving such benefit.

g) The learned counsel relied upon his pleadings in writ petition being W.P. (C) 3423 of 2015 contained in paragraph 20 to 22,

28, 30 and 33 and has submitted that similar statements have been made in the other connected writ petitions which relate to different financial years. He submits that for each year the petitioner is claiming Rs. 1 Crore, which is the maximum permissible incentive of interest subsidy.

h) The learned counsel has reiterated his submissions which was made on 28.10.2024.

i) The learned counsel has relied upon following judgments: -

Coastal Paper Limited vs Commissioner of Central Excise Vishakhapatnam reported in ***(2015) 10 SCC 664*** paragraph 1, 2, 3, 10, 11, 15, 23 and 24 to submit that the Policy is to be interpreted and purposive construction of the Policy is to be given effect by this Court. He submits that purposive interpretating has been extended even for interpretation of tax exemption notification. On the same point, another judgment is ***Government of Kerala and Another v. Mother Superior Adoration Convent*** reported in ***(2021) 5 SCC 602*** paragraph 1, 4, 11, 13, 14, 15, 19, 26, 27 and 28.

State of Jharkhand and Others vs Brahmputra Metallics Limited, Ranchi **reported in** ***(2023) 10 SCC 634*** paragraph 20, 23, 32, 34, 36, 38, 48, 49 and 50 to submit that State cannot blow hot and cool at the same time; once by extending certain benefit through the Policy and thereby denying the benefit by inaction. He has also submitted that the judgment elaborately deals with the concept of promissory estoppel and legitimate expectation and has held that two principles operate in different fields; promissory estoppel is essentially a shield against the action of the other side and legitimate expectation itself can be a cause of action**;** once such legitimate exception is established even in the case of action of State in connection with private person, the

same assumes the status of public interest and can be enforced.

j) The learned counsel referred to paragraph 16 to 31 of the writ petition to submit that the fault was completely on the part of the State in not acting as per the scheme and not undertaking negotiation with the parties and therefore, the argument of the State that the petitioner was at fault is not correct.

Findings of this Court.

A. The Facts.

6. The petitioner has established a mega unit in the State of Jharkhand with an investment of more than 50 crores and the commercial production has been duly determined by the office of respondent No. 2 on 08.08.2008 vide memo No. 2447 dated 22.10.2008 (Annexure-2). The petitioner had taken prior permission of State of Jharkhand to establish the 'mega unit' and was entitled to the benefit of the ***special package*** towards capital investment subsidy pursuant to the ***Jharkhand Industrial Policy, 2001 (hereinafter referred to as the Policy of 2001)***. It is the further case of the petitioner that they applied for grant of ***special package*** with respect to capital investment subsidy and an amount of Rs. 5.43 crores were duly sanctioned towards capital investment subsidy under ***special package*** and was disbursed to the petitioner.

7. It is the case of the petitioner that under the ***special package*** framed for 'mega unit' although it was stated that other fiscal incentives will be provided under the Policy of 2001 including interest subsidy under clause 29.5 pursuant to negotiation but no such exercise was undertaken by the State of Jharkhand regarding negotiation for grant of interest subsidy to 'mega units'. It is their further case that a meeting was held under the chairmanship of the Chief Secretary, Jharkhand as back as on 17.09.2008, proceeding of which was communicated to concerned department vide memo No. 2269 dated 27.09.2008, wherein it was decided that with respect to other subsidies admissible under the Policy of 2001 including interest subsidy, the industrial department

shall frame appropriate proposal and shall take appropriate approval of the State of Jharkhand but no proposal was framed by Industrial Department entering into negotiations with new Industrial Units having status of ***'mega unit'*** for grant of benefit of interest subsidy. The specific case is that since no negotiation was initiated on the part of the State for interest subsidy under ***special package***, the petitioner is entitled to claim interest subsidy under clause 29.5 under the Policy of 2001.

8. The writ petitioner in the different writ petitions was initially filed seeking a direction upon the respondents to process the application for grant of interest subsidy in terms of clause 29.5 of the Policy of 2001 to the extent of Rs.1.00 crore for each financial year from 2008-09 to 2012-13 and also seeking a declaration that in absence of any 'Special Package' framed for mega units, the subsidies which are available to a new industrial unit under Policy of 2001 including interest subsidy under clause 29.5 is also admissible to a mega unit under the Policy of 2001. However, in the counter affidavits, the respondents placed the order rejecting the claim of interest subsidy under clause 29.5 to the mega unit of the petitioner on the ground that there has been no negotiation with regard to grant of interest subsidy, the petitioner has also challenged such order of rejection of claim of interest subsidy under clause 29.5.

9. The core issue is,

> ***Whether the petitioner is entitled to 'interest subsidy' under the general provisions of clause 29.5 of the Policy of 2001 although the petitioner is a mega industrial unit and has been extended the benefit of under the special package under clause 29.11 meant for 'mega industrial unit'?***

10. It has been argued that the stand of the respondents that the petitioner is not entitled for the benefit of interest subsidy under clause 29.5 of the Policy of 2001 since there has been no negotiation regarding payment of interest subsidy, is contrary to the intention of the Policy. It is their further argument that the petitioner having never been extended the incentive of interest subsidy under the special package is entitled for

interest subsidy under clause 29.5 as the said incentive was only admissible once to a unit and if the petitioner would have been extended the benefit of interest subsidy under special package pursuant to negotiation with the State Government, the petitioner would not have been entitled for interest subsidy under clause 29.5 of the Policy of 2001. The learned counsel for the petitioner has tried to impress upon this Court that subsidy by way of special package was in addition to the subsidy already provided under the Industrial Policy of 2001 subject to the only rider that particular incentive was only admissible once to a unit. Meaning thereby that a unit cannot avail one nature of subsidy both under the special package and also under the general provisions of the Policy of 2001 but interest subsidy having not been granted under the special package is to be allowed under the general provisions. It has also been argued that the action of the State in rejecting the claim of interest subsidy on the ground of non-negotiation between the petitioner and the State is amenable to challenge on the principles of doctrine of substantive legitimate expectation as the action of the State is manifestly unfair and arbitrary and is violative of Article 14 of the Constitution of India. It has been argued that the State having held solemn representation under its Policy of 2001 to extend incentives to unit being established during the tenure of the Policy of 2001 cannot deprive the industrial units from legitimate entitlement under the policy on the sole ground that it contemplated to offer certain better incentives in respect of certain kinds of industries i.e. Mega Units on the basis of negotiation on case-to-case basis.

11. On the other hand, it is the case of the respondents that the interest subsidy could be available to the petitioner through negotiations only in terms of the clause 29.11 read with the resolution of the Department of Industries issued vide Memo No. 1885 dated 10.06.2003 and the Mega Project Rules of 2005 as a part of ***special package*** and the petitioner having set up a ***'Mega Unit'***, it is not open to the petitioner to claim interest subsidy under the general provisions and outside the scope of the scheme of ***special package***.

12. The issue has to be decided in the light of the scheme of the Policy of 2001 read with follow-up action of the respondents, that is, resolution issued by the Department of Industries vide Memo No. 1885 dated 10.06.2003 and also Mega Project Rules of 2005 and the action taken by the petitioner pursuant thereto.

B. <u>The scheme of fiscal incentives under Policy of 2001 read with resolution of the Department of Industries issued vide Memo No. 1885 dated 10.06.2003 and Mega Project Rules of 2005</u>

13. The State of Jharkhand formulated the Policy of 2001 with an object to accelerate industrial development of the State of Jharkhand. The Policy of 2001 was initially effective from 15.11.2000 to 31.03.2005 and the benefit under the policy was extended up to 31.03.2011.

14. The dispute in the present cases relates to fiscal incentives as provided under clause 29.0 of the Policy of 2001. Clause 29.0 of the Industrial Policy has as many as 11 sub clauses running from 29.1 to 29.11. Clause 29.2 gives a list of various types of incentives being offered with a clear indication that such incentive shall be admissible only once to a unit which comes into production during the period the Policy of 2001 remains effective. The list interalia includes capital investment incentive, interest subsidy, exemption from stamp duty and registration. Clause 29.0, 29.1, 29.2, 29.3, 29.5 and 29.11 of the Policy of 2001 are quoted as under: -

> ***"29.0 FISCAL INCENTIVES.***
>
> ***29.1*** *There is a dire need for the new born state of Jharkhand to accelerate industrialisation in the back ground of lost opportunities and non-realisation of its industrial potential.*
>
> ***29.2*** *The types of incentives which are being offered are given below. Such incentives shall be admissible only once to a unit, which comes into commercial production during the period this policy remains effective:*
>
> *1. Capital Investment Incentive*
> *2. Captive Power Generating Subsidy*
> *3. Interest Subsidy*
> *4. Stamp Duty and Registration*
> *5. Employment Generation Based Incentives*

6. Special Incentives for Thrust Areas/EOU and SC/ST/Women/ Ex-Servicemen and Handicapped Persons.
7. Feasibility Study _ Project Report Cost Reimbursement Subsidy
8. Pollution Control Equipment Subsidy
9. Incentive for Quality Certification

29.3 CAPITAL INVESTMENT INCENTIVE

The capital investment incentive shall be admissible to small and medium scale industries. The details of such incentives are as follows:

Sl. No.	***Incentive***	***Category***	***Maximum Incentive (%)***	***Financial Limit (Lakhs)***	***Special Benefits***
1	*Capital Investment Incentive (For Small & Medium Scale Industries)*	*A* *B* *C*	*15* *20* *25*	*15* *20* *25*	*Additional 5% incentive over and above with a cap of Rs. 5 lakhs in thrust areas, 100% Export Oriented Units, SC/ST Entrepreneurs, Women Entrepreneurs, Handicapped persons and Ex-servicemen shall be admissible.*

29.5 INTEREST SUBSIDY

The objective of providing this subsidy is to bring down interest cost of industry for the period an industry is most hard pressed This subsidy is aimed to encourage industry to continuous growth rather than stagnate and contribute its share of prosperity to the state.

The interest subsidy admissible to new industries shall be admissible in the following manner on the interest actually paid to be financial institution / banks on loans taken by such new industry:

Sl. No.	*Incentive*	*Category (%)*	*Maximum Incentive*	*Financial Limit (Lakhs)*
1	*Interest subsidy*	*A* *B* *C*	*25* *50* *60*	*The subsidy shall be limited to a sum of Rs. 100 lakhs per annum provided the total interest subsidy shall not exceed 2% of the total sales amount made in the State of Jharkhand and/ or in course of interstate sales as supported by the certificate/ document issued by the competent commercial tax*

				authority. This subsidy shall be admissible for a period of 5 Years of all categories of industries from the date of commercial production.

29.11 MEGA UNITS:
Special packages shall be formulated for the new projects with an investment of more than Rs. 50 crores on case-to-case basis through direct negotiation with prospective investors."

15. Annexure-1 to the Policy of 2001 deals with definition of 'Effective Date'. The 'Effective Date' means 15th November 2000. The 'existing industrial unit' has been defined to mean an industrial unit which has gone into commercial production before the effective date and 'new industrial unit' has been defined to mean an industrial unit which has come into commercial production ***between 15.11.2000 and 31.03.2005***. **'Mega Unit'** has been defined to mean an eligible new unit of special characteristics set up ***on or after the 15th November 2000*** with investment exceeding Rs. 50.00 crores. Some of the definitions as contained in Annexure- 1 to the Industrial Policy are quoted as under: -

"1. ***EFFECTIVE DATE*** *Effective date means 15th November 2000 from which date the new State of Jharkhand has been created, the date on which the provision of this Policy come into force, i.e. November 15, 2000. This Policy will remain in force till 31st March 2005.*

3. ***EXISTING INDUSTRIAL UNIT*** *Existing Industrial Unit means an industrial unit which has gone into commercial production before the effective date.*

4. ***NEW INDUSTRIAL UNIT*** *New Industrial Unit means an industrial unit which has come into commercial production between 15th November, 2000 and 31st March, 2005.*

10. ***SMALL SCALE INDUSTRY (SSI)***
"Small Scale Unit" means a unit having investment up to the limit as prescribed by the Govt. of India from time to time.

11. ***LARGE/ MEDIUM SCALE UNIT***

"Large/ Medium scale unit" means a unit having investment up to the limit as defined by the Government of India from time to time.

*14. **MEGA UNIT** "Mega Unit" means an eligible new unit of special characteristics set up on or after the 15th November 2000 with investment exceeding Rs. 50.00 crores.*

16. As per clause 29.2, the fiscal incentives shall be admissible only once to a unit, which comes into commercial production during the period this policy remains effective. It is not in dispute that the policy remained effective till 31.03.2011. Each of the sub heading under clause 29.2 running from serial No. 1 to 9 have been considered separately right from clause 29.3 to clause 29.10.

As per **clause 29.3**, capital investment incentive is admissible to small and medium scale industries.

As per **clause 29.4**, captive power generating subsidy admissible to new industries in various categories of districts mentioned therein and such incentive does not appear to be confined to small and medium scale industries.

Clause 29.5 provides for 'interest subsidy'. As per clause 29.5, the object to provide this subsidy is to bring down interest cost of industry for the period an industry is most hard pressed. The interest subsidy has been made admissible to new industries and is admissible in the manner mentioned therein on the interest actually paid to the financial institution/banks on loan taken by such new industries. As per the scheme, the interest subsidy is limited to a sum of Rs. 100 lakhs per annum provided the total interest subsidy shall not exceed 2% of the total sales amount made in the State of Jharkhand and/or in course of inter-state sales. The subsidy is made admissible for a period of 5 years for all categories of industries, that is category A, B and C, from the date of commercial production but for different categories of industries, different percentages have been provided.

Clause 29.6 deals with incentive on stamp duty and registration of documents within State relating to purchase/acquisition of land and building for setting up a new unit.

Amongst the various types of incentives as enumerated in clause 29.2 of the industrial policy, only one such incentive is limited to Small and Medium Scale Industries under Clause 29.3 under the head 'Capital Investment Incentive'. Further clause 29.5 dealing with interest subsidy, with which we are concerned in the present case, has its own terms and conditions.

17. There is yet another clause i.e. clause 29.11 dealing with ***'Mega Units'.*** Clause 29.11 provides that ***special package*** shall be formulated for the new projects with an investment of more than Rs. 50 crores on case-to-case basis through direct negotiation with prospective investors.

18. In order to give effect to the provisions of clause 29.11 of the Policy of 2001, the Department of Industries issues resolution being Memo No. 1885 dated 10.06.2003 wherein ***special package*** for mega industries was notified. This was to implement and following provisions were made: -

> *(i) Capital investment subsidy*
> *(ii) Other three subsidies for different categories of industries were also available pursuant to negotiation, namely-*
> *(a) interest subsidy under clause 29.5*
> *(b) stamp duty and registration subsidy under clause 29.6 and*
> *(c) pollution control equipment subsidy under clause 29.9.*

19. Thus, the interest subsidy under clause 29.5 of the Policy of 2001 was made available to mega units under ***special package*** under clause 29.11 of the Policy of 2001, but through negotiations on case-to-case basis. The capital investment subsidy under clause 29.11 for ***special package*** to mega units was specifically provided under different categories with allowable percentages of capital investments and maximum permissible limit and three categories of subsidies i.e. interest subsidy, stamp duty and registration subsidy and pollution control equipment subsidy were to be granted under ***special package*** to

mega units only upon negotiation. The scheme under the aforesaid resolution dated 10.06.2003 does not contemplate grant of any other category of subsidy except the aforesaid four category of subsidies under clause 29.11 through negotiations on case-to-case basis although clause 29.2 mentions about a few more subsidies total 9 in number. It was also mentioned in the resolution dated 10.06.2003 that the proposal from the mega unit will be processed in terms of resolution dated 10.06.2003 under the Policy of 2001 and in order to implement the same appropriate rules will also be formulated. Thus, the resolution dated 10.06.2003 clearly provided that the proposal for fiscal incentives relating to aforesaid four categories of subsidies including interest subsidy were to come from the mega units.

20. The said resolution dated 10.06.2003 was followed up by rules contained in Notification dated 02.08.2005 issued by the Department of Industries, namely, ***Jharkhand Mega Project and Incentives Rules, 2005 (hereinafter referred to as the 'Mega Project Rules of 2005').*** The Mega Project Rules of 2005 has various definitions included the definition of 'New Industrial Unit' under rule 2(2.3) which is quoted as under: -

> *"**2.3 NEW INDUSTRIAL UNIT***
> *New Industrial Unit under Mega Project shall mean and include such Industrial units where investment in Fixed Assets consisting of Land, Civil Construction, Plant & Machinery and Other Capital Equipment is more than Rs. 50 Crores and has gone into production on or after 15.11.2000."*

21. The perusal of the definition of 'New Industrial Unit' as defined under the Mega Project Rules of 2005 reveals that no outer date for coming into production has been prescribed for 'mega project'. Even in the definition of 'Mega Unit' as defined under the Policy of 2001 no outer date of commencement of commercial production has been mentioned. However, the 'new industrial unit' as defined under the Policy of 2001 and applicable for industries in general prescribes that a 'new industrial unit' has to come into commercial production during the period between 15.11.2000 to 31.03.2005 and the period of the policy

was extended till 31.03.2011. Thus, the definition of 'new Industrial Unit' for mega unit is not the same as the general definition of 'new Industrial Unit' under the Policy of 2001.

22. Further, Rule 2.14 of Mega Project Rules of 2005 provides that Schedule 1 of Policy of 2001 shall apply mutatis mutandis for the purposes of categorisation of backward areas. The ***Expansion/Modernization/Diversification*** and also ***Incremental production*** of existing industrial unit under 'Mega Project' has been specifically defined under the Mega Project Rules of 2005. The applicability of the Mega Project Rules of 2005 has also been provided in terms of Rule 3 which makes the Mega Project Rules of 2005 effective from 15.11.2000 and it clearly provides that benefits under the rules shall be available to those units which has gone into commercial production on or after 15.11.2000 or undertaken expansion, diversification or modernization after 15.11.2000. The benefit under the Mega Project Rules of 2005 has also been made available to weak but not sick or loss-making unit which has gone into commercial production on or after 15.11.2000. The incentives to new industrial unit undertaking expansion, diversification and modernization or weak unit have been provided under Rule 4 which has different categories area wise, coupled with other conditions including maximum subsidy admissible in terms of money. It has also been provided under Clause 4.1.2 that the fiscal incentives will be decided on a case-to-case basis by the Government of Jharkhand. Rule 5 deals with methodology/procedure for capital investment subsidy and the rules specifically provides the format for an application for claiming capital investment subsidy by mega industrial projects.

23. This Court finds that the Mega Project Rules of 2005 is a complete code with respect to extending fiscal incentives by way of ***special package*** to mega units and the restrictions or conditions which are otherwise provided for other industries under general provisions of the Policy of 2001 to avail different fiscal incentives is not applicable to special package under ***mega projects*** except to the extent and the

manner in which they are to be extended and specifically provided for in the Mega Project Rules of 2005 as a part of the ***special package*** on case to case basis.

24. Clause 29.2 of the Policy of 2001 applicable to the industries in general provides for the types of fiscal incentives which are being offered and there are as many as 9 different fiscal incentives enumerated therein but the scheme formulated under clause 29.11 for ***'Mega Unit'*** as ***special package*** through resolution dated 10.06.2003 and follow-up Mega Project Rules of 2005 offers only 4 fiscal incentives to be extended through negotiation and it has also been provided under rule 4.1.2, 4.2.2, 4.3.2 of Mega Project Rules of 2005 that the fiscal incentives will be decided on a case-to-case basis by the Government of Jharkhand. The four fiscal incentives are offered as a ***special package*** just like a bouquet of fiscal incentives to ***'Mega Unit'*** on case-to-case basis and are subject to conditions mentioned in Mega Project Rules of 2005 itself irrespective of conditions prescribed for availing those incentives by other industries as prescribed through clause 29.2 to 29.10. In case, the argument of the petitioner that the petitioner is entitled to benefit of interest subsidy directly under the general provisions of clause 29.5 of the Policy of 2001 is accepted, it would amount to giving a complete go by to the scheme specifically designed for ***'Mega Unit'*** formulated under clause 29.11 of the Policy of 2001 read with the aforesaid resolution dated 10.06.2003 read with Mega Project Rules of 2005 which specifically provides that the enumerated three incentives including interest subsidy was to be provided on negotiation on case to case basis. In case the interpretation and submissions of the petitioner is accepted, the same would amount to giving a complete go by to the scheme of clause 29.11 which provides for ***special package to 'Mega Unit'*** on case-to-case basis through direct negotiations with the prospective investors.

25. Thus, fiscal incentives to mega projects under clause 29.11 of the Policy of 2001 is available on case-to-case basis through negotiations and are not available as a matter of right. This Court is also of the

considered view that persons opting to avail the benefits as ***'Mega Unit'*** as ***special package*** under clause 29.11 are required to avail the fiscal benefits only through the ***special package*** under clause 29.11 which provides conferment of fiscal benefits as ***special package*** on case-to-case basis through negotiations from prospective investors and cannot be permitted to avail one fiscal incentive under the ***special package*** in terms of clause 29.11 and also claim another fiscal incentive under general provision of the Policy of 2001 particularly those which are specifically provided for under the ***special package*** (e.g. interest subsidy) and made available on negotiations on case to case basis.

26. There can be a situation where one or the other industry under mega project is extended all or only some of the four fiscal incentives contemplated under Mega Project Rules of 2005 through negotiations as a part of ***special package*** on case-to-case basis. There is no concept of a common/same package of fiscal incentives to all the ***'Mega Units'*** under clause 29.11 read with the resolution dated 10.06.2003 and also Mega Project Rules of 2005. Different mega units may have different requirement of fiscal incentives and hence their entitlement of fiscal incentives are to be decided on case-to-case basis.

27. This Court finds that Annexure 2 is the certificate of determination of commercial production issued to the petitioner. It was issued within the category of ***'mega project'*** under the Industrial Policy 2001. It has been specifically recorded in the certificate that the petitioner had given the required proposal for investment as a ***'Mega Unit'*** in terms of Policy of 2001 Clause 29.11 read with Memo No. 1885 dated 10th June, 2003 to the Industry Department and permission was granted to the petitioner. However, the proposal submitted by the petitioner for investment as a ***'Mega Unit'*** has not been placed on record which could have thrown some light as to whether the petitioner had made any proposal for claiming interest subsidy as a part of proposal for investment as a ***'Mega Unit'*** in terms of clause 29.11 of the Policy of 2001.

28. The details of the investment and date of trial production and date of commercial production are recorded in the certificate, total being Rs. **7343.32** lakhs in different phases and having different dates of commercial production is as under: -

Sl No.	**Name of the Unit**	**Date of Trial Production**	**Date of Commercial Production**
1	Ferro Alloy Silico Mn Unit (1st Unit) -do- (2nd Unit)	24.03.2005 23.07.2008	26.03.2005 07.08.2008
2	Induction Furnace Unit	21.06.2005	25.06.2005
3	Rolling Unit: Rod Coil	19.04.2006 25.07.2008	02.05.2006 08.08.2008
4	Mini Blast Furnace Unit	13.03.2008	27.03.2008

29. The certificate also reveal that all the aforesaid units have been treated as one project and therefore, the starting date of commercial production of last rolling unit i.e. 08.08.2008 was recommended and was taken as the date of production of ***Mega Project*** of the petitioner.

30. The aforesaid certificate regarding grant of commercial production was processed in terms of Clause 29.11 of Policy of 2001 upon approval of the proposal of the petitioner and after prior permission has set up the ***mega project*** whose date of production of different units were ranging from 26.03.2005 to 08.08.2008 and the date of production of the consolidated project as a whole was taken as 08.08.2008. In terms of the said certificate of commercial production as ***mega project***, the capital investment subsidy was duly sanctioned as a part of ***special package*** although the petitioner was otherwise not entitled under clause 29.3 of the Policy of 2001 which was available only to Small and Medium Scale Industries.

31. A proceeding dated 17.09.2008 has been placed on record which was a High-Level Committee headed by the Chief Secretary, State of

Jharkhand and the meeting was in connection with grant of capital investment subsidy and other subsidies to mega units. As per the said minutes of meeting the following decisions was taken: -

i) In view of the special package offered to the mega unit the concerned department would prepare a check-list which would project the availability of fund through budget.

ii) For every industrial unit a separate proposal were to be placed for consideration accompanied with inspection report and

iii) For other incentives including interest subsidy for which there is a provision for giving incentives upon negotiation. The proposal be prepared and placed by the concerned department before the government.

32. The petitioner has not placed on record the proposal of the petitioner by virtue of which the 'mega project' of the petitioner was approved to enable this Court to find out as to whether the proposal included claim for interest subsidy. As explained above, the resolution dated 10.06.2003 provides that it was on the part of the units to submit their proposal for consideration.

33. This Court finds that much after grant of capital investment subsidy under clause 29.11 of the Policy of 2001 and after expiry of the period of policy, the petitioner filed an application dated 24.09.2011(Annexure-3) for grant of interest subsidy by referring to the various certificates issued by the department but no reference was made to the certificate of commercial production issued to the petitioner as 'mega project' under clause 29.11 of the policy. The application was made under the general provisions of clause 29.5 Policy of 2001. This was irrespective of the fact that the petitioner was granted the certificate of production as ***'Mega Unit'*** in terms of the proposal of the petitioner and the proposal was approved by the respondents. The petitioner was not granted the certificate of production under the general provisions of the Policy of 2001. The petitioner consciously opted to avail the benefits of the Policy of 2001 under the special package available for ***'Mega***

Unit' under clause 29.11 of the Policy of 2001 and after availing the benefits thereunder applied for grant of interest subsidy vide annexure-3 under general provisions of the Policy of 2001 and claimed interest subsidy as a matter of right by referring to the principles of promissory estoppel/ legitimate expectation by omitting to go through procedure of negotiation for grant of such benefits to ***'Mega Unit'*** through ***special package*** which was available even for interest subsidy through negotiations on case-to-case basis. This has been done without referring to the proposal of the petitioner which led to approval of the 'mega project' and as to whether the proposal of the petitioner ever included grant of interest subsidy which could be subject matter of negotiation in terms of clause 29.11 of the Policy of 2001 on case-to-case basis.

34. This Court finds that the aforesaid resolution dated 10.06.2003 and the Mega Project Rules of 2005 clearly reveal that fiscal incentives/subsidies to 'mega projects' in terms of clause 29.11 of the Policy of 2001, that is, capital investment subsidy and other fiscal incentives including interest subsidy were offered as a package of incentives for 'mega industries' by way of ***special package*** which had nothing to do with the restrictions/conditions imposed for grant of fiscal incentives to the other industries and the 'mega units' having the required certificate under Mega Project Rules of 2005 were to be governed by the Mega Project Rules of 2005. The rules clearly provided that fiscal incentives will be decided on case-to-case basis by the Government of Jharkhand. It was on account of the ***special package*** under ***'mega project'*** only that the petitioner was granted capital investment subsidy though the petitioner was not entitled to capital investment subsidy under clause 29.3 which was available only to small and medium scale industries. The petitioner was granted capital investment subsidy as a part of the ***special package*** for mega units and the ***special package*** so framed provided for grant of all nature of incentives falling under clause 29.3. 29.4, 29.5 and 29.6 on negotiation as ***special package.***

35. This Court is of the considered view that having been granted capital investment subsidy as a part of the ***special package*** under clause 29.11 read with resolution dated 10.06.2003 and Mega Project Rules of 2005, it is not open to the petitioner to contend that they would be entitled to interest subsidy under clause 29.5 irrespective of the fact that they have not been extended interest subsidy in terms of the Mega Project Rules of 2005 which under the rules could be extended to the mega units only through negotiations.

36. The Mega Project Rules of 2005 specially framed for 'mega projects' under Policy of 2001 are not silent so far as the other incentives including interest subsidy are concerned. Rather there is a specific provision that 4 out of 9 fiscal incentives including interest subsidy would be available through negotiation. Thus, for 'mega projects', the entitlement to claim interest subsidy was dependent upon the result of negotiation and could not have been claimed as a matter of right.

37. There is no such statement made in the entire records that the petitioner ever gave any proposal for negotiation for grant of interest subsidy in terms of resolution dated 10.06.2003 read with Mega Project Rules of 2005 and having not taken any step for claiming such benefits through negotiations it is not open to the petitioner to invoke clause 29.5 directly claim the interest subsidy as a matter of right under the general provisions. It is not open to the petitioner to avail the capital investment subsidy under the ***special package*** deal for 'mega projects' under clause 29.11 and simultaneously claim interest subsidy under general provisions by referring to clause 29.5 of the policy without following the procedure of claiming interest subsidy through negotiation. It has already been held in paragraph 23 above that the scheme for grant of ***special package*** deal for 'mega projects' under clause 29.11 is a complete code in itself.

38. This Court is of the considered view that the State has already acted in terms of clause 29.11 of the Policy of 2001 and the parties have acted pursuant thereto and the petitioner has already availed the benefit of capital investment subsidy as a part of ***special package*** in terms of

clause 29.11 as per the proposal submitted by the petitioner to set up ***'Mega Unit'*** and approved by the respondents. There is no cause of action for the petitioner to invoke the principles of promissory estoppel/legitimate expectation to direct the respondents to extend interest subsidy to the petitioner under the general provisions as a matter of right and give a complete go by to the process for negotiation to claim such benefit . Accordingly, the judgements relied upon by the petitioner relating to point of promissory estoppel/ legitimate expectation do not apply to the facts and circumstances of this case.

39. In the present case, the claim for capital investment subsidy by way of ***special package*** was extended to the petitioner under clause 29.11 which was otherwise not available to the petitioner under the general provisions of clause 29.3 as the benefit of capital investment subsidy under clause 29.3 was confined to small and medium scale industries and not available to large scale industries; the maximum permissible amount/limit of capital investment subsidy and also the terms and conditions are also different from that of the general provisions under clause 29.3 of the Policy of 2001.

40. Once the unit falls under ***'Mega Unit'*** and avails the benefits in terms of resolution dated 10.06.2003 and the Mega Project Rules of 2005 whereby ultimately no benefit was extended under clause 29.5, 29.6 and 29.9 through negotiations on case-to-case basis, such benefits were not available as a matter of right under clause 29.5, 29.6 and 29.9 which are available to other industries as a matter of right under general provisions of the policy.

41. The representation claiming interest subsidy under clause 29.5 through general provisions of the policy was rightly rejected by the impugned order by stating that there has been no negotiation with respect to grant of interest subsidy to the petitioner.

42. In view of the aforesaid findings, this Court is of the considered view that rejection of claim of the petitioner for grant of interest subsidy through general provisions of the Policy of 2001 under clause 29.5 is neither arbitrary, nor against the Policy of 2001 nor hit by the principles

of promissory estoppel/ legitimate expectation. It is held that the petitioner could have claimed interest subsidy for its ***'mega project'*** only through negotiations in terms of clause 29.11 read with the resolution of Department of Industries issued vide Memo No. 1885 dated 10.06.2003 read with Mega Project Rules of 2005 and not through the general provisions as a matter of right under clause 29.5.

43. As a cumulative effect of the aforesaid findings, the issue framed is answered by holding that the petitioner is not entitled to interest subsidy through general provisions of the Policy of 2001 under clause 29.5 and the impugned order of rejection of such claim does not call for any interference.

44. Accordingly, there is no merit in these batch of writ petitions which are hereby dismissed.

45. Pending I.A., if any, stands closed.

(Anubha Rawat Choudhary, J.)

Mukul/AFR