

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

252

CWP-5575-2023

Date of decision: 13.03.2024

M/S MEDI GAS CORPORATION

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Chirag Girdhar, Advocate
for the petitioner.

Mr. Aditya Sharda, DAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present writ petition is for directing the respondents to disburse 30% State Capital Investment Subsidy amounting to Rs. 24,05,000/- alongwith interest as sanctioned to the petitioner-Unit vide sanction letter dated 01.02.2011 under the Industrial Policy, 1996 and for setting aside the communication dated 18.11.2022 whereby the genuine claim of the petitioner for release of the sanctioned amount has been rejected for invalid and unsustainable reasons.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner had submitted an application for grant of Investment Incentive (Capital Subsidy) under the Punjab Industrial Incentive Code as per the Industrial Policy of 1996 on 14.05.2001 for expansion of its business. The petitioner intended to set up a plant for manufacturing Nitrous Oxide Gas L.P. at village Jandaili (H.B. No. 225), Tehsil & District Ludhiana which was declared as Rural Industrial Focal Point. The unit of the petitioner was classified under the Head “Pharmaceutical Industry” and was one of the fields of thrust areas being developed by the State of Punjab. The above said unit had been established and had achieved commercial production on regular basis w.e.f. 15.12.2000. The details of the capital investment in the land, building and machinery etc. was duly furnished to the competent authority and upon consideration of the entire documentary evidence appended alongwith the application and finding the petitioner eligible, the respondent-State of Punjab sanctioned an amount of Rs. 24,05,000/- as a capital subsidy vide memo No. Inc-1/Sub/LDH/M-259/2701-B dated 01.02.2011. The petitioner thereafter submitted various representations for release of the abovesaid sanctioned subsidy, however, the same was not disbursed even though the petitioner had submitted all necessary documents including the balance sheets of the year 2005-06; 2006-07; 2007-08 and 2008-09 on 30.03.2011, as demanded by the respondent-Department.

3. He further contends that originally, the petitioner was a partnership firm and one Parmod Kumar Mehta was the partner in the firm. However, after passage of some time, there was a change in the constitution of the firm and the old partnership was dissolved on 02.06.2012 and a new

partnership deed was thereafter executed with Vinay Mehta and Pankaj Mehta sons of Parmod Mehta, Parmod Mehta son of Murari Lal Mehta. The said details were also furnished to the office of the respondents and it was informed that there was no sale of unit. The same is being run by the family members of the original partner Parmod Kumar Mehta. All the requisite additional documents had also been duly furnished to the respondent-Department. The respondents also sought certain additional information vide communication dated 05.11.2015 in light of the judgment passed by this Court in the matter of *M/s Balak Gases Oxygen Plant, Mandi Gobindgarh and others*". The requisite information i.e. the account name, bank account number alongwith IFSC Code etc., for facilitating disbursement of the capital subsidy, were also furnished to the respondent-Department, however, yet, the subsidy was not released. Finally, the petitioner was constrained to send a legal notice dated 01.09.2022 calling upon the respondents to pay the subsidy, which was replied to vide communication dated 18.11.2022. The claim of the petitioner for release of sanctioned amount of capital subsidy was conveyed to have been denied on the ground that there has been a change of the composition of the partnership firm and that it has become a sole proprietorship from the erstwhile partnership concern. The operative part of the impugned communication is extracted as below:

From

*Director of Industries & Commerce, Punjab,
Chandigarh.*

To

*Sh. Rajesh Kumar Girdhar,
Advocate,
Punjab and Haryana High Court,
Room No. 11, New Bar Complex,*

*Resi. Cum-Off. Kothi No. 1335
Sector 37-B, Chandigarh.*

*Memo No. Inc/Sub/Ludhiana/M-259/5420-A
Dated 18.11.2022*

*Subject: Legal Notice –M/s Medi Gas Corporation,
Jandiali, Chandigarh Road, Ludhiana.*

Please refer to your legal notice dated 01.09.2022 vide which legal notice has been send on behalf of M/s Medi Gas Corporation, Jandiali, Chandigarh Road, Ludhiana.

2. In this connection, it is informed that case of the unit was considered by the department as per Operational Guidelines notified on 13-11-2019 and it has been found that Constitution of the unit has been changed from Proprietorship from to Partnership concern and vice versa. Hence, the unit is not eligible for the release of sanctioned amount of capital subsidy as per Operational Guidelines-2019.

3. Therefore, legal notice dated 01.09.2022 served by you on behalf of M/s Medi Gas Corporation, Jandiali, Chandigarh Road, Ludhiana is considered and filed.

4. This is for your information

*Superintendent (Incentive)
For Director of Industries & Commerce
Punjab, Chandigarh*

4. Aggrieved thereof, the present writ petition has been filed.

5. The respondents have filed their reply wherein the factual aspect extracted above is not disputed. It is admitted that the capital subsidy

to the tune of Rs. 24,05,000/- was sanctioned on 01.02.2011 subject to conditions prescribed thereunder and that certain guidelines were also notified by the Government of Punjab under the Industrial Policy of 1978, 1987, 1989, 1992, 1996 and 2003 vide notification dated 13.11.2019. The said guidelines set out specific instances where the Department would be liable to release and disburse the sanctioned capital subsidy or the investment incentive and also the category of entities which would not be entitled for release of such capital subsidy. It is contended that as all partners in the partnership firm had resigned, the composition of the petitioner Industrial Unit has changed to Proprietorship from Partnership and that it is deemed to be a dissolution of the partnership concern. The same disentitled the petitioner for the release of capital subsidy under the operational guidelines of the Government. Hence, a communication dated 18.11.2022 was accordingly sent to the petitioner.

6. Counsel for the petitioner has argued that the stand of the respondent is bad and liable to be set aside *inter alia* on the following grounds:-

i) That the capital incentive was sanctioned in favour of the petitioner on 01.02.2011 and that the petitioner became entitled to release thereof on fulfillment of the terms and conditions prescribed thereunder. Any change in the composition of the unit later in point of time could not be cited as a reason to disallow the subsidy already sanctioned since the delay in disbursement of the subsidy is attributable solely to the respondent themselves.

ii) It is further contended that the guidelines for disbursement of the capital subsidy relied upon by the respondents had been notified

on 13.11.2019 which is nearly 08 years after the capital subsidy had already been sanctioned. He contends that similar guidelines determining eligibility and entitlement of industrial unit for release of capital subsidy were a subject matter of challenge in a batch of writ petitions bearing ***CWP-19007 of 2002*** titled as ***“M/S Balak Gases Oxygen Gas Plant and another versus State of Punjab and others”***.

It was held by this Court that the respondent-State would be estopped from denying the benefits on the basis of operational guidelines issued later in point of time and that it would be estopped from withdrawing the benefits that had accrued in favour of the beneficiary industrial units. He contends that the reliance of the respondent-State on the guidelines issued in November, 2019 could not be used to the impediment of the petitioner and to disentitle the petitioner to the capital subsidy which had already been sanctioned after examining the validity of the application and assessing the eligibility and entitlement of the petitioner to the release thereof.

7. Learned counsel further contends that the objections as regards changes of status of petitioner would not be sustainable since Clause 1.2.2 of the operational guidelines notified by the respondent –State of Punjab in 2019 recognizes a change in constitution of a partnership firm. Merely because one of the partners resigns and his family members have been inducted as partners cannot be construed to mean that the status of the partnership firm becomes that of a sole proprietorship (even for a brief period). The status of the petitioner unit thus is still that of a partnership and that it cannot be construed to be covered under Clause 1.2.3 (2) as relied upon by the respondents.

8. Responding to the same, counsel for the respondent-State contends that Clause 1.2.3 (2) of the operational guidelines of 2019 deals with the issue that where the partners in a particular firm resign from the partnership, the same would be termed as a dissolution of the partnership firm disentitling such firm from seeking release of capital subsidy/investment. He further submits that the impugned decision had been taken by the respondents as per the operational guidelines that have already been notified and that the petitioner has been rightly held disentitled to the release of the subsidy.

9. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present writ petition.

10. It is not in dispute that the capital subsidy to the petitioner was sanctioned on 01.02.2011 and that the said capital subsidy has not been released to the petitioner even till date. The conditions incorporated in the letter sanction of subsidy are extracted as under:-

i) That the unit will supply balance sheets and Sales Tax/Vat Returns for the last five years.

ii) The disbursement will be made on the availability of funds and strictly as per seniority provided that the unit is found to be in working condition/operation at the time of disbursement.

11. The said details were immediately furnished and supplied alongwith letter dated 30.03.2011. The conditions required to be fulfilled was merely the balance sheets of five years preceding the date of sanction. The same does not even empower the State to prescribe any new condition over a period of time.

12. It was nearly two months thereafter that the sole proprietorship by Vinay Mehta was converted into a partnership by induction of the family members as partners on 04.06.2012. It is also noticed that the petitioner-Medi Gas Corporation was working as a Partnership since 17.01.1999. The partnership deed came into being on 07.10.2000 between five persons namely Girish Gupta; Jyoti Gupta; Harbans Lal Gupta; Paramjit Kaur and Parmod Mehta & Sons H.U.F. Later, sons of Parmod Mehta became partners and composition of partners changed on 04.06.2012 but the claim was still being considered valid for release. It was only after issuance of new operational guidelines notified on 13.11.2019 that the respondents found a basis to reject the claim of the petitioner. There was thus no impediment for nearly 08 years since sanction of the capital subsidy.

13. All the requisite documents as asked for by the respondents had been duly supplied to them including the balance sheets upto the year 2009 alongwith communication dated 30.03.2011. Hence, the entitlement of the petitioner is required to be seen as on the date when the capital subsidy was sanctioned to it and the terms and conditions incorporated in the letter of sanction. The operational guidelines issued later in point of time cannot be read into the terms and conditions for the grant of capital subsidy and sanction thereof. Introduction of new terms and conditions would materially alter the Rules of the game after the same is already over. No industrialist can be put to disadvantage by incorporating additional conditions, later in point of time, notwithstanding that the respondent-State has itself been at lapse in complying its own obligation to release the capital incentive subsidy.

14. Such an attempt made earlier on the part of the respondent-State in prescribing additional guidelines for release of subsidy was considered by this Court in the matter of ***“M/S Balak Gases Oxygen Gas Plant and another versus State of Punjab and others”*** bearing ***CWP-19007 of 2002*** which was decided against the respondents vide judgment dated 20.05.2011. The said judgment has already attained finality. Yet another attempt has been made by the respondent-State by notifying fresh operational guidelines to create an artificial distinction regarding eligibility for release of the capital subsidy by introducing certain conditions that did not form part of the original letter of sanction and/or the industrial policy and the Capital Incentive Subsidy Scheme. Such an attempt needs to be deprecated. The relevant extract of judgment in the case of Balak Gases (*supra*) is extracted as under:-

22. *Thus, it would be seen that the State of Punjab has repeatedly admitted its liability to pay the amount of subsidies/incentives to the Industrial Units and sanctioned the amount, but it did not release the same on unalterable grounds of closure of units and non-availability of funds etc. without any legal basis in this relevant connection.*

23. *Ex facie, the argument of counsel for the respondents that in the wake of recommendations of the committees, the State Government has issued the guidelines dated 8.9.2009 to make the payment in public interest, so, the doctrine of promissory estoppel is not applicable in the present case, is neither tenable nor the observations of Hon'ble Apex Court in M/s Motilal Padampat's case (supra). are at all attracted to the facts of the present case, wherein it was observed that "when the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government*

were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and after his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies."

24. Possibly, no one can dispute with regard to the aforesaid observations, but, to me, the same would not come to the rescue of the respondents-State in the instant controversy, as at the same time and in the same judgment, it was also ruled (in M/s Motilal Padampat's case (supra)) in para 24 as under:-

"Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen. The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promisee would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional

*democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned; the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a "high standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations; but, let it be said to the eternal glory of this Court, this doctrine was emphatically negated in the **Indo- Afghan Agencies** case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society.*

Xxx xxxx xxxx xxxx xxxx xxxx xxx

27. *The matter did not rest there. As indicated earlier, the State has already admitted its liability during the course of hearing of the above mentioned writ petitions and have sanctioned and paid the subsidy amount to other industrial entrepreneurs. The petitioner-Industries have also pressed into service the plea of discrimination. In that eventuality, it cannot possibly be saith and State is estopped from denying the legitimate right of petitioner-Industries as well, in view of the analogy of law hidden under section 115 of the Indian Evidence Act, 1872, which envisages that when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. Above-all, the petitioner-Industries are also legally entitled to the same treatment on the principle of equality enshrined in the Constitution of India.*

28. *This is not the end of the matter. The question of applicability of promissory estoppel was considered by the Hon'ble Supreme Court in case Union of India and others v. Anglo-Afghan Agencies etc. AIR 1968 SC 718 and it was held that "we are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional setup no person may be deprived of his right or liberty except in due course of and by authority of law: if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law-common or statute, the Courts will be competent to and indeed will be bound to, protect the rights of the aggrieved citizen."*

29. *Not only that, having considered the various judgments, including the judgment of M/s Motilal Padampat's*

case (supra) (relied on behalf of the respondents) on the point of promissory estoppel, in a recent judgment of U.P.Power Corporation Ltd.'s case (supra), the Hon'ble Apex Court has observed (para 20) as follows :-

"In this 21st century, when there is global economy, the question of faith is very important. Government offers certain benefits to attract the entrepreneurs and the entrepreneurs act on those beneficial offers. Thereafter, the Government withdraws those benefits. This will seriously affect the credibility of the Government and would show the shortsightedness of the governance. Therefore, in order to keep the faith of the people, the Government or its instrumentality should abide by their commitments. In this context, the action taken by the appellant-Corporation in revoking the benefits given to the entrepreneurs in the hill areas will sadly reflect their credibility and people will not take the word of the Government. That will shake the faith of the people in the governance. Therefore, in order to keep the faith and maintain good governance it is necessary that whatever representation is made by the Government or its instrumentality which induces the other party to act, the Government should not be permitted to withdraw from that. This is a matter of faith"

30. Meaning thereby, the doctrine of promissory estoppel is also applicable to the State and its instrumentality/officers. The Rule of estoppel is a principle of law by which a person is held bound by the representation, made by him or arising out of his conduct. If, a person made a statement intending that some other person should act upon it, he will be estopped and will be prevented, from denying the truth of his statement once the other person has altered his position on the basis of the statement. Where any person by his words or conduct willfully causes another to believe in the existence of a certain state of

things, rule of estoppel precludes a person from denying the truth of the statements previously made by him. In order to hold a person bound by estoppel, there should be a representation that a certain state of thing is true and secondly, the person to whom such a representation is made, should have acted on the belief of it.

31. Above being the legal position and material on records, now the short and significant questions, thought important that arises for determination in these cases, are (i) as to whether the principle of promissory estoppel is applicable in the instant case and (ii) whether the State has the power to unilaterally alter the eligibility clause, by means of administrative guidelines, to deny the benefits already accrued to the petitioner-Industries emanating from the Industrial Policies/relevant rules (Annexure P1 and P2) on the grounds of closure of units and non-availability of funds etc. or not?

Xxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx

39. In the present cases, the offer of subsidy is a manner of providing incentives for such investment and an entrepreneur that assumes a business risk in investment, is entitled to believe that the scheme is not an empty promise but rooted on a sound government policy and is squarely covered under the regime of promissory estoppel of the industrial units. The State could not legally be permitted to completely defeat the rights of petitioner-Industries by constant re- appraisal of the scheme retrospectively, that too by issuing administrative instructions of any kind and by its officers by passing the impugned orders. Even in case of those industries, which after several years of operation has perforce to close its business by the only reason that assured subsidy did not reach him or any other valid ground beyond their control. A businessman, who makes investment and obtains loans from the market or financial institution for establishment of the industry, is at least entitled to assume that a portion of debt could be redressed from the

amount of subsidy/incentive and benefits as promised by the State WA emanating from the Industrial Policies and relevant rules framed thereunder.

40. Now adverting to the next celebrated contention of the State counsel that since the respondents have issued administrative instructions/guidelines, altering the original Industrial Policies (Annexure P1) and the relevant rules framed thereunder, so, the petitioner-Industries, as such, are not entitled to the subsidies/incentives contrary to the guidelines, is not only devoid of merit but misplaced as well. Once the Governor has issued the notifications publishing the Industrial Policies (Annexure P1) in Government Gazette and State Govt. notified the relevant rules (Annexure P2) to implement the indicated Policies, then, to my mind, the administrative/executive instructions/guidelines cannot legally be issued, unilaterally to alter the eligibility criteria and imposing such restrictions on the payment of amount of incentives detrimental to already accrued valuable rights of the petitioner-Industries, that too, without issuing any notice and providing adequate opportunity of hearing to them. Such substantive rights of the petitioner- Industries cannot be taken away by issuing the executive instructions/guidelines, which have no sanctity of law and did not contain any legal force. It cannot possibly be denied that only the State Government (not its officers) has the power to amend the rules in a legal manner that too prospectively and even State cannot take away any such rights already accrued to a party by way of subsequent amendment. In the present cases, as the impugned guidelines are based on recommendations of the officers' committees, therefore, the administrative instructions/guidelines will not in any way override the effect and operation of Industrial Policies and relevant rules framed thereunder in this regard by the State.

41. Moreover, the respondents cannot be permitted to keep on changing the eligibility criteria for the benefit emitting from the scheme, which was primarily intended to promote the industrial growth in the specified category of area and industry in general and production and employment in border area in particular. As indicated earlier, the entitlement of petitioner-Industries to claim the incentives and subsidies under the scheme has not been denied and was sanctioned, but the respondents did not release the amount for one or the other untenable grounds grounds in the garb of impugned orders, which are entirely beyond the scope and jurisdiction of the original Industrial Policies and relevant rules framed thereunder. In the same manner, a welfare State cannot possibly be heard to say that the amount was not released on account of paucity of funds with it.

42. In this manner, to my mind, any subsequent administrative instructions/guidelines issued by the State or any orders passed by its officers, impugned in the present writ petitions, which have no sanctity of law and legal force, are illegal, contrary to the Industrial Policies and indicated relevant rules, without jurisdiction and in operative on the rights of the petitioner-Industries. The State cannot deny the release of the amount of incentive/subsidies to them (petitioner-Industries) in this relevant connection.

43. Therefore, there cannot be any gainsaying that the petitioner- Industries did act on the assurance of the State. If the crux of the pleadings, materials placed on the records and admission of the respondents, as discussed hereinabove, is put together and the case is construed in its totality, then the only possible conclusion, that can be drawn, is that the petitioner-Industries were given an assurance by the respondents-State and they actually acted in pursuance of the assurance in this behalf. That by itself would be sufficient to attract the doctrine of promissory estoppel.

44. In this view of the matter, it is held that the State and its instrumentality/officers are legally duty bound to fulfill their promises and are liable to release the indicated benefits to the petitioner-Industries on the principle of promissory estoppel, which is deeply applicable to the facts and in the special circumstances of the present cases. Therefore, the contrary arguments of State counsel "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances as the law laid down in the aforesaid judgment "mutatis mutandis" is applicable to the present controversy and is the complete answer to the problem in hand in this context."

15. Further, the specific stand of the petitioner that it is still a partnership firm, as taken in Para No.20 of the present writ petition, has not been specifically denied by the respondents in their reply submitted in Para No.20 of the written statement. The requisite documents of the re-composition/constitution of the partnership firm have already been furnished and that they have not been adversely commented thereupon. Hence, the status of the petitioner as a partnership firm, as on date, still exists.

16. That even otherwise, as per the law, every partner has an unlimited obligation/liability against the partnership firm and has all rights to operate the accounts as per Section 25 of the Partnership Act, 1932. Therefore, each partner has an obligation towards all other partners and that he can act and/or operate account and receive payments for and on behalf of other partners. Such a distinction, which has been referred to by the respondents to portray that the earlier identity of the petitioner firm having undergone material change, it would be deemed to have been dissolved (notwithstanding reconstitution of the partnership) even though new partnership is admitted by the respondents in their own communication

dated 18.11.2022 bearing Memo No. INC/Sub/Ludhiana/M-259/5420-A.

17. Notwithstanding that the operational guidelines issued on 13.11.2019 for release of subsidy would be hit by judgment in M/s Balak Gases (supra), even the above stand is fallacious and liable to be rejected. Reference is thus being made to the relevant clauses of the operational guidelines:-

1.2.1. Dissolution of a Partnership Firm

A dissolved partnership ceases to be a legal person/juristic entity and is thus not entitled to be released/disbursed the sanctioned capital subsidy/investment incentive upon/after its dissolution. A Partnership Firm is governed by a Partnership Deed/Contract if any and the provisions of the Partnership Act, 1932.

A Partnership Firm which dissolves for the reasons set out in the Partnership Act, 1932 or the Partnership Contract/Deed ceasing to be a juristic entity would not be entitled to the sanctioned capital subsidy/incentive. Needless to say, the provisions of the Partnership Act, 1932 would be taken into account while deciding not to release/disburse sanctioned capital subsidy/incentive under this category.

In addition to any events/type of dissolution contemplated in the Partnership Deed/Contract rendering the Entity/Industrial Unit disentitled to release/disbursal of capital subsidy/investment incentive, the following types and/or events of dissolution would also render the Industrial Unit disentitled to release/disbursal of sanctioned capital subsidy/investment incentive: -

(1) Dissolution by agreement/consent of all Partners or in accordance with a contract/deed between Partners under Section 40 of the Partnership Act, 1932

(2) Compulsory Dissolution as contemplated under Section 41 of the Partnership Act, 1932 upon either of the following two events happening:

(a) by the adjudication of all the partners or of all the partners but one as insolvent, or

(b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

Provided that where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

(3) Dissolution upon happening of certain contingencies/events as contemplated under Section 42 of the Partnership Act, 1932 which is subject to contract between the partners/ Partnership Deed:

(a) if constituted for a fixed term, by the expiry of that term;

(b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

(c) by the death of a partner, and

(d) by the adjudication of a partner as an insolvent.

(4) Dissolution by Notice of Partnership at Will as contemplated under Section 43 of the Partnership Act, 1932:

(a) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(b) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

(5) Dissolution of the Partnership Firm by Court for the grounds mentioned in Section 44 of the Partnership Act 1932.

1.2.2. Reconstitution/Change in Constitution of the Partnership Firm

Change in constitution as a legal concept is distinct from 'Dissolution' because dissolution ends the very juristic existence of the Partnership Firm, whereas a 'change in constitution' means the continuation of the Partnership Firm under altered circumstances (such as on addition or reduction of the numbers of original partners). Therefore, there would be no impediment for release of sanctioned subsidy/ investment incentive to an Entity/ Industrial Unit being a Partnership Firm that has undergone reconstitution/change in constitution (unless such impediment flows from relevant policy/scheme under which the subsidy was sanctioned). This is especially so, when the original terms and conditions of disbursal/release do not contemplate bar on/ stoppage of release/disbursal of sanctioned subsidy/investment incentive upon such change in constitution/reconstitution. Hence, a Partnership Firm that has undergone such a limited change in its constitution may be released the sanctioned subsidy/investment incentive.

Xxxx xxxxx xxxxx xxxx xxxx

3) Partnership run by family members- *A Partnership of family members where all the family members decide to quit the Partnership Firm except one family member, is no longer a legally subsisting Partnership Firm. Upon the resignation/exit/retirement of all family members except one, such an Industrial Unit stands reduced to a sole proprietorship which is legally not the same entity as the Partnership Firm in whose favour the capital subsidy/investment incentive stood sanctioned. Thus, in such an event, the Industrial Unit is not entitled to release/disbursal of the sanctioned capital subsidy/investment incentive.*

(4) Exit of Partners with simultaneous induction of New Partners- *Where the Entity/Industrial Unit being a Partnership Firm had inducted new partners upon exit of old partners then the Partnership Deed/Contract may be adverted to understand whether a new Partnership comes into existence or the old Partnership survives:*

a. If a new Partnership Firm comes into existence, then the Entity/Industrial Unit is not entitled to the release/disbursal of the sanctioned capital subsidy/investment incentive (originally in favour of the old Partnership Firm)

b. If the Partnership Firm (old) continues despite induction of new partners and exit of old partners, then the entity/Industrial Unit is entitled to the release/disbursal of the sanctioned capital subsidy/investment incentive.

If there is no Partnership Deed/Contract in place, there being no impediment in the relevant policy/ scheme of the time to release/disbursal of sanctioned capital subsidy/investment incentive upon such Reconstitution/Change in Constitution, the

Entity/Industrial Unit may be released such sanctioned capital subsidy/investment incentive.”

18. A perusal of the Notification shows that the same was intended to ensure release of capital subsidy and attempts to streamline the process in light of the judgment in Balak Gases (supra).

19. Surprisingly, the said guidelines permit change in constitution or reconstitution of a partnership firm but disentitle the petitioner for an event of change of event and does not recognize the petitioner regaining the same status.

20. The respondent cannot be allowed to read a change merely to the prejudice of the petitioner and discard a change which fulfills the requirement. The exercise of power to determine eligibility cannot be selective and even a change which favours the petitioner too need to be considered by the respondent especially when the petitioner regained its status before the release of subsidy. It is required to be kept in mind that all these restrictions are being apprised only by way of notification dated 13.11.2019 and cannot be applied retrospectively even when the subsidy fell due in 2011.

21. The respondents cannot be permitted to take a stand at their convenience. Vide the aforesaid communication, they have acknowledged that the status of the petitioner is that of a partnership unit, while declining the case of the petitioner unit for release of the capital subsidy. The stand of the respondents is nothing more than a self serving statement to cover up their lapse and to find a justification for their acts before this Court. The provisions as contained in the operational guidelines notified in the year 2019 need to be reconciled and harmoniously constructed. A brief status of a partnership

firm, as a sole proprietor on account of resignation of one of the partners, and before execution of fresh partnership deed, inducting new partners cannot be construed as conferring the status of a sole proprietorship so as to attract Clause 1.2.3 (2) of the Operational Guidelines and to hold a partnership firm disentitled from the benefits that have already enured in its favour. This would not have been the intent even of the appropriate government since any such clause would easily be avoided by mere induction of an additional partner before resignation of an existing partner. Thus, a mere logistic lapse cannot be construed as depriving a person of a right that has accrued in his favour.

22. I find that the conduct of the respondent-State is dishonest as it is devising ways and mechanisms to find excuse from performing its obligation. It is not in dispute that the petitioner became entitled for release of the capital subsidy in the year 2011 when the incentive was sanctioned. The conditions as are incorporated in the letter of sanction are the sole conditions required to be fulfilled by an applicant. Introduction of any new conditions for determination of eligibility is clearly a dishonest attempt on the part of the State and adds to the agony of an industrialist who had invested pursuant to an assurance given by the respondent-State. More so, such attempt earlier has already been set aside by this Court. Fresh notification is just yet another attempt at doing again, what had been held to be illegal and bad by this Court earlier.

23. Accordingly, the present writ petition is disposed of. The respondent is directed to release the sanctioned capital subsidy as on 01.02.2011 within a period of two months of the receipt of certified copy of this order alongwith interest @ 6% per annum from the date of sanction till

its actual release. In case the above said amount is not released within a period of two months as above, the petitioner shall be entitled to interest @ 8% per annum. The respondent-State is also burdened with an additional cost of **Rs. 50,000/-** to be deposited with the ***“High Court Legal Services Committee, Chandigarh”***.

24. It is seen that a large number of such cases are coming up before this Court where the Industrialists are being forced to litigate by such artificially devised objections and to approach the Court for seeking benefits that had accrued in their favour more than a decade ago. Invariably, the respondent-State is attempting ways and means to disobey the directions issued by the Court in ***CWP-19007 of 2002*** titled as ***“M/S Balak Gases Oxygen Gas Plant and another versus State of Punjab and others”***.

25. Let a copy of this order be also placed before the Chief Secretary, Punjab as any such attempt to disobey the order passed by this Court by devising ways and mechanisms which are not sustainable in law would be viewed as an attempt to disobey the order already passed and as an attempt to commit contempt of this Court.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 13, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No