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

204 **CWP-5819-2016(O&M)**
Date of decision: 22.07.2024

M/s Sekhri Milk Products ...Petitioner

Versus

Union of India & ors. ...Respondents

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

Present : Mr. Sunil Chadha, Senior Advocate with
Mr. Tara Dutt, Advocate and
Mr. G.S. Simple, Advocate,
for the petitioner.

Mr. Praveen Chander Goyal, Advocate and
Ms. Ishita Uppal, Advocate,
for respondent No.1.

Ms. Niharika Sharma, AAG, Punjab.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the communication dated 10.06.2015 (Annexure P-8), whereby the proposal of the petitioner for grant-in-aid under the Scheme of National Mission of Food Processing (hereinafter referred to as 'NMFP') has been returned on the ground that the Government of India has delinked the said Centrally Sponsored Scheme.

2. Learned Senior counsel appearing for the petitioner contends that the Government of India had issued guidelines for the NMFP Scheme of Cold Chain, Value Addition and Preservation Infrastructure (for non-horticultural products) during the remainder term of 12^{th} Plan (2013-17).

The objective of the scheme is to provide integrated and complete cold chain and preservation infrastructure facilities from the farm gate to the consumer or from the production site to the market. The said scheme was to be implemented through the State Governments.

3. Consequent upon the above said NMFP Scheme, Government of Punjab, Department of Food Processing, invited applications from the entrepreneurs seeking grant-in-aid/assistance under the aforesaid Centrally Sponsored Scheme during the year 2014-15 including the Cold Chain, Value Addition and Preservation Infrastructure for non-horticultural products (maximum up to Rs.5 crores per project).

4. Pursuant to the aforesaid advertisement, the petitioner-firm applied for establishment of a plant at Batala and an application was submitted by the petitioner with the respondent-Department of Food Processing, Punjab, on 21.08.2014. Certain queries and clarification were raised by the respondents whereupon the petitioner-firm submitted the revised application on 03.11.2014. Hence, a complete application form along with all requisite documents was duly received by the respondents on 03.11.2014.

5. To grant approval to the projects under the NMFP scheme, the Government of Punjab had set up two committees, namely 'Technical Screening Committee' for the valuation and approval and the State Level Empowered Committee headed by the Chief Secretary, Government of Punjab to give a formal approval to the cases approved by Technical Screening Committee. The application of the petitioner-firm was put up

before the Technical Screening Committee on 05.12.2014 on which date the said committee found the case of the petitioner eligible for the grant under the NMFP scheme and determining the eligible project cost at Rs.814.77 lacs. However, as there was a ceiling on the maximum assistance, the total eligible project cost was capped at Rs.5.00 crores per project. The case was accordingly recommended for conditional approval, subject to submission of certain additional documents. The operative part of the recommendations made by the Technical Screening Committee is as under:-

> *"18.* ***TSC Recommendations*** *- In the light of the above and that as per the guidelines of the Scheme for Cold Chain Infrastructure, the committee observed that the case is eligible for grant. As per the scheme guidelines, the eligible grant amount in 90% of the total eligible project cost with a ceiling for Rs. 500.00 Lakh. In the present case the eligible project cost is Rs. 814.77 lakhs (Eligible cost of P & M + Eligible cost for Technical Civil works = Rs. 751.77 Lakh & Rs. 63.00 Lakh). However, TSC has recommended the case for conditional approval subjected to submission of*
>
> - *Item wise and cost wise details of Technical civil works duly certified by Chartered Engineer (Civil)*
> - *PEDA certificate to ensure the utility of installed solar plant and quantum of power generated with proposed solar plant to run the cold chain.*
> - *PSPCL certification to ensure that the applicant has a tie up arrangement with the State Electricity Department to meet the consistent requirement of power load, in case of solar power fell shot on the account of low sunshine and the power*

generated is less than the required."

6. Learned Senior counsel contends that after approval by Technical Screening Committee, a meeting was fixed for approval by the State Level Empowered Committee on 15.12.2014. However, the same could not be held and the consideration on the application was deferred. Thereafter, the said meeting never took place for reasons beyond the control of the petitioner.

7. He vehemently argues that the proposed plant at Batala was established in agreement/collaboration with M/s Amul and the said plant was eventually commissioned on 05.01.2015. When grant-in-aid, as promised under the Scheme was not released, the petitioner firm sent a written representation dated 27.01.2015 to the Director, Department of Food Processing, Government of Punjab, followed by a reminder dated 12.05.2015. In response thereto, communication dated 10.06.2015 was received which reads thus:-

> *"To*
>
> *Mr. Abhinav Sekhri*
> *C-2354. Ranjit Avenue,*
> *Distt. Amritsar*
> *No. 9/93/2014 Mission Policy/ 709*
> *Dated: 10.6.15*
>
> *Sub:* ***Project proposal for Grant-in-Aid under NMFP scheme.***
>
> *Dear Applicant,*
>
> *With reference to your letter dated 08.06.2015. It is to inform you that the Govt. of India*

has de-linked the Centrally Sponsored Scheme of National Mission on Food Processing (NMFP) w.e.f. 01.04.2015. Therefore, your proposal for grant-in-aid cannot be processed further."

8. Learned Senior counsel further contends that the petitioner had set up the said plant in collaboration with M/s Amul considering the benefits under the Scheme and it later started buying almost 1.25 lacs liter milk per day from as many as 10,000 small farmers, who are situated in the border villages. It is submitted that the petitioner-firm had already invested a huge amount of more than Rs.8.00 crores under the said Scheme and therefore, respondents cannot contend that the claim of the petitioner firm for grant-in-aid cannot be processed further as the Government of India has delinked the Centrally Sponsored Scheme of NMFP. He has vehemently argued that the Technical Screening Committee had already held the petitioner-firm to be eligible for the grant and that only a formal approval was required to be given by the State Level Empowered Committee. The grant promised under the scheme cannot be denied to the petitioner firm for such reasons since the petitioner has altered its position by relying on the said scheme and made huge investment. Having induced the petitioner to change its stance, the promise extended to it could not have been denied. He has further argued that the reason given by the respondents in the Communication dated 10.06.2015 about the delinking of the Centrally Sponsored Scheme is even otherwise misconceived. He places reliance on file No.5-4/2017-Infra (ICC) dated 27.03.2017, as per which the

Government of India had approved 101 eligible integrated cold chain proposals, in an order of merit, for sanction out of 308 proposals received and appraised. Relevant extract thereof reads thus:-

"File No.5-4/2017- Infra (ICC)
Government of India
Ministry of Food Processing Industries
Panchsheel Bhawan, August Kranti Marg
New Delhi-110049

Dated: 27.03.2017

IMPORTANT NOTICE

With reference to the Expression of Interest (EOI) dated 31.08.2016, this Ministry has approved 101 eligible integrated cold chain proposals in order of merit for sanction out of 308 proposals received and appraised. List of proposals approved for sanction is at Annexure.

The sanction of aforementioned 101 eligible cold chain proposals is subject to provisions of scheme guidelines of Integrated Cold Chain and Value Addition Infrastructure issued on 29.08.2016 and the terms and conditions as laid down in the letter(s) to be issued by the Ministry in respect of each proposal.

Status of remaining proposals will follow."

9. It is, thus, submitted that the reasons given by the respondents for not processing the case of the petitioner are fallacious and not sustainable since Government of India had itself recommended the claims even later. He contends that the respondent-Union of India was granted opportunity to file an affidavit as to whether the project mentioned in the letter dated 27.03.2017 vide order dated 18.04.2018 was a part of the

National Mission of Food Processing or was a part of some other project. However, despite a lapse of more than six years since then, no affidavit in compliance thereto has been filed. It is also submitted by the counsel that when the matter came up for hearing on 27.07.2022, the following order was passed:-

> *"Learned Senior counsel for the petitioner submits that the ground for rejecting the proposal for grant-in-aid was delinking from centrally sponsored scheme of national mission of food processing w.e.f. 01.04.2015. By referring to Annexure P-13, learned Senior counsel further submits that the Ministry of Food Processing Industries is still sanctioning grant-in-aid for eligible cold chain proposal subject to provision of scheme/ guidelines of integrated cold chain and value addition. The case of the petitioner was duly recommended by Technical Scrutiny Committee. Thereafter it was to be approved by the State Level Empowered Committee. The State Level Empowered Committee did not meet on the date fixed and that is how the case of the petitioner could not be approved.*
>
> *Learned Senior counsel for the petitioner further submits that the grant-in-aid is still being offered by the Ministry of Food Processing and Industries even after alleged delinking and as of now an amount of Rs.1.72 crores is still lying unutilized with respondents No.2 and 3.*
>
> *Learned counsel for respondent No.1 seeks time to respond to the communication (Annexure P-13) dated 27.03.2017.*
>
> *Learned counsel for respondents No.2 and 3 also seeks time to have instructions in the context of receiving grant-in-aid from respondent No.1 and utilization*

thereof. Respondents No.2 and 3 shall also respond to the amount if any, still lying unutilized with them.

Adjourned to 13.10.2022."

10. He further submits that respondent No.1-Union of India has failed to file any affidavit clarifying any of the position and there has been no denial of the specific assertion made by the petitioner about grant having been released even later. It is, thus, submitted that as the petitioner fulfilled the eligibility conditions as prescribed in the scheme and was found eligible by the Technical Screening Committee, the respondents could not have denied the benefit that accrued in favour of the petitioner for the reasons stated in the communication dated 10.06.2015, especially when the reasons assigned thereunder are unsustainable. He places reliance on the judgments of ***M/s Balak Gases Oxygen Gas Plant & anr. Vs. State of Punjab & ors., 2012 (4) RCR (Civil) 413, The Gujarat State Financial Corporation Vs. M/s Lotus Hotels Pvts. Ltd., 1983 AIR (SC) 848, Steel Crakers & Anr. Vs. M.S.T.C. & anr., 1992 AIR (Calcutta) 86*** and certain other judgments passed by the various High Courts.

11. In ***M/s Balak Gases Oxygen Gas Plant's case (supra),*** this Court has held as under:-

"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 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 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."

12. In ***The Gujarat State Financial Corporation's case(supra)***, the Hon'ble Supreme Court held as under:-

"9. It was next contended that the dispute between the parties is in the realm of contract and even if there was a concluded contract between the parties about grant and acceptance of loan, the failure of the Corporation to carry out its part of the obligation may amount to breach of contract for which a remedy lies elsewhere but a writ of mandamus cannot be issued compelling the Corporation to specifically perform the contract. It is too late in the day to contend that the instrumentality of the State which would be 'other authority' under Article 12 of the Constitution can commit breach of a solemn under-taking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract. It was not disputed and in fairness to Mr. Bhatt, it must be said that he did not dispute that the Corporation which is set up under Section 3 of the State Financial Corporations Act, 1951 is an instrumentality of the State and would be 'other

*authority' under Article 12 of the Constitution. By its letter of offer dated July 24, 1978 and the subsequent agreement dated Feb. 1, 1979 the appellant entered into a solemn agreement in performance of its statutory duty to advance the loan of Rs. 30 lakhs to the respondent. Acting on the solemn undertaking, the respondent proceeded to undertake and execute the project of setting up a 4-star Hotel at Baroda. The agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the statute under which it was created and set up. On its solemn promise evidenced by the afore-mentioned two documents, the respondent incurred expences, suffered liabilities to set-up a hotel. Presumably, if the loan was not forthcoming, the respondent may not have undertaken such a huge project. Acting on the promise of the appellant evidenced by documents, the respondent proceeded to suffer further liabilities to implement and execute the project. In the back drop of this incontrovertible fact situation, the principle of promissory estoppel would come into play. In Motilal Padampat Sugar Mills Co. (P) Ltd. v. State of U.P., **(1979) 2 SCR 641 at p. 662,** this Court observed as under:*

> *"The true principle of promissory estoppel, therefore seems to be that where one party has by his words of conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties,*

> *and this would be so irrespective whether there is any pre-existing relationship between the parties or not."*

10. Thus the principle of promissory estoppel would certainly estop the Corporation from backing out of its obligation arising from a solemn promise made by it to the respondent.

11. ***Jeet Ram Shiv Kumar v. State of Haryana, (1980) 3 SCR 689****. which slightly differs from the view taken by this Court in the aforementioned decision at any rate would not help the appellant because it only lays down that the principle of promissory estoppel cannot be invoked for preventing the Government from discharging its functions under the law. Even then, it was held that when the officer authorised under a scheme enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the Court is entitled to regulate the officer to act according to the scheme and the agreement or the representation. The officer can not arbitrarily on his mere whim ignore his promise on some undefined and undisclosed grounds of necessity or changed the conditions to the prejudice of a person which had acted upon such representation and put himself in a disadvantageous position. On this point, both the decisions concur and the ratio would govern the decision in this appeal. The respondent acting upon the solemn promise made by the appellant incurred huge expenditure and if the appellant is not held to its promise, the respondent would be put in a very disadvantageous position and therefore also the principle of promissory estoppel can be invoked in this case.*

*12. Viewing the matter from a slightly different angle altogether it would appear that the appellant is acting in a very un-reasonable manner. It is not in dispute that the appellant is an instrumentality of the Government and would be other authority' under Article 12 of the Constitution. If it be so, as held by this Court in R.D. Shetty v. The International Airports Authority of India, **(1979) 3 SCR 1014 at p.1041,** the rule inhibiting arbitrary action by the Government would equally apply where such corporation dealing with the public whether by way of giving jobs or entering into contracts or otherwise and it cannot act arbitrarily and its action must be in conformity with some principle which meets the test of reason and relevance.*

13. Now if appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation can not be allowed to act arbitrarily so as to cause harm and injury, flowing from its un-reasonable conduct, to the respondent. In such a situation, the Court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. A petition under Article 226 of the Constitution would certainly lie to direct performance of statutory duty by 'other authority' as envisaged by Article 12."

13. Responding to the above, learned counsel for respondent No.1-Union of India has not disputed the factual aspects as noticed above in relation to submission of the application, its processing by Technical Screening Committee as also the recommendation made by the said Committee. He, however, submits that Technical Screening Committee is entrusted to scrutinize all the proposals received by the department for

grant-in-aid and forwarding the same for sanction to the State Level Empowered Committee, which eventually takes a decision as to whether sanction is to be granted or the application deserves rejection. The State Level Empowered Committee has never sanctioned/granted approval to the project, therefore, as such no right stands accrued to the petitioner to claim release of such subsidy. It is submitted that meeting of the State Level Empowered Committee dated 15.12.2014 was postponed for various administrative reasons and that mere submission of an application does not entitle the petitioner to claim subsidy. Further as the Government of India had been funding the Centrally Sponsored Scheme on National Mission of Food Processing w.e.f. 01.04.2015, therefore, the project of the petitioner could not be processed for sanction/approval and also that the discontinuation had been on account of lack of availability of sufficient funds with the Government of India on account of devolution of the share of the State in the taxes, which has increased. Hence, the ground for rejection is not arbitrary as it is on the basis of lack of availability of finances.

14. Learned counsel for Union of India has in fact argued that the Ministry of Food Processing had issued detailed operational guidelines to the State/U.T. Government for implementation of NMFP Scheme and had approved the recommendation thereof for the remainder of the 12th plan. New guidelines were issued on 23.07.2013 for intimation under the said scheme. It is submitted that the State Level Empowered Committee was the competent authority to decide about the funds amongst various schemes. However, not more than 10% and 20% of the allocation was to be utilized for promotional activities and human resources development components respectively. In the present case, there was no approval by State Level Empowered Committee and that the petitioner has approached this Court only on the strength of recommendations/approval by the Technical

Screening Committee. He submits that no right accrues in favour of the petitioner and the principles of legitimate expectation would not be applicable in favour of the petitioner. He places reliance on the judgment of Delhi High Court in ***CRPL Infra Private Ltd. & anr. Vs. Ministry of Food Processing Industries passed in WP(C) 4879 of 2021, decided on 06.02.2024***. The relevant extract thereof reads as under:-

> *"XXXX XXXX XXXX XXXX*
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> *14. The short question which, therefore, arises for consideration is whether the rejection of the case of the Petitioner by the Respondent, as upheld by the IMAC, requires interference by this Court under Article 226 of the Constitution of India or not. The Petitioner has invoked the principles of legitimate expectation and promissory estoppels.*
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> *XXXX XXXX XXXX XXXX*
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> *17. The law of legitimate expectation has been crystallized by the Apex Court in several judgments. It has been held that for a legitimate expectation to arise, the decision of the authority must affect such person by (a) altering rights or obligations of that person which are enforceable by or against him in private law, or (b) depriving him of some benefit or advantage which he has conferred upon him in the past by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing the benefit has been communicated to him and he has been given an opportunity to comment thereon, or he has received assurance from the decision-maker that the benefit will not be withdrawn without giving him an opportunity of advancing reasons for contending that they should not be withdrawn. The Apex*

Court in Sethi Auto Service Station v. DDA, (2009) 1 SCC 180, has explained the concept of legitimate expectation as under:

> *"24. The protection of legitimate expectations, as pointed out in De Smith's Judicial Review (6th Edn.), (Para 12-001), is at the root of the constitutional principle of the rule of law, which requires regularity, predictability and certainty in the Government's dealings with the public. The doctrine of legitimate expectation and its impact in the administrative law has been considered by this Court in a catena of decisions but for the sake of brevity we do not propose to refer to all these cases. Nevertheless, in order to appreciate the concept, we shall refer to a few decisions.*
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> *25. At this juncture, we deem it necessary to refer to a decision by the House of Lords in Council of Civil Service Unions v. Minister for Civil Service [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] , a locus classicus on the subject, wherein for the first time an attempt was made to give a comprehensive definition to the principle of legitimate expectation. Enunciating the basic principles relating to legitimate expectation, Lord Diplock observed that for a legitimate expectation to arise, the decision of the administrative authority must affect such person either (a) by altering rights or obligations of that person which are enforceable by or against him in private law, or (b) by depriving him of some benefit or advantage which either: (i) he has in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon, or (ii) he has received assurance from the decision-maker that they will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should be withdrawn.*
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> *26. In Attorney General of Hong Kong v. Ng Yuen Shiu [(1983) 2 AC 629 : (1983) 2 WLR 735 : (1983) 2 All ER 346 (PC)], a leading case on the subject, Lord Fraser said: (All ER p. 351g-h) "... when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as*

implementation does not interfere with its statutory duty."

27. Explaining the nature and scope of the doctrine of legitimate expectation, in Food Corporation of India v. Kamdhenu Cattle Feed Industries [(1993) 1 SCC 71] , a three-Judge Bench of this Court had observed thus:(SCC p. 76, para 8)

"8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non- arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

28. The concept of legitimate expectation again came up for consideration in Union of India v. Hindustan Development Corpn. [(1993) 3 SCC 499] Referring to a large number of foreign and Indian decisions, including in Council of Civil Service Unions [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] and Kamdhenu Cattle Feed Industries [(1993) 1 SCC 71] and elaborately explaining the concept of legitimate expectation, it was observed as under: (Hindustan Development Corpn. case [(1993) 3 SCC 499] , SCC p. 549, para 35)

"35. ... If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds

attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is „not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits‟, particularly when the element of speculation and uncertainty is inherent in that very concept."

Taking note of the observations of the Australian High Court in Attorney General for New South Wales v. Quinn [(1990) 64 Aust LJR 327 : (1990) 170 CLR 1] that "to strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism", speaking for the Bench, K. Jayachandra Reddy, J. said that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. The caution sounded in the said Australian case that the courts should restrain themselves and restrict such claims duly to the legal limitations was also endorsed.

29. Then again in National Buildings Construction Corpn. v. S. Raghunathan [(1998) 7 SCC 66 : 1998 SCC (L&S) 1770] , a three-Judge Bench of this Court observed as under: (SCC p. 75, para 18)

"18. The doctrine of „legitimate expectation‟ has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness

in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "legitimate expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "legitimate expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel."

30. This Court in Punjab Communications Ltd. v. Union of India [(1999) 4 SCC 727], referring to a large number of authorities on the question, observed that a change in policy can defeat a substantive legitimate expectation if it can be justified on "Wednesbury" reasonableness. The decision-maker has the choice in the balancing of the pros and cons relevant to the change in policy. Therefore, the choice of the policy is for the decision-maker and not for the court. The legitimate substantive expectation merely permits the court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. (Also see Bannari Amman Sugars Ltd. v. CTO [(2005) 1 SCC 625] .)

31. Very recently in Jitendra Kumar v. State of Haryana [(2008) 2 SCC 161 : (2008) 1 SCC (L&S) 428] it has been reiterated that a legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right. It is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's dealings with the public and the doctrine of legitimate expectation operates both in procedural and substantive matters.

32. An examination of the aforenoted few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfil unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority *was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.*

33. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. (Vide Hindustan Development Corpn. [(1993) 3 SCC 499])"

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19. The fact that the Petitioner has already spent money would not create any right on the Petitioner to claim that amount from the State. It is also well settled that High Courts while exercising its jurisdiction under Article 226 of the Constitution of India do not interfere with the decisions of various authorities but only adjudicate on the decision making process. The Petitioner has been given an opportunity to present its case before the Technical Committee and the IMAC. The Petitioner has put forward his case and a decision has been passed. It cannot be said that the decision arrived at by the Government is so perverse that it requires interference by this Court."

15. Relying thereon, he contends that the claim of the petitioner for having expended an amount in executing the project cannot form a basis to claim legitimate expectation. It is also vehemently argued that a right to claim the subsidy would have accrued in favour of the petitioner only after grant of approval by the State and in the absence thereof, the present petition is misconceived and is liable to be dismissed. He is, however, not in a position to dispute the communication (Annexure P-13) dated 27.03.2017 as no response has been received by him in this regard.

16. The counsel for the State of Punjab, however, contends that the claim of the petitioner cannot be considered since the Government of India has delinked from the scheme. The State is only competent to examine the eligibility and the finance not being released by the Government of India, there is no illegality or error in the impugned order. She further submits that the earlier scheduled meeting of the State Level Empowered Committee could not be held due to administrative exigencies and there can be no fault on the State for the same. It is contended that State would be ready to forward the case if the Government of India has no objection to the release of the grant.

17. I have heard learned counsel for the respective parties and have gone through the documents appended along with the present petition as also the judgments cited by learned counsel for the respective parties.

18.. Since the factual aspect is not in dispute including the factum of recommendation of the claim of the petitioner for grant of subsidy under the NMFP Scheme by the Technical Screening Committee. The issue arises as to whether the petitioner has a right for consideration of its claim by the respondents for release of subsidy in terms of the above-said scheme. In this regard, it is necessary to refer to some of the guidelines of the scheme issued by the respondents. The same are extracted as under:-

> ***"3. Eligible Sectors:***
>
> *Following sectors may be covered under the scheme:*
>
> *(a) Dairy All milk and milk products, etc.*
>
> *(b) Meat-All meat and meat products etc.*
>
> *(c) Aquaculture and marine products like Prawns, Seafood, Fish, and their processed products etc.*
>
> *(d) Any other non- horticultural food products requiring integrated cold chain.*
>
> ***4. Eligible Organizations:***
>
> *Integrated cold chain and preservation infrastructure may be set up by individuals or groups of entrepreneurs interested in supply chain management, organizations such as Govt./PSUs/Joint Ventures/ NGOs/ Cooperatives/ SHG's/Private Sector Companies and Corporations etc.*
>
> ***5. Eligibility Conditions:***
>
> ***5.1*** *The applicant should have sound financial back ground. The net worth of the applicant(s) should be more than 1.5 times of the grant applied for.*
>
> ***5.2*** *The project proposals are required to be duly appraised by the bank/financial institution and avail term loan. The term loan will not be less than 25% of the project cost.*
>
> ***5.3*** *Project Appraisal Report from Bank/Financial Institution must contain all the project*

components for which grant is sought.

5.4 *Date of commercial production should not be prior to the date of submission of application.*

5.5 *Any two of the project components, from (a), (b) or (c) mentioned in para 2 above will have to be set up by the applicant(s). Irradiation facility can be set up as stand alone for the purpose of availing grant.*

5.6 *No second proposal from the same applicant/company."*

18. It is not a case of either of the parties that the petitioner Company was not eligible for grant of subsidy under the NMFP Scheme floated by the Government of India. The condition specified in Clause 5.4 stipulates that date of commercial production should not be prior to the date of submission of the application. In the present case, undisputedly the date of submission of amended application was 3rd November, 2014 and the commercial production was achieved on 05.01.2015. Besides, the reason for rejection of the proposal of the petitioner by the Directorate of Food Processing Department, Government of Punjab is not on failure of petitioner to be eligible but is on account of delinking of the Centrally Sponsored Scheme of the NMFP by the Government of India w.e.f. 01.04.2015. It is also evident that meeting of the State Level Empowered Committee was scheduled to be convened on 15.12.2014, however the said meeting was not held for the reasons beyond the control of the petitioner. The application, thus, continued to remain pending with the State Level Empowered Committee for a period of more than 3½ months before the Government of

India took a decision to de-link with the said scheme. No satisfactory explanation has been put forth by the respondent-State of Punjab as to why the State Level Empowered Committee meeting could not be held for such a long period. The only stand taken by the Government of Punjab is that the meeting scheduled for 15.12.2014 could not take place on account of administrative reasons but they offered no specific explanation as to why subsequent meeting could not be scheduled promptly. In the absence of any reasonable explanation, the delay of the respondent-State of Punjab cannot be completely ignored, especially when it impacts the rights of the people.

19. Proceeding further, the reasons given in the communication sent by the respondent-State of Punjab is on account of delinking of the NMFP scheme, whereas the communication dated 27.03.2017 shows that Government of India had granted a sanction to 101 eligible integrated cold chain approvals in an order of merit. Hence the applications that had already been submitted by 01.04.2015 i.e. before delinking of the said scheme were being processed and were being considered by the Government of India. No response to the specific query raised by this Court about the applicability of the said scheme to the people whose's cases had been recommended by the Technical Committee has been filed by Union of India despite the document having been brought to the notice of the counsel representing the Union of India and seeking response way back in the year 2018 as well as in 2022. Thus, the said documents remain undisputed. Hence, the basic reason for denial of the consideration of the application of the petitioner does not subsist.

20. The question which next arises before the Court is whether the respondents are estopped from denying the capital subsidy to the petitioner or not. To assess the entitlement the principle of Promissory estoppel needs to be examined. "Promissory estoppel' is a legal doctrine to prevent a party from retracting a promise despite lack of a lawful contract but subject to the claimant having met the conditions prescribed by the others. The said principle attains all the more significance when the State or its instrumentalities promise a subsidy or benefit. In an event of the State making a clear and unambiguous promise with an exhibited intent of not only an assurance by the State but also intended to be relied upon by the targetted beneficiaries. Once the party, to whom such promise is extended, changes its position relying upon it and has acted in furtherance thereto, it would be inequitable and unfair to allow the public authority to go back on its promise. There must be an over-weighing larger public interest or a statutory duty when such an assurance or promise is not adhered to.

21. The circumstances of the case establish that various eligibility conditions prescribed under the NMFP Scheme were met by the petitioner and all documents in support of the claim were duly furnished. The Technical Committee evaluated the entitlement of the petitioner and recommended the case of the petitioner for an approval by the State Level Empowered Committee. Ordinarily the role of the State Level Committee is only to verify the recommendation and grant the formal sanction as the technical requirement pertaining to the assessment have already been done by the Technical Committee. Even otherwise, it is not the case of the

respondents that the SLEC did not find the petitioner eligible for benefit under the Scheme. The rejection of approval is for the reason of Government of India de-linking the NMFP Scheme. However, even the said reason is found lacking in merit. The counsel for UOI has argued vehemently that lack of funds was the reason behind its decision. The conduct of UOI, however, fails to inspire confidence in accepting the same. They have granted financial benefits under the scheme to more than 100 units even in the year 2017. Despite being granted several opportunities over a period of more than 6 years, the UOI failed to offer any explanation as to how the circumstances of those people were any different from the petitioner. An inference, thus, flows against the UOI. It could not adopt a discriminatory practice and has chosen to give any reason or objectivity behind the later decision. Under the above scenario, I am unable to accept or agree with the arguments advanced and objections raised by the respondents on the principles of Promissory estoppel. The petitioner is entitled for consideration of its claim under the scheme and to the benefits thereunder.

22. Now adverting to the objection raised by the respondent-Union of India about the principles of legitimate expectations are not being applicable to the claim of the petitioner by placing reliance on the Delhi High Court's judgment in ***CRPL Infra Private Limited's case (supra)*** would not be attracted to the facts of the present for the following reasons:-

1. In the said case, the claim of the petitioner was considered by the competent authority and the same was

rejected for the reason that the applicant therein did not fulfill the eligibility conditions prescribed under the scheme document since 50% of the investment had been made prior to the floating of the scheme. Per contra, the claim of the petitioner in the present case has not been considered at all by the competent authority and there is no rejection of the claim on the ground that the petitioner was not eligible.

Secondly, the principle of law as relied upon by the judgment of the Delhi High Court is in fact applicable in favour of the petitioner.

It is undisputed that consequent upon the issuance of the scheme, the project was floated by the petitioner and the same stands executed. Hence, the petitioner has changed its stance and has altered its position on the basis of the proposal/scheme as was floated by the respondents. Further, the applicant/investor would be justified in law to presume that a time bound decision shall be taken by the competent authority, once an application has been considered/approved by the Technical Screening Committee. It is not in dispute that the meeting of the State Level Empowered Committee was not held and no satisfactory explanation has been put forth as to why the same could not be convened. The petitioner cannot be made to suffer for a lapse committed by the respondents in not convening their meeting and not taking a considered decision on the claim of the petitioner. The consequences cannot be entirely fastened on the claimant, who is not at fault.

23. The ratio of the judgments relied upon by the learned Senior counsel for the petitioner in the matter of ***M/s Balak Gases Oxygen Gas Plant and The Gujarat State Financial Corporation (supra)*** is applicable to the facts of the present case.

24. The present writ petition is, hereby, allowed.

25. The respondent-State of Punjab is directed to consider the claim of the petitioner on the basis of Technical Screening Committee report forwarded to them and to take appropriate decision on the basis thereof. In the event of the petitioner being found eligible for the benefit under the said scheme, the same shall be forwarded to the Government of India, which shall then consider the claim in light of its earlier sanction granted in year 2017 and the requisite benefits shall be released in favour of the petitioner. However, in the event the Government of India declines the claim due to lapses of the State of Punjab, the subsidy shall be released to the petitioner along with interest @ 6% per annum from the date of filing of the petition, by the Government of Punjab as the citizen cannot be made to suffer due to State lapse. The entire exercise be completed by the respondents within a period of 5 months from the date of receipt of certified copy of this order.

22.07.2024 **(VINOD S. BHARDWAJ)**
monika **JUDGE**

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No