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

Date of decision: 30th JULY, 2024

IN THE MATTER OF:

+ **W.P.(C) 1142/2024 & CM APPL. 4799/2024**

M/S PAMPAR OVENFRESH FOODS PVT LTD Petitioner

Through: Ms. Aakanksha Jha, Mr. Shashi
Mohan and Mr. Pranit Bag, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sandeep Kumar Mahapatra,
CGSC with Mr. Tribhuvan, Adv.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court challenging a decision taken by the Respondents herein to direct the Petitioner to refund the first instalment of grant in aid along with the accrued interest on the ground that the Petitioner has failed to adhere to the various stages mandated under the Scheme which was brought out by the Respondents for Creation/Expansion of Food Processing and Preservation Capacities (CEFPPC) under Pradhan Mantri Kisan Sampada Yojana (PMKSY) and all other consequential actions.
2. The facts, in brief, leading to the filing of the present Writ Petition, are that the Union of India floated a Scheme for Creation/Expansion of Food Processing and Preservation Capacities (CEFPPC) under Pradhan Mantri



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Kisan Sampada Yojana (PMKSY). It is stated that in terms of the said Scheme, the Government through Ministry of Food Processing Industries, decided to provide subsidy for creation of Processing and Preservation Capacities and Modernization and/or Expansion of Food Processing Units. It is stated that applications were invited from persons who were interested to avail of the Scheme for expansion of their projects. It is stated that the Petitioner applied for grant of aid and for expansion of its projects. It is stated that the grant in aid for expansion of the project of the Petitioner was approved on 21.01.2019 and a sum of Rs.139.99 lakhs was approved as the grant in aid to the company of the Petitioner. It is stated that the Petitioner started commencing the expansion of the project in terms of the various modalities and a major portion of the expansion was completed by the Petitioner much ahead of the agreed timeline. It is stated that the Petitioner submitted its claim for 50% of the sanctioned grant in aid and the same was approved and the grant in aid amounting to Rs.69.995 lakhs was disbursed in favour of the Petitioner on 07.08.2017. It is stated that unfortunately, the Petitioner suffered a huge setback as a massive fire broke out in the factory of the Petitioner. It is stated that the fire caused severe damage to the property of the Petitioner. It is stated that the Petitioner took steps to claim the insurance for a sum of Rs.35 crores. It is stated that the Petitioner also informed the Respondents about the incident. The Project Management Agency (PMA) inspected the unit of the Petitioner which was gutted by fire and the PMA submitted its report on 02.12.2019 stating that the project of the Petitioner has been burned to ground. It is stated that the Petitioner received the notice dated 19.12.2019, issued by the Respondent No.2,



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directing the Petitioner to refund the first instalment of grant in aid amounting Rs.69.995 Lakhs along with interest on the ground that the Petitioner has failed to adhere to the timeline which is mandated under the Scheme. It is further stated that the insurance claim of the Petitioner was approved and the Petitioner received Rs.15,40,26,710/- as insurance claim. It is the case of the Petitioner that the Petitioner was not able to adhere to the timeline because of the fire accident that gutted the factory of the Petitioner because of which the project of the Petitioner was severely hit. In the reply given by the Petitioner to the notice given by the Respondents for recovery of the grant in aid, the Petitioner has brought out the steps taken by the Petitioner to ensure that the project is revived. However, after the reason given by the Petitioner, notice dated 04.08.2022, 07.12.2022 and 09.03.2023 were issued to the Petitioner for returning the grant in aid which was disbursed to the Petitioner. In response to the notice dated 07.12.2022, the Petitioner participated in the proceedings and demonstrated as to what all steps have been taken by the Petitioner to put the project back on track. It is stated that despite demonstrating the efforts put by the Petitioner to put the project back on tracks, the Respondents have decided to initiate recovery proceedings against the Petitioner.

3. The Petitioner, thereafter, filed W.P.(C) 10771/2023 before this Court challenging the recovery proceedings initiated against the Petitioner. This Court vide Order dated 29.08.2023 disposed of the said Writ Petition directing the Petitioner to give a representation to the Respondents along with all the documents to demonstrate that the Petitioner was not keeping good after the fire incident and has been taking steps to ensure that the



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project is put back on tracks. Relevant portions of the Order dated 29.08.2023 reads as under:

“2. Material on record reveals that Petitioner had participated in a scheme for Creation/Expansion of Food Processing and Preservation Capacities (CEFPPC) under the Pradhan Mantri Kisan Sampada Yojana and was accorded an approval for grant in aid as stipulated under the scheme on 23.01.2019. Under the said scheme, a sum of Rs.69.995 lakhs was advanced to the Petitioner on 07.08.2019. It is stated that a major fire broke out at the establishment of the Petitioner on 29.09.2019. The Respondents were informed about the fire on 21.10.2019.

3. The Project Monitoring Agency inspected the premises on 29.11.2019 and a report was submitted on 02.12.2019. However, on 19.12.2019, a meeting was held by the Inter-Ministerial Approval Committee, Ministry of Food Processing & Industry under which a decision was taken for recalling of Rs.69.995 lakhs which had been advanced to the Petitioner. The decision of the meeting was communicated to the Petitioner on 01.01.2020.

4. It is the contention of the Petitioner that the Respondents were aware of the fact that a fire had broken out in the establishment of the Petitioner and Clause 13 of the guidelines of the scheme gives the power to the Respondent to extend the time stipulated under the scheme for the purpose of completion and operationalization of project.

5. Material on record discloses that some steps were taken by the Petitioner in order to get the factory back on rails. It is stated by the Petitioner that without considering the steps taken by it, the Respondents



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ought not to have taken a decision on 19.12.2019 for recalling the grant in aid.

6. Per contra, Mr. Sandeep Kumar Mahapatra, learned CGSC for the Respondents, contends that the documents which have been handed over in Court today had not been supplied to Respondent No.2 when the decision was taken on 19.12.2019. He also states that in any event the Respondent No.2 has power to withdraw the assistance at any point of time.

7. Material on record indicates that steps have been taken by the Petitioner to get the factory restarted inasmuch as regular rents have been paid by the Petitioner under the lease agreement entered into by the Petitioner and the lessor for running the establishment and orders have been placed for purchase of machinery etc. Since the scheme under which the Petitioner was given the benefit is a beneficial scheme and the records do indicate that certain steps which were taken by the Petitioner, this Court is of the opinion that the Petitioner must be given an opportunity to give a fresh representation to Respondent No.2 highlighting the steps taken by it to get the factory back on its feet which can be considered by Respondent No.2 to decide as to whether further time can be extended to the Petitioner before the amount is recalled.

8. The Petitioner, is, therefore, directed to give a representation within a period of three weeks from today supplying all the documents to demonstrate that the Petitioner was not keeping quiet after the fire and had been taking steps to ensure that the factory starts running again.

9. Respondent No.2 is directed to take a decision on the



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representation within six weeks from the date of receipt of representation. Till a decision is not taken by the Respondents, the Order dated 01.01.2020 asking for a recall of the grant-in-aid amount and the consequential action taken by the Respondents shall be kept in abeyance.

10. The petition is disposed of along with pending application(s), if any.

11. The Registry is directed to correct the name of the Petitioner in the cause title from 'RAMPAR' to 'PAMPAR'."

4. Material on record indicates that pursuant to the said Order, a detailed representation was given by the Petitioner to the Respondents and the Respondent vide its decisions dated 04.12.2023 & 05.02.2024 has rejected the representation of the Petitioner and has decided to proceed further with the recovery of grant in aid.

5. The Petitioner has, thereafter, filed the present Writ Petition with the following prayers:

“(a) Issue an appropriate writ, order or direction in the nature of mandamus thereby directing the Respondent authorities to set aside the impugned orders dated December 4, 2023 and December 19, 2019 and to act in accordance with law;

(b) Issue an appropriate writ, order or direction in the nature of mandamus there by directing the Respondent authorities to set aside any proceeding in relation to the orders dated December 4, 2023 and December 19, 2019, or any proceeding thereunder and/or in relation thereto and/or being continued by the authorities therefrom since the said orders are bad in law;



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(c) Issue an appropriate writ, order or direction in the nature of mandamus thereby directing the Respondent authorities to quash and/or set aside the outcome of the meeting of Inter-Ministerial Approval Committee dated May 28, 2019 recorded in the minutes of the meeting and consequential e-mail dated September 15, 2021 and any proceeding thereunder and/or in relation thereto and/or being continued by the authorities therefrom since the said outcome of the meeting dated May 28, 2019 and subsequent e-mail dated September 15, 2021 are bad in law;

(d) Issue an appropriate writ, order or direction in the nature of mandamus thereby directing the Respondent authorities to immediately pay the petitioner the balance sum of grant in aid amounting to Rs. 69.995 lakhs along with accrued interest thereon since the petitioner has fulfilled its obligations under the scheme in its true spirit and has completed the expansion work for which the scheme was floated;

(e) Issue an appropriate writ, order or direction in the nature of mandamus thereby permitting the petitioner to transfer the operation of the scheme from Unit-I to Unit-II since the said unit-II is ready for operation and the said permission would tantamount to fulfilment of the scheme in issue and may bring the dispute to a closure;

(f) Issue an appropriate writ, order or direction in the nature of prohibition restraining the Respondent authorities from proceeding with the email dated January 1, 2020 or the email dated September 15, 2021, and to act in accordance with law;

(g) Issue an appropriate writ, order or direction in the



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nature of prohibition restraining the Respondent authorities from proceeding with the various notices pertaining to the recovery of first instalment of grant in aid amounting to Rs.69.995 lakhs along with accrued interest released in favour of the petitioner issued by the respondent authorities; including the certificate officer, Howrah, the respondent No. 10 hereinabove and/or any proceeding in relation thereto or thereunder or touching there upon and to act in accordance with law;

(h) Issue an appropriate writ, order or direction in the nature of certiorari commanding the Respondents to certify and transmit the records relating to the alleged refund of the first grant in aid amounting to Rs. 69.995 lakhs along with accrued interest from the petitioner and the proceedings through certificate officer, the respondent No. 10 herein above for recovery of the said sum from the petitioner, so that the said records may be quashed and/or set aside and conscionable justice might be rendered;

(i) Issue an appropriate writ, order or direction in the nature of certiorari commanding the Respondents to certify and transmit the records relating to the impugned order dated December 4, 2023 as passed by the Director, CEFPPC so that the same may be quashed and/or set aside and conscionable justice might be rendered;

j) Rule Nisi in terms of the prayers above;

(k) Directions on the Respondent authorities to set aside the impugned orders dated December 4, 2023 and December 19, 2019 and to act in accordance with law;



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(1) Directions on the Respondent authorities to set aside any proceeding in relation to the orders dated December 4, 2023 and December 19, 2019, or any proceeding thereunder and/or in relation thereto and/or being continued by the authorities therefrom since the said orders are bad in law;

(m) Directions on the Respondent authorities to quash and/or set aside the outcome of the meeting of Inter-Ministerial Approval Committee dated May 28, 2019 recorded in the minutes of the meeting and consequential e-mail dated September 15, 2021 and any proceeding thereunder and/or in relation thereto and/or being continued by the authorities therefrom since the said outcome of the meeting dated May 28,, 2019 and subsequent e-mail dated September 15, 2021 are bad in law;

(n) Directions on the Respondent authorities to immediately pay the petitioner the balance sum of grant in aid amounting to Rs. 69.995 lakhs along with accrued interest thereon since the petitioner has fulfilled its obligations under the scheme in its true spirit and has completed the expansion work for which the scheme was floated;

(o) Directions on the Respondents to permit the petitioner to transfer the operation of the scheme from Unit-I to Unit II since the said unit-II is ready for operation and the said permission would tantamount to fulfilment of the scheme in issue and may bring the dispute to a closure;

(p) Injunction restraining the Respondent authorities from proceeding with the email dated January 1, 2020 or the email dated September 15, 2021, and to act in accordance with law;



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(q) Injunction restraining the Respondent authorities from proceeding with the various notices pertaining to the recovery of first instalment of grant in aid amounting to Rs.69.995 lakhs along with accrued interest released in favour of the petitioner issued by the respondent authorities; including the certificate officer, Howrah, the respondent No. 10 hereinabove and/or any proceeding in relation thereto or thereunder or touching there upon and to act in accordance with law;

(r) Ad interim reliefs in terms of the prayers made above;

(s) Grant costs to the Petitioner;

(t) Pass such other or further order(s) in favour of the Petitioner and against the Respondents, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.

(u) That the petitioner was not received any reference Board minutes meeting dated 28.05.2019 and E-mail dated 19.12.2019, even the concerned authorities were not served by E-mail or any other mode of service to the petitioner.”

6. It is stated by the learned Counsel for the Petitioner that the impugned Order shows no application of mind by the Respondents. He states that the impugned communication is a verbatim reproduction of the earlier order and the detailed representation given by the Petitioner has not at all been considered by the Respondents which shows complete non-application of mind on the part of the Respondents. Learned Counsel for the Petitioner



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further states that the Order dated 05.02.2024 states that no fresh facts have been provided by the Petitioner in its representation which is completely contrary to the record as the Petitioner had provided supporting material along with its detailed representation which was given to the Respondents. He states that a mere lip-service has been carried out by the Respondents and the Order dated 29.08.2023 passed by this Court has not been given effect to by the Respondents. He states that in the representation given by the Petitioner, the Petitioner had shown that on the day when the fire broke out in the factory of the Petitioner, the Petitioner was proceedings with the implementation of the Scheme much ahead of the schedule given in the Scheme and the project of the Petitioner was on the verge of completion when the fire broke out. It is stated that the Petitioner had claimed insurance from the insurance company and had also requested the Respondents for extension of time by 18 months for completion of the project. He states that extension of time could be provided to the Petitioner under Clause 13 of the Scheme. He further states that the Respondents have completely failed to appreciate that the Petitioner had given documents to show that Leave and License Agreement for machineries, which were gutted in the fire, was taken only 45 days before the incident from M/s Gopal Consumer World for implementation of the Scheme. He further states that the Petitioner had also filed a sub-lease deed entered into by the Petitioner with M/s Connect Multipurpose Storage Private Limited and the Petitioner had also given proof to show that the machineries were purchased so that the project can be revived.

7. Learned Counsel for the Petitioner states that the amounts have been



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spent by the Petitioner from its pockets. It is stated that a sum of Rs.30 lakhs was paid as security deposit and invoices were issued for purchase of plant and machinery for a total sum of Rs.8,85,12,240/-. It is stated by the learned Counsel for the Petitioner that these additional facts show the bona fide of the Petitioner that the Petitioner has taken all the steps required to put the factory back on track and the same have not been taken into account by the Respondent at all. He, therefore, states that the decision taken by the Respondent to recover the Grant-in-aid given to the Petitioner is completely arbitrary and ought to be set aside. He states that the very fact that no fresh fact has been stated in the impugned Order shows non-application of mind on the part of the Respondents. He states that the documents submitted by the Petitioner have not been considered at all by the Respondent and the Respondent has merely stated that no fresh fact has been given in its representation. The Petitioner also places reliance on the Judgment of the Co-ordinate Bench of this Court in Shakti Industries v. Union of India, **2022 SCC OnLine Del 129**, wherein in identical circumstances, this Court has held that the Scheme in question was beneficial in nature and, therefore, has to be interpreted in a purposive manner and keeping in mind the objective behind the scheme, which was to promote small scale industries by granting them financial assistance, and the act of rejecting a legitimate claim, simply on the account of a technicality, would cause grave and irreparable harm, not only to the petitioner but also the faith of general public in these welfare schemes.

8. *Per contra*, learned Counsel for the Respondent contends that pursuant to the Order passed by this Court, a representation dated



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14.09.2023 was received by the Respondent. A joint inspection was carried out on 19.10.2023 by a joint inspection team at the site and the joint inspection team submitted its report. He states that the detailed report submitted by the Committee shows that the steps taken by the Petitioner were not adequate and, therefore, the claim of the Petitioner has been rejected. He further states that the Petitioner had given more or less the very same facts which were available with the Respondent before W.P.(C) 10771/2023 was filed and disposed of by this Court. He states that no further documents from the date of the disposal of the representation to the date of the joint inspection report has been submitted which would have persuaded the Respondent to change their mind.

9. Heard the Counsels for the parties and perused the material on record.

10. The short issue which arises for consideration in the present Writ Petition is as to whether the decision taken by the Respondents to recover the amount of grant in aid given by the Respondents to the Petitioner for implementation of the Scheme in question requires interference by this Court under Article 226 of the Constitution or not.

11. This Court on 29.08.2023, after hearing the parties and the plea of the Petitioner that the Petitioner has taken steps to ensure that the project is put back on track, had permitted the Petitioner to give a detailed representation. The Petitioner gave a detailed representation to the Respondents. A joint Inspection team went to the site and after assessing the site has given its report. Relevant portions of the Joint Inspection Report is being reproduced herein and the same reads as under:

“Current Status of the project site:



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A physical site visit of the project was conducted by a Joint Inspection Team (JIT) comprising of representatives from Ministry and PMA on 19 October 2023, The following are the observations made by the MoFPI:

A. Observations made on the project site premises where fire was reported (which was approved by the Ministry for Grant-in-aid under CEFPPC scheme) at Plot No. F-12, Sankrail Food Park, Sankrail, Howrah-711302 West Bengal:

- Burnt iron scraps were observed*

B. Observations made at the new project (which was established on their own) site premises at Plot No. B-4B, Sankrail Food Park, Sankrail, Howrah-711302 West Bengal:

- The 1A informed that this facility consists of both existing operations and expansion project (which was established by IA as a replica of the erstwhile project where fire broke out, which was approved by the Ministry).*
- The new project plant is located approximately 651 in away from the erstwhile project plant where fire broke out, which is contrary to the version made by the promoter at the time of personal hearing held on 12.10.2023 wherein they had stated that it was adjacent building.*
- Further, the distance between the erstwhile project site and the back side gate of the new project site is approximately 481 meters.*



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- *Further, the distance between the erstwhile project site where fire broke out and the boundary wall of the new project site is approximately 372 meters. IA did not assist the JIT in provision of measuring tape for measuring the distance and the area of the godown shed.*
- *IA has not provided the area/ space demarcation between the existing project and the expansion project in the new premises*
- ***IA did not provide the list of plant and machineries in the existing project and the expansion project in the new premises at the time of inspection.***
- *JIT observed that they are manufacturing potato chips in the new project site. The same was ascertained from the bags of raw potatoes found at the entry gate.*
- *IA has not shared the layout plan and design for the expansion project. However, IA took the JIT to the project and showed the following machineries/ godown shed to JIT and stated the following:*

a) Packaging machines:

Out of 19 packaging machines, 4 nos of potato chips packaging machines (with brand name- Pace; S.No. SM 01667, SM 01685, SM 01659 and SM 01668; Year of Make 2019) along with 6 weigher machines and other accessories like feeder, conveyor, printers (with individual capacity of 80 packages per minute) are the components of expansion project. JIT also observed a



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mezzanine floor above the room where packaging machines were kept by IA

b) Nitrogen plant:

IA informed JIT that out of 4 Nitrogen plants, 1 no of Nitrogen plant with Brand name - Airtech Engineering (year of make not observed) with capacity of 50 Newton Meter Cube is a part of approved P&M component under the expansion project. Remaining three Nitrogen plants belongs to the earlier facility. JIT found the aforesaid nitrogen plants in the project site.

c) Boiler:

*Boiler of Brand name- Thermax with capacity of 20 lakh kilo Calories/ hour is the component of expansion project. JIT observed that the control panel of Boiler make of Thermax Limited (THERMOPAC) with year of make 2008 (Model: VTIF20/13). As per the invoice submitted by IA, the boiler was procured (Invoice Date: 05 Dec, 2022) from M/s Deelishh Chips and Namkeen Pvt Ltd. As per internet information M/s Deelishh Chips and Namkeen Pvt Ltd is engaged in business of Food and Beverage, Ready to Eat Food. **The boiler is not purchased from Thermax Limited (THERMOPAC) or authorized Thermax dealers. No separate boiler shed is seen in the project and the boiler is found installed in the area near the finished product godown.***

d) P&M components from the approved project as stated by IA observed in the non- demarcated area of the facility

(i) Flavourite flavouring drum- installed and found functioning



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(ii) *Heat exchanger- not in use*

(iii) *Radiant Coil of thermal heat fluid - not in use*

(iv) *Fryer-not in use*

(v) *Potato grader not in use*

e) Finished good shed:

IA informed JIT, that the finished good shed was a component under the approved project that got fire damaged. IIT found that it was dumped with cartoon packs and the unused P&M components.

C. General Observations made by JIT base on the aforementioned findings:

- It was observed that there is a lack of safety measures and maintenance even in the alternate factory, which may make it susceptible in case of fire and its spread both internally and externally.*
- In the alternate premises area, it was observed that no clear-cut area was demarcated for the expansion project (approved by MoFPI). The JIT felt that the congested area reduces the minimum space required for safe plant operation and will adversely affect environmental conditions due to the generation of steam, heat or dust or particles harmful to health.*
- The boiler seems too old, and IA has been*



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requested to share the daily/weekly operational checks like starting, pressure, temperature, boiler pre-cleaner with JIT but IA has not provided the requisite information.

D. Difficulties faced by JIT at the site:

- IA has not cooperated with JIT and created hurdles in measuring the distance between the old and new project site. IA did not provide measurement tape, and after some time on repeated requests provided an electric wire to measure the distance.*

E. Conclusion of physical site inspection report:

There is no specific demarcation of area and Plant and Machineries between the existing and expansion project in the new premises. Hence, JIT could not be able to differentiate the space/ area as well as the plant and machineries meant for existing and expansion projects at the new premises.”

(emphasis supplied)

12. Based on the Joint Inspection Report, it was found by the Respondents that no physical progress has been shown by the Petitioner. The Joint Inspection Team consisted of the officers of the Ministry of Food Processing Industries, A Senior Associate of Ernst & Young LLP, which is the Project Management Agency, and the representatives of the Petitioner. This Court has not reason to come to the conclusion that the purport of the Joint Inspection Team was to deny the benefit of the Scheme to the Petitioner or it was done as a mere lip service to the Orders of this Court.

13. Clause 13 of the Scheme which is relevant for the case is being



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reproduced herein and the same reads as under:

“13. Implementation and monitoring of the projects sanctioned:

i. The Implementation schedule for the projects would be 18 months from the date of the issue of approval letter. In exceptional circumstances, for the reasons beyond the control of the promoter (s), the implementation period may be extended with approval of IMAC.

ii. In case of non-adherence of time lines, a penalty of 1% of the quantum of instalment amount due for release for that instalment, will be imposed for each month's delay beyond the stipulated timeline. The maximum amount of penalty, however, shall not exceed 10% of the instalment to be released to the project.

iii. It will also be binding on the applicant to allow inspection/physical verification of the unit at any time by representatives of Ministry.

iv. Promoter would be required to prominently display on the front of the project building/ vehicles stating that the "Project is assisted by the Ministry of Food Processing Industries, Government of India.”

14. No doubt, the Scheme provides that in exceptional circumstances and for reasons beyond the control of the promoters the implementation period of the Scheme may be extended with approval of the IMAC. However, in the facts of the present case, looking at the Joint Inspection Report this Court is of the opinion that steps have not been taken by the Petitioner after the fire incident to ensure that project can be put back on track even after giving additional time. Therefore, the claim of the Petitioner on the ground of



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legitimate expectation cannot be accepted.

15. 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.

25. At this juncture, we deem it necessary to refer to a decision by the House of Lords in Council of Civil



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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.

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.



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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



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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)]



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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.”



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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 aforementioned 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



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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])”

(emphasis supplied)

16. The purport of this Court behind remanding back the matter to the



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Respondents was to see as to whether the Petitioner's project can be put back on track within a reasonable time or not. The Joint Inspection Report belies the contentions raised by the Petitioner.

17. The scope of judicial review in administrative Order is well described by the Apex Court in Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517 has held as under:

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and



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succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

18. The Apex Court in Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818 has held as under:

"18. Before we conclude, it is necessary to point out that the High Court was of the opinion that the eligible bidders were not entitled to be either impleaded in the petition filed in the High Court by the ineligible bidder GYT-TPL JV or were not entitled to be heard. With respect, this is not the appropriate view to take in



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matters such as the present. There are several reasons for this, one of them being that there could be occasions (as in the present appeals) where an eligible bidder could bring to the notice of the owner or employer of the project that the ineligible bidder was ineligible for additional reasons or reasons that were not within the contemplation of the owner or employer of the project. It was brought to our notice by Afcons Infrastructure in these appeals that GYT-TPL JV did not have any experience in the construction of a viaduct by the segmental construction method and that the translations of documents in Mandarin language filed in the High Court were not true English translations. Submissions made by the learned counsel for Afcons Infrastructure in this regard are important and would have had a bearing on the decision in the writ petition filed in the High Court but since Afcons Infrastructure was not a party in the High Court, it could not agitate these issues in the writ petition but did so in the review petition which was not entertained. It is to avoid such a situation that it would be more appropriate for the constitutional courts to insist on all eligible bidders being made parties to the proceedings filed by an unsuccessful or ineligible bidder."

19. The Apex Court in Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489 has held as under:

"19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or



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mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer."

20. The Apex Court in N.G. Projects Ltd. v. Vinod Kumar Jain, (2022) 6 SCC 127 has held as under:

"23. In view of the above judgments of this Court, the writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a



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requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present day Governments are expected to work."

21. In the present case, the Joint Inspection Report has found that the progress of the Petitioner is not satisfactory and, therefore, the Respondents have to decide not to change the original decision taken by them to recover the grant-in-aid given by the Respondents to the Petitioner. This Court does not find any reason to interfere with the decision taken by the Respondents.

22. Accordingly, the Writ Petition is dismissed along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

JULY 30, 2024

Rahul