CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

Present :- Hon'ble Justice Amrita Sinha

<u>WPA No. 3152 of 2022</u>

Ringtong Tea Co. Pvt. Ltd. & Anr.
Vs.
The Union of India & Ors.

For the writ petitioners	:-	Mr. Amales Ray, Sr. Adv. Mr. Nigam Mittal, Adv. Ms. Prerna Mitra, Adv.
For the Tea Board	:-	Mr. Sudipto Kumar Mazumdar, Sr.Adv, DSGI Mr. Ajoy Kumar Singhania, Adv.
Heard on	:-	25.04.2025 & 28.04.2025
Judgment on	:-	02.05.2025

<u>Amrita Sinha, J.:-</u>

Facts of the case:

1. The petitioner no. 1 company is running a tea estate and the petitioner no. 2 claims to be one of the Directors of the petitioner no. 1. The petitioners seek subsidy under the 'Tea Development & Promotion Scheme', 2014 for the XII Plan, hereinafter referred to as 'the Scheme, 2014'. They are aggrieved by the sudden nullification and invalidation of their pending claim under the Tea Development & Promotion Scheme under the 15th Finance Commission 2021-26, hereinafter referred to as 'the new Scheme'.

2. The Government of India approved the Scheme, 2014 during the XII Five Year Plan (2012 - 2017). The Scheme was valid from 12th December, 2014 to 31st March, 2017. There were seven major components in the Scheme which were further divided into sub-components.

3. In response to the Scheme, 2014 the petitioners applied for subsidy under various components. In the instant writ petition adjudication is restricted only to grant of subsidy under component-1, sub-component- 1.1- Re-plantation, Replacement planting and Rejuvenation of old tea bushes. The schedule for disbursement of subsidies under the Scheme, 2014 mentions that, there will be two instalments for the activity of re-plantation, replacement planting, rejuvenation pruning and new planting. The first instalment of subsidy will be released immediately on completion of re-planting and after receiving satisfactory first post planting inspection report. Second/final instalment will be released on completion of twenty four months from the date of completion of replanting and after receiving satisfactory second post planting inspection report.

4. The application for subsidy was to be submitted in the prescribed format, complete in all respect, with all supporting documents to the nearest office of the Tea Board thirty days before the commencement of the field operations or procurement of items. The documents which were required to be submitted along with the application were mentioned in the modalities for implementation of the Scheme, 2014.

5. By a communication dated 30th December, 2015 the Manager of the petitioner no.1 was informed that in response to its application dated 4th November, 2015 and subsequent pre-approval, inspection was undertaken by the office on 19th November, 2015 and no objection was raised by the authority to commence uprooting and re-plantation and rejuvenation pruning and infilling in the areas under the Boards' Tea Development & Promotion Scheme (Plantation Development) under the sub-component re-planting and rejuvenation pruning and consolidation at own risk, subject to fulfilling all terms and conditions of the Scheme, 2014. No Objection letter was also issued on 29th November, 2016 for uprooting and re-plantation and rejuvenation and infilling mentioning that the same were issued with an object to enable the company to commence and complete field works within the scheduled time without any financial commitment on the part of the Tea Board at that stage.

6. On expiry of the Scheme, 2014 on 31st March, 2017, the Tea Board published the modalities and guidelines for Tea Development & Promotion Scheme for Medium Term Framework hereinafter referred to as 'MTF Scheme'. The date of commencement of MTF Scheme was 29.12.2017 and its duration was till 31.03.2020. The MTF Scheme specifically recorded that the pending claims for applications submitted under Plan XI and XII, including small tree growers, will be accommodated during the Medium Term Framework and will be governed by the guidelines that were framed under the respective

schemes. Prior to coming into effect of the MTF Scheme, further no objection was issued in favour of the Manager of the petitioner no.1 on 1st December, 2017 for rejuvenation and infilling.

7. The petitioner again applied for subsidy under the MTF Scheme. Pre activity acknowledgement receipt was issued to the petitioner on 2nd January, 2019 by the Assistant Director of Tea Development, Tea Board disclosing that on receipt of the application on 29th October, 2018 for rejuvenation and infilling activity under the aforesaid sub-component, pre-activity inspection was done on 14th December, 2018. It was mentioned therein that issuance of the acknowledgement receipt does not guarantee payment under the schemes and the same should not be construed as binding on the Board for any financial commitment whatsoever.

8. The tea estate was inspected on 27-29.01.2021 and first inspection report: rejuvenation activity was communicated to the petitioners mentioning that the inspecting officer of the Tea Board Kurseong personally visited the tea estate in the presence of the Manager of the tea garden to verify the process of pruning and infilling of vacancies of the rejuvenated area under the Scheme and that the recovery of the rejuvenated bushes and infills have been found to be satisfactory for approval of subsidy. The second cum final inspection reports issued by the Development Officer of the Tea Board also mentions that the rejuvenated bushes with infilled plants were being maintained satisfactorily.

9. Despite obtaining satisfactory inspection reports subsidy was not released in favour of the petitioners. Application was made by the petitioners under the Right to Information Act, 2005 seeking information with regard to payment of subsidy under the aforesaid schemes. It was informed that sanctioned letter of the subsidy scheme is issued only to the extent of fund available, only after ascertaining fund availability. Any additional expenditure made, if the scheme is to be operational beyond one year, has to be reflected in the return so that provision can be made for payment in the next one or two financial years. The sanctioning officer will be held responsible if any sanction is issued without fund backup.

10. The Office Order no. 30/19 dated 3rd June, 2019 issued by the Financial Advisor and CAO was forwarded to the petitioners. The same mentions that it has been noticed that a large amount of liability has been created towards disbursal of subsidy without allocation of additional fund by the Ministry of Commerce and Industry. The sanction towards subsidy disbursal is to be restricted within the allocated budget and all efforts should be made to clear the liability first before creating any fresh liability. Meticulous review of the sanctioned cases as per MTF guidelines is required before disbursing the fund.

11. The Ministry of Commerce and Industries vide intimation dated 24th February, 2020 disclosed that a team from the Development Directorate, Kolkata was camping at Siliguri for resolving various

issues relating to subsidy matters. All stakeholders were requested to contact the officials at Siliguri for direct resolution/disbursement of subsidy amount to the best possible extent as per the existing guidelines of Tea Board. The intimation further disclosed that additional allotment is being made by the Ministry of Commerce and Industries and the committed liabilities will be cleared and inspections and receipt of applications will also start.

12. The Director of Tea Development issued a circular on 4th June, 2020 mentioning that field inspections which could not be carried out due to restrictions imposed on account of Covid-19 pandemic may recommence and all cases be kept in readiness for sanction subject to availability of fund.

13. On 12th November, 2021 a new scheme under the name and style of Procedure for Implementation of Tea Development & Promotion Scheme (15th Finance Commission), 2021-2026 came into force. The duration of the scheme is from 12th November, 2021 to 31st March, 2026, till such time the target or the fund is achieved/ available, whichever is earlier. The Board has the right to declare any cut-off date for receipt or closure of applications. The new scheme discloses that certain activities for big growers and small growers which were approved under the earlier schemes have been discontinued and not included as eligible activities in the new scheme. For such activities, while no fresh applications will be entertained, financial assistance would be considered under the new scheme only for those cases for

which formal sanction order has been issued. The activities for which the petitioner sought subsidy in terms of the earlier schemes, stood discontinued in the new scheme. The petitioners are aggrieved by the same.

Submissions of the petitioners:

14. It is the case of the petitioners that in furtherance to the applications made by the petitioners for grant of subsidy, the authority issued No Objection Certificates and also conducted inspections of the tea estate. On issuance of satisfactory reports by the authority, subsidy ought to have been disbursed in favour of the petitioners.

15. The clause in the Scheme, 2014 mentioning that satisfactory completion of field work and offering the same for physical verification and receiving the supporting documents along with the satisfactory inspection report will entail the applicant garden for receiving the subsidy, has been stressed upon.

16. It has been argued that though the No Objection Certificates do not create any right in favour of the petitioners, but post satisfactory inspection reports, a right has accrued in favour of the petitioners for being treated eligible for grant of subsidy.

17. The petitioners allege violation of Article 14 of the Constitution. It has been submitted that subsidy has been released in favour of other similarly placed tea estates but the petitioners have been denied the benefit. Discrimination has been pleaded.

18. It has been contended that the petitioners fulfilled all the eligibility criteria to receive the subsidy. The petitioners were never informed about any formality or condition which the petitioners may not have complied rendering the company ineligible to receive subsidy. There was no fault, delay or laches on the part of the petitioners. No Objection Certificates and satisfactory pre and post inspection reports were obtained within the validity period of the schemes.

19. Promissory estoppel has been pleaded. It has been submitted that relying on the promise of disbursing subsidy, the petitioners changed their position. Now at this stage, the authority ought not to retract from the promise made.

20. Issuance of sanction letter for releasing fund is a procedural matter. All substantive conditions for grant of subsidy being fulfilled, subsidy ought to be released in favour of the petitioners.

21. The right which accrued in favour of the petitioners in terms of the schemes of the year 2014 and 2017 cannot be taken away by virtue of the implementation of the 2021 scheme. Restriction in the new scheme to release subsidy for the pre-existing liability ought not to be made applicable in case of the petitioners.

22. The object for grant of subsidy is yet to be achieved. Public purpose will not be served if the subsidy, as assured /promised, is not released because of the restriction in the new scheme allegedly on account of scarcity of fund.

23. Reference has been made to the report of the department related to Parliamentary Standing Committee on Commerce presented to the Hon'ble Chairman, Rajya Sabha on 15th June, 2022 relating to the issues affecting the Indian tea industry especially in the Darjeeling region wherein it is mentioned that the department recommends review of the decision to settle outstanding subsidies of beneficiaries who had been accorded NOC for completion of the concerned activities.

Prayers made by the petitioners:

24. Prayer has been made to direct the authority to issue sanction letter in respect of the claim of the petitioners under the Scheme, 2014 - Plan XII and disburse subsidy, as admissible, in favour of the petitioners. Prayer has also been made to declare that the restriction for grant of subsidy in the new scheme, 2021 will not be applicable in case of the petitioners.

Decisions cited by the petitioners:

25. The petitioners rely on the following precedents in support of their prayer:

a. Judgment delivered by the Hon'ble Supreme Court in the matter of ***Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes & Ors.*** reported in ***1992 Supp (1) SCC 21***.

b. Judgment delivered by the Hon'ble Supreme Court in the matter of ***State of Bihar & Ors. Vs. Kalyanpur Cement Limited*** reported in ***(2010) 3 SCC 274***.

c. Judgment delivered by the Hon'ble Supreme Court in the matter of ***Indian Oil Corporation Ltd. & Ors. Vs. Shashi Prabha Shukla & Anr.*** reported in ***(2018) 12 SCC 85***.

d. Judgment delivered by the Hon'ble Supreme Court in the matter of ***State of Jharkhand & Ors. Vs. Brahmputra Metallics Ltd., Ranchi & Anr.*** reported in ***(2023) 10 SCC 634***.

e. Judgment delivered by the Hon'ble Supreme Court in the matter of ***Dr. Bool Chand vs. Chancellor, Kurukshetra University*** reported in ***(1968) 1 SCR 434 : AIR 1968 SC 292 : (1968) 2 LLJ 135***.

f. Judgment delivered by the Hon'ble Division Bench of this Court in the matter of ***Union of India & Ors. Vs. Md. Asiq Billah & Ors.*** with ***Union of India & Ors. Vs. West Bengal Board of Madrasah Education & Ors.*** with ***Union of India & Ors. Vs. Md. Aktar Hossain & Ors.*** reported in ***2019 SCC OnLine Cal 9382 : (2019) 3 Cal LT 244***.

g. Judgment delivered by the Hon'ble Division Bench of the Madhya Pradesh High Court in the matter of ***Shri Bajrang Extraction Pvt. Ltd. & Anr. Vs. The Secretary to the Government of M.P. & Ors.*** reported in ***1993 SCC OnLine MP 73 : AIR 1993 MP 202***.

Submissions of the respondents:

26. The respondents oppose the submissions and the prayers made by the petitioners. It has been submitted that no promise and/or assurance was ever given by the respondents for grant of subsidy in favour of the petitioners. A pan India policy was adopted by the Government for promoting the tea industry and the Government adopted the scheme and approved the modalities and the guidelines for implementation of the scheme for development and promotion of the tea industry. The subsidy is always subject to the availability of funds provided to the Board by the Government through budget allocation. The writ court ought not to exercise the power of judicial review to adjudicate policy matters of the Government.

27. It has been denied that any right of the petitioners has been infringed by non grant of subsidy as alleged or at all. As sanction letter for grant of subsidy was not issued in favour of the petitioners, accordingly, no right accrued in favour of the petitioners to seek issuance of writ of mandamus for releasing subsidy.

28. The No Objection Certificates issued in favour of the petitioners clearly mentions that the same was being issued with an object to enable commencement and completion of field work within the time schedule but without any financial commitment on the part of the authority. Mere issuance of No Objection Certificates and post operative inspection reports do not create any right in favour of the petitioners

for grant of subsidy. The same can be granted only upon fulfilment of all criteria, subject to availability of fund.

29. With the implementation of the new scheme, the scope for grant of subsidy in favour of applicants of the earlier schemes came to an end. The earlier schemes, not being in vogue at present, there is no scope to consider the petitioners for grant of subsidy in terms of the earlier schemes which have expired in its usual course.

30. Not to carry forward the financial liabilities in respect of the earlier schemes is a policy decision of the Government and the prayer of the petitioners seeking declaration that the said restrictive clause will not apply to the petitioners, found eligible for grant of subsidy under the earlier schemes, ought not to be allowed in the facts and circumstances of the instant case. The petitioners ought not to have approached the writ court seeking such declaration.

31. It has been denied that there has been any discrimination by the respondents. There hasn't been any violation of the principle of natural justice and none of the legal or statutory right of the petitioners has been infringed in any manner.

32. It has been submitted that there are several other tea gardens who made application for grant of subsidy but only the applicants who complied with all formalities were issued sanction for subsidy on 'first come first serve' basis as long as funds were available with the authority. Any order passed in favour of the petitioners for grant of

sanction will have wider ramification throughout the country and the respondent authority will not be able to meet up the financial liability of the tea gardens for want of budgetary allocation.

33. With regard to the recommendation of the Parliamentary Standing Committee in the Rajya Sabha it has been submitted that till the recommendation is accepted in the Parliament and any law or directive is issued, the same cannot be implemented by the authority. Mere recommendation will not give any right to the petitioners to receive subsidy in respect of claims which stood lapsed on expiry of the scheme.

34. The respondents pray for dismissal of the writ petition.

Decisions relied upon by the respondents:

35. The respondents rely on the following precedents in support of their case:

a. Judgment delivered by the Hon'ble Supreme Court in the matter of ***D.C.M. Ltd. & Anr. Vs. Union of India & Anr.*** reported in ***(1996) 5 SCC 468***.

b. Judgment delivered by the Hon'ble Supreme Court in the matter of ***State of Punjab vs. Nestle India Ltd. & Anr.*** reported in ***(2004) 6 SCC 465***.

c. Judgment delivered by the Hon'ble Supreme Court in the matter of ***Dr. Ashwani Kumar vs. Union of India & Anr.*** reported in ***(2020) 13 SCC 585***.

d. Judgment dated 23rd April, 2019 delivered by a coordinate bench of this Court in WP No. 723 of 2017 in the matter of ***Purajit Bakshi Gupta vs. Union of India & Ors.***

Discussion by the Court:

36. I have heard and considered the respective submissions made by the parties and have perused the materials on record.

37. Indeed, a scheme was floated by the authority for providing subsidy for development and promotion of the tea industry. The objective of the scheme was to increase production and field productivity and quality of tea by encouraging re-plantation/ replacement planting/ rejuvenation pruning/ extension planting/ irrigation and mechanization. The scheme was valid for a particular period of time. Conditions were prescribed in the scheme to consider eligibility of an applicant to receive subsidy under its various components.

38. There was provision for pre approval and post operative inspections. The scheme permitted the Tea Board to carry out or cause further inspections and investigations as deemed necessary for verification of particulars furnished by the applicant for grant of subsidy. The No Objection Certificate issued by the field office could not be taken to be binding on the Board if the applicant was subsequently found to be

ineligible for subsidy due to other reasons to be specified by the Board in writing.

39. The commitment of the Board is to become binding only after issuance of approval cum sanction letter following the scrutiny of the post operative inspection report.

40. In the case at hand, though No Objection Certificates and the inspection reports under the scheme were issued, the petitioners were never issued the approval cum sanction letter. The scheme specifically mentions that satisfactory completion of field work and the same being offered for physical verification by the field office will entail the applicant garden for receiving subsidy, but fact remains that subsidy was not released in favour of the petitioners despite having possession of more than one inspection reports.

41. The petitioners were never intimated about any reason or shortcoming on their part for not releasing subsidy in their favour despite possessing satisfactory second and final inspection reports from the authority during the validity period of the scheme.

42. The Scheme, 2014 gave way to the MTF Scheme which expired in 2020 and currently the new Scheme, 2021 is in operation. The liability under the earlier schemes has been partially disowned by the respondents in the new Scheme.

Issues to be decided:

43. Whether a writ of mandamus can be issued commanding the authority to release subsidy in favour of the petitioners on obtaining NOC and second cum final inspection reports?

44. Whether a declaratory order can be passed declaring that the restriction of payment of subsidy in accordance with the earlier schemes cannot be made applicable in case of the petitioners?

Observations of the Court:

45. Subsidy is a grant and/or benefit offered by the Government in aid of a public policy. Neither does one have a fundamental right to receive subsidy nor is the Government bound to provide subsidy to anyone. Only when the Government decides to promote or facilitate or grant relief to any sector or industry, the Government may frame policy to provide subsidy. None can compel the Government to provide subsidy. When subsidy schemes are offered, the authority has to ensure that the benefit reaches the proper target and the money is not misused, siphoned off or squandered. Effort ought to be taken to achieve the desired result.

46. The Government in the year 2014, for the purpose of development and promotion of the tea industry, declared to release subsidy in favour of the eligible applicants. A specified amount in the budget was allocated to meet up the liability meant for release of subsidy.

47. The petitioners claim to have complied with the conditions and aver to be eligible to receive subsidy. From the documents annexed to the writ

petition even though it appears that the petitioners may have been eligible to receive subsidy on account of obtaining No Objection Certificates and pre approval inspection reports and second and final inspection reports, but the sanction letter was not issued in favour of the petitioners.

48. Several tea gardens throughout the country applied for grant of subsidy in terms of the schemes. There may be innumerable tea gardens that may be eligible to receive subsidy. The same does not imply that subsidy will be released in favour of all eligible tea gardens. It is only when all the conditions prescribed in the schemes are complied with by the applicants, that the sanction for releasing subsidy is issued. Till a formal sanction letter is obtained, the right to receive subsidy does not accrue at all.

49. The petitioners allege discrimination. Apart from bald allegation of violation of Article 14, not a single instance has been brought forward by the petitioners in support of such allegation. No case has been made out by the petitioners that subsidy has been granted in favour of tea garden(s) who did not comply the conditions prescribed in the schemes. In the absence of particular instance of discrimination being brought to the notice of the authority, it will not be possible for the authority to identify and take corrective measures to redress the issue.

50. The petitioners also raise the issue of promissory estoppel on the part of the authority. It appears that indeed a scheme was floated by the

Government to provide subsidy but the same does not mean that a specific promise was made to the petitioners in favour of the grant. The authority has taken a fair stand to release subsidy in favour of eligible applicants on first come first serve basis. Whoever applied earlier got a better chance for consideration for releasing subsidy in its favour. It can always be that a prior applicant was found eligible and subsidy granted in its favour from the available fund.

51. The petitioners have not been able to highlight any instance where an applicant, who applied later than the petitioners, was allowed the subsidy ignoring or bypassing the claim of the petitioners. It may be that by the time eligible applicants to receive the grant on completion of all formalities are identified, the scheme expired and the fund allocated for the scheme got exhausted.

52. The authority has taken the stand that subsidy could not be paid to all the applicants due to scarcity of fund. The scheme in question had a limited fund to be offered as subsidy to eligible tea gardens. The quantum of money that will be offered as subsidy is a policy decision. The Government is the best authority to take a call as to how much money is to be offered as subsidy to promote a particular industry. It is not open for a tea garden to challenge the policy of the Government quantifying an amount to be offered for subsidy.

53. Subsidy can never be claimed as a matter of right. Had the Government not floated the scheme of subsidy even then the tea

garden of the petitioners would continue to be in operation. It is not the case of the petitioner that it is only because of the subsidy offered by the Government that the petitioners have entered into the tea business and without the subsidy it will not be possible for the petitioners to run the same. The petitioners are in the tea industry and will continue with the tea industry irrespective of the fact whether subsidy is released in their favour or not. It is true that releasing subsidy will certainly help in development and promotion of the business but writ of mandamus cannot be prayed for commanding the authority to release subsidy in favour of the petitioners.

54. The authority adopting a scheme has the right to review the same as per requirement. The Government adopted a scheme in the year 2014 which was reviewed in the year 2017 and further reviewed in the year 2021. It is absolutely the right and privilege of the authority to take measures and review schemes for the benefit of the public.

55. The petitioners allege that the decision not to carry forward past liabilities is not based on any public policy. Such a submission cannot be accepted by the Court. Decision to grant subsidy is a policy decision of the Government. An individual tea garden does not have any right and/or authority to decide as to whether the policy adopted by the Government is in the aid of the public or not. All figures and data are available with the Government and it is for the Government to take a decision whether to continue with a public policy or not. It is always open for a litigant to challenge the policy itself. It is, however,

not open for a litigant to choose a portion of the policy and pray for the same to be made applicable to him or to pray for a declaration that a particular portion of the policy cannot be made applicable in his case.

56. The intention of the Government is to promote and develop the tea industry. How much budget is to be allocated for the same is the sole discretion of the Government. It is not proper for the Court to exercise power of judicial review to intrude upon and direct the Government to fix up a particular amount for the said purpose. The Court neither has the expertise nor the mechanism to arrive at a figure which may be directed to be fixed as budgetary allocation in respect of a particular policy to obtain the optimum result.

57. The submission of the petitioners that as all substantive conditions were fulfilled by the petitioners and issuance of the sanction letter was merely procedural, may be proper to some extent. Fact remains that, as long as the sanction letter is not issued, no right accrues in favour of the petitioners to seek a writ of mandamus directing the authority to release subsidy as per the scheme.

58. The new scheme that is currently in vogue though discontinued certain activities of the earlier schemes but the said scheme has reserved provision for providing financial assistance in respect of cases in which formal sanction order had been issued and in cases where part of the subsidy had been released. It is not that payment in terms of the earlier schemes has been discontinued completely. Had the

petitioners been granted a sanction letter, then direction could have been passed upon the authority for releasing subsidy.

59. In Mangalore Refinery (supra) the Court was considering the issue as to whether technical ground can be resorted to refuse permission. Here, subsidy cannot be directed to be paid as formal sanction has not been issued by the Government. It is not that the sanction has not been granted for technical reason. There are several factors to be taken up for consideration prior to issuance of sanction letter including availability of fund. Accordingly, the ratio laid down in the subject case cannot be made applicable in the instant case.

60. In Shri Bajrang Extraction (supra) the Court was of the opinion that a definite promise was held out by the authority in the scheme to give subsidy. The Court was of the opinion that once the eligibility for grant of subsidy is acquired, the right to sanction was also acquired. In the case at hand, there is nothing to suggest that all the eligibility conditions were complied with by the petitioners for receiving subsidy. Moreover, there may be several eligible applicants. In such situation, the decision of the authority to issue sanction letter on first come first serve basis, subject to the availability of fund, cannot be faulted.

61. The Court held that sanction of subsidy after due proceeding of the application is procedural and not substantial part of the scheme. Once the eligibility for grant of subsidy is acquired, the right to sanction is also acquired. In the instant case, the proceeding to ascertain

eligibility of the petitioners for sanction of subsidy remained incomplete. Apart from obtaining No Objection Certificates and inspection reports, the other formalities for issuance of sanction letter could not be completed within the validity period of the scheme as long as fund was available. As such, substantial part for processing the application could not be completed within due time.

62. In Kalyanpur Cement (supra) the Court was dealing with the issue of promissory estoppel. The Court held that the authority cannot be permitted to take advantage of its own wrong. The Court also noted that to invoke the doctrine of promissory estoppel, clear, sound and positive foundation must be made in the petition itself by the party invoking the doctrine and bald expressions without any supporting material would not be sufficient. The Court also took note that it is settled law that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers.

63. Here, apart from the scheme itself no promise was ever made to the petitioners for releasing subsidy in their favour. On the contrary, the No Objection Certificates issued in favour of the petitioners clearly recorded that the same was being issued only with an object to enable commencement and completion of field work within the time schedule and subject to clearance of all other liabilities without any financial commitment on the part of the Tea Board. The activities were done by the petitioners at their own risk. So, no expressed or even implied

promise appears to have been made by the authority for releasing subsidy to the petitioners.

64. In Sashi Prabha (supra) the Court reiterated the settled issue that the dealing of a public authority has to be fair, objective, non-arbitrary, transparent and non-discriminatory. The Court held that in exercise of uncontrolled discretion and power, it cannot resort to any act to fritter, squander and emasculate any public property be it by way of State largesse or contracts. In the instant case, the petitioners have failed to come up with any specific instance where the authority released subsidy in favour of ineligible applicants or squandered public money. Specific stand of the authority is that subsidy was released in favour of eligible applicants as long as fund was available on first cum first serve basis. Said stand of the authority appears to be a fair one and transparent at the same time.

65. In Brahmputra Metallics (supra) the Court was considering the issue as to whether the respondent was entitled to a rebate/deduction from electricity duty. The Court held that it would be manifestly unfair and arbitrary to deprive industrial units of their legitimate entitlement for implementing the industrial policy. As no justification or reason was disclosed by the State for not giving effect to the exemption within the subject period, the Court interfered in the matter and passed necessary direction. There is no question of delay in this case. The petitioners applied within the prescribed time period but the fund allocated for subsidy exhausted prior to issuance of sanction letter in

favour of the petitioners for which subsidy could not be directed to be released. No case to exercise judicial discretion has been made out by the petitioners.

66. In Md. Asiq Billah (supra) the Court held that a declaratory relief can be granted by the Court under Article 226 of the Constitution of India. Though the petitioners have prayed for an order of declaration but they have not challenged the legality and validity of the new Scheme. The new Scheme does not absolutely bar grant of subsidy in respect of applicants in whose favour sanction letter was issued. As the petitioners do not possess a sanction letter, accordingly, the petitioners will not be entitled to take the benefit of the new Scheme. If the petitioners are aggrieved by the Scheme, then the same ought to have been challenged before the Court. Seeking declaratory order is not the remedy.

67. The petitioners have distinguished the ratio laid down by the Court in the matter of Purajit Bakshi Gupta (supra) by submitting that in the cited case application was made when the scheme was not in existence. As the petitioners in the instant case applied within the validity period of the scheme, subsidy ought to be released in their favour. Here, benefit could not be extended to the petitioners because they were unable to obtain sanction letter during the validity period of the schemes.

68. In Aswini Kumar (supra) the Court was of the opinion that the Courts would not pass orders purely on the matter of policy or formulate judicial legislation for implementation by the executive. It is outside the power of judicial review to issue directions or advise the executive in matters of policy. In the instant case, the authority took the decision to offer subsidy for a particular budgeted allocation. As the petitioners failed to obtain sanction letter for release of subsidy prior to the exhaustion of the budgetary allocation, as such, subsidy could not be released in their favour. It will be highly improper for the Court to issue writ either to divert budget from other fund or to increase the budgetary allocation to meet the liability of the petitioners.

69. In D.C.M. Limited (supra) the Court held that the doctrine of promissory estoppel is applicable against the Government. From the discussions made it does not appear that the said principle has not been acted upon by the Government.

70. In Nestle India (supra) the Court while dealing with the issue of promissory estoppel reiterated the pre conditions for operation of the doctrine; first, a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee and second, such acting upon the promise by the promisee so that it would be inequitable to allow the promisor to go back on the promise. In this case, assuming that a promise was given by the Government for releasing subsidy, the same was duly acted upon by the promisor. It is not that the Government went back in its promise. The limited amount of fund that

was available for grant of subsidy was duly released in favour of the eligible applicants. The petitioners were unable to get the benefit of the scheme for reasons as discussed hereinabove.

Conclusion:

71. From the discussions made herein above it appears that neither any statutory nor any fundamental right of the petitioners has been violated or infringed upon by the act of the respondents. Their right to trade and business has not been interfered by the act of the respondents. Apart from the fact that without the subsidy the petitioners may not be able to develop the business further, the petitioners have not been prejudiced in any manner whatsoever by non-granting of subsidy in their favour.

72. The issues framed herein above are, accordingly, answered in the negative. In the facts of the instant case, there is no scope for issuance of writ of mandamus directing the authority for releasing subsidy in favour of the petitioners. There is also no scope for issuance of any declaratory order in respect of the prevailing new scheme as sought for by the petitioners.

73. It may be that relying upon the recommendations made by the department of Commerce and Industry, the authority may revise or review their subsidy plan and may offer further subsidy to the eligible applicants. Till such time the petitioners will have to manage their

business with their own fund without depending upon fund from the Government.

74. The writ petition stands dismissed.

75. No order as to costs.

76. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)