
(2014) 09 AHC CK 0241

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 1853 and 1854 of 2009

Bajaj Hindustan Limited

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 299

Citation : (2014) 10 ADJ 714 : (2015) 3 ALJ 146

Hon'ble Judges : Tarun Agarwala, J; Satish Chandra, J

Bench : Division Bench

Judgement

Tarun Agarwala, J.—The petitioner is a public limited company and is engaged in the manufacture and sale of sugar. The writ petitions have been filed for the quashing of the demand notices whereby the respondents are seeking to realise purchase tax on the purchase of sugarcane made by the petitioner. The facts leading to the filing of the writ petitions are that the sugar industry is one of the largest sectors of the Indian economy and India is the second highest cane producing and sugar producing country in the world, next to Brazil. Sugar is an important cash crop in the country occupying 1.86 million hectares and contributing around 7.5% of the gross value of the agriculture produce in the country. About 50 million farmers depend on the sugarcane cultivation for their livelihood and an equal number of agricultural labour earn their living by working in the sugarcane farms.

2. The demand for sugar in the country is continuously rising. The State of U.P. is spread over an area of 2.41 lacs sq. kms. having a population of around 18.00 crores and is the largest State in the country. The sugar industry is one of the most important industries in the State of U.P., with the sugar cane being the chief cash crop. The economy of the State being mainly agro-based, the sugar industry plays a pivotal role in the economy of the State by creating livelihood for about 32.00 lacs farmers, 1.6 lacs industrial workers and one crore of people by way of indirect employment in the form of contract labour, cane harvesting

labour, transport labour, etc. Nearly half of the India's sugarcane area is located in Uttar Pradesh. Uttar Pradesh is presently the highest sugarcane producing and second highest sugar producing State in the country sharing about 42% of the sugarcane and 28% of sugar production of the country. It is relevant to note that in U.P. 58.5% of the sugarcane produce is diverted to other industry for production of Gur, Khandsari, Rab, etc.

3. Even though the demand of sugar in the country has increased manifold, the sugar industry in Uttar Pradesh has remained stagnant over a long period of time due to various reasons such as sickness of uneconomic and unviable units mainly in the government and in the cooperative sectors having outdated machinery and less installed capacity. Due to low sugar crashing capacity of the sugar mills, farmers are forced to sell their sugarcane to Khandsari and Gur industry at a lower price as a result, the farmers are not getting adequate price for their produce.

4. Keeping in view the increase in the demand of sugar, it became imperative that the major sugar producing States in the country were required to take steps to increase the sugarcane production by promoting and encouraging further capital investment in this sector. The need of the hour was to pump in modern and state of the art technology in the sugar industry and to encourage entrepreneurs to invest the money in the sugar industry and bring new areas under sugarcane cultivation as well as to enhance the productivity of the existing area under cultivation by improving the developmental activities such as infrastructural development, bridges, culverts, provision of better seeds, better remuneration to farmers, etc.

5. In this background the State of U.P. announced a Sugar Industry Promotion Policy, 2004. The policy elaborates the circumstances and the economic factors which became necessary to exempt the new sugar industry that was to be established under the policy. The preamble of the policy indicates that it was in the best interest not only for the sugar industry but in public interest as well. The State Government announced the policy after considering the pros and cons of the policy and the policy was adopted not for any short term benefit but to keep the long term growth of the sugar sector and the economy of the State.

6. The policy provides for various incentives to sugar company which undertakes investment of Rs. 350.00 crore or more in the State of Uttar Pradesh. The incentives were made available on setting up of new units and/or expansion of existing units and also on setting up of ancillary industries like generation of power, distillery, etc. The policy aimed to gear up an investment climate in U.P. and to provide a fillip to sugar industry in the State, which in turn would contribute to the growth of the rural economy and general employment in the State. The policy provided exemptions/incentives for five years in case where investment of Rs. 350.00 crores was made and ten years in case where investment was exceeding Rs. 500.00 crores.

7. The policy further provided that the following exemption/incentives would be given to entrepreneurs who are eligible under the policy, namely:

- (a) exemption from entry tax on sugar
- (b) exemption from trade tax on molasses
- (c) exemption from Stamp duty and registration charges on purchase of land
- (d) exemption from purchase tax on sugarcane
- (e) reimbursement of Society commission on sugarcane
- (f) exemption from administrative charges on molasses
- (g) reimbursement of transport of sugar
- (h) reimbursement of additional cost on transport of sugarcane
- (i) capital subsidy of 10% on the investment made.

8. The policy made further provision for exemption at two levels;

(i) Firstly, with the minimum investment of Rs. 350 crores, the exemptions and incentives as given in the policy would be for a period of 5 years, and for those entrepreneurs who invest more than Rs. 500 crores, the exemptions and incentives shall be for a period of 10 years.

(ii) The above was subject to the condition that the company/unit ensured direct employment of not less than 1000 persons.

(iii) The investments mentioned in (i) have to be made within a period of 3 years from 01.04.2004 to 31.03.2007 and the units were also required to commence production within the same period.

(iv) The incentives would be available for 5 years and 10 years in the case of investment of Rs. 350 crores and above and Rs. 500 crores and above respectively. To avail this incentive/exemption, the company/unit would have to produce necessary documents in support of their claim of the investment amount which will be examined by committees constituted by the State Government for this purpose.

After due examination, the State Government would issue the company an eligibility certificate.

9. While introducing the policy, the State Government envisaged that setting up of sugar mills and ancillary projects under the sugar policy would result in the increase in the crushing capacity, increase in the power generation and the present drawl capacity would increase from 40% to 60% and that new industry would provide direct employment to about 30,000 persons and indirect employment to about 1,00,000 persons. The sugar policy would also provide better livelihood to 8.0 lacs farmers. Apart from the above, there would be an

increase of cultivation of the sugarcane and better price would be paid to the farmers. The State Government in its policy was of the opinion that the policy would benefit the State economy and the general public in the long run and even though the State may lose some revenue in the short term but, after the expiry of the exemption period, the revenue would increase considerably and that such investment would increase ancillary industries and create new job opportunities.

10. With this background the sugar policy was introduced on 24.08.2004 by a Government Order No. 1631 dated 24.08.2004 which was effective from 01.04.2004 and which was subsequently amended by Government Order No. 2591 dated 17.12.2004. By this amendment it was clarified that the total amount of rebate/remission would not exceed the total investment made during the period for which the benefit was granted. Therefore, the rebate or the remission was only made to help the entrepreneurs to recoup its investment.

11. Under this sugar policy, new units were required to be established and start commercial production and existing units were required to be modernized between 01.03.2004 to 31.03.2007. Subsequently, by a Government Order No. 1965 dated 14.11.2006 the period was extended till 31.03.2008.

12. Pursuant to the sugar policy, the relevant notification under the statutes were issued granting exemption/incentive. A notification dated 16.05.2006 was issued u/s 14(1) of the Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 (hereinafter referred to as the Act) for remission of purchase tax payable by such sugar mills as are eligible under the sugar policy, 2004. For facility, the said notification dated 16.05.2006 is extracted hereunder:

"No. 502/S.Chi.U.Anu.-1-06-2528-2004 Dated Lucknow, May 16, 2006

WHEREAS the State Government is satisfied that it is necessary so to do with view to encouraging the establishment of new sugar factories in the State;

Now, Therefore, in exercise of the powers under sub-section (1) of section 14 of the Uttar Pradesh Sugar Cane (Purchase Tax) Act, 1961 (Act no. IX of 1961), the Governor is pleased to remit the purchase tax on sugar cane payable by such sugar mills as are eligible under the Chini Udyog Protsahan Niti, 2004 of the State Government for a period mentioned below:-

(1) ten years for such companies/units as have invested a minimum of Rs. 500 crore on setting up new sugar units or in expansion of capacity of existing sugar producing units or setting up of new alcohol/ethanol or co-electricity generation plant in accordance with the said Niti and Government orders issued thereunder;

(2) five years for such companies/units as have invested a minimum of Rs. 350 crore on setting up new sugar units or in expansion of capacity of existing sugar producing units or setting up of new alcohol/ethanol or co-electricity generation plant in accordance with the said Niti and Government orders issued thereunder.

By order, RAHUL BHATNAGAR Sachiv."

13. The petitioner, upon the assurances and promises contained in the sugar industry promotion policy, 2004 and the steps taken by the government to provide employment and in furtherance to the notification issued u/s 14 of the Act, decided to make investment in the sugar industry in the State of Uttar Pradesh. Accordingly, the petitioner established sugar units at Bilai (District Bijnor), Gangnauli (District Saharanpur), Thanabhawan & Budhana (District Muzaffarnagar), Kinauni (District Meerut), Khambarkhera (District Lakhimpur Kheri) and Barkhera (District Pilibhit) in the State of Uttar Pradesh which are running since 2004-05. The petitioner also set up and established the sugar unit at Maqsudapur, District Shahjahanpur by investing Rs. 294.00 crores which started commercial production on 19.12.2007. The petitioner, in this way, by setting up these sugar units invested more than Rs. 3000.00 crores. The investment so made was acknowledged and approved by the State Government vide its letter dated 31.10.2005. Since the petitioner fulfilled the prescribed conditions laid down in the sugarcane policy, an eligibility certificate was granted by the State Government on 31.10.2005 indicating that the petitioner had invested Rs. 300.00 crores in the establishment of sugar units. Another eligibility certificate dated 31.01.2007 was issued by the State Government indicating that the petitioner had expended more than Rs. 500.00 crores and was eligible for exemption/incentive under the sugar policy.

14. Based on the aforesaid eligibility certificates, the petitioner claimed exemption from purchase tax on cane which was duly granted. In addition to the aforesaid, the petitioner was given benefit which the petitioner availed of under other statutes as per the sugar policy such as exemption from entry tax for sale of non-levy sugar produce by the petitioner, exemption from U.P. Trade Tax on sale of molasses, exemption from administrative charges on molasses, reimbursement of charges of cane transportation, reimbursement of additional cost on transport of sugarcane etc. The aforesaid exemption was duly availed of by the petitioner in terms of the sugar policy.

15. It is relevant to mention here, that the Sugar policy of 2004 was issued when the Samajwadi Party came into power. In 2007, the Bahujan Samajwadi Party into power on 30.05.2007, and within a few days issued a notification dated 04.06.2007 withdrawing the sugar policy with immediate effect. According to the petitioner, the discontinuation of the scheme which was operative till 31.03.2008 did not affect the petitioner's right as they had already availed the terms and conditions of the sugar policy and that the petitioners' right had been established, acknowledged and vested and further implemented in terms of the provisions of the various statutory notifications under various Acts, which benefits were availed of by the petitioner. Subsequently, the petitioner received various demand notices demanding payment of sugarcane purchase tax. The petitioner, being aggrieved by the issuance of various demand notices, has filed the present writ petitions for its quashing and has further prayed for writ of mandamus commanding opposite parties not to realise purchase tax on purchase of sugarcane. The petitioner also prayed for a writ of mandamus commanding

the Cane Commissioner, U.P., Lucknow to exempt the petitioner's sugar mill as per the notification dated 16.05.2006. For facility, writ petition no. 1853 of 2009 relates to the demand notices of the petitioner's unit at Maqsudapur and writ petition no. 1854 of 2009 relates to the demand notices for the remaining units. During the pendency of the writ petitions, the petitioner moved an amended application, which was allowed by an order of the Court dated 04.09.2014, pursuant to which an additional relief was incorporated namely, that the order of the State Government dated 04.06.2007 rescinding the sugar policy should also be quashed.

16. In this background, we have heard Sri Bharat Ji Agrawal, the learned senior counsel assisted by Sri Ashish Mishra, Sri Rajesh Tewari, Sri Sanjeev Kumar Singh and Ms. Sanyukta Singh for the petitioner and Sri Avinash Chandra Tripathi, the learned standing for the State of U.P.

17. Sri Bharat Ji Agrawal, the learned senior counsel contended that the State government issued a sugar policy, which was given wide publicity through which Government induced the entrepreneurs including the petitioner to invest and set up sugar units in the State of Uttar Pradesh. The petitioner accepted the offer and acted upon the policy by making a huge investment. The petitioner raised funds and set up 08 sugar factories within the stipulated period. Eligibility certificate was granted by the State Government and the petitioner became entitled for claiming exemptions/incentives for the stipulated period as per the sugar policy. Not only this, the petitioner availed the benefits which the State Government acknowledged and, therefore, after all these, the State Government cannot resile and contend that since the policy had now been discontinued, the exemption would no longer be available to the petitioner. The learned senior counsel contended that the action of the respondents was in clear violation of the principles of promissory estoppel. The learned senior counsel contended that the action of the respondents in interpreting the Government Order of 04.06.2007 has caused serious prejudice to the petitioner since the entire investment was made by taking loans from various financial institutions and raising funds from the open market. It was submitted that the State Government was duty bound to provide all the benefits for the stipulated period as available under the policy and the action of the respondents in denying the facility, and on the other hand, issuing the demand notices were wholly arbitrary and violative of the principles of natural justice. The learned senior counsel contended that the policy of the State Government which was acted upon by the petitioner has created a legitimate expectation of the petitioner being treated in a fair manner and the denial by the respondents was not only violative of Article 14 of the Constitution but was also in gross violation of principles of promissory estoppel. The learned senior counsel further urged that initially the withdrawal of the policy by notification dated 04.06.2007 did not impact the petitioner in any manner, since the petitioner had already started availing the exemption facility but the subsequent action of the respondents by issuing demand notices for payment of sugarcane purchase tax had made the petitioner to question the action of the

State Government in withdrawing the sugar policy as being arbitrary and, consequently, submitted that, in the alternative, the action of the respondents in withdrawing the sugar policy should also be quashed. The learned counsel submitted that in any case the withdrawal of the sugar policy would not put the petitioner in an adverse position since the Act permits remission of purchase tax to those entrepreneurs who were eligible under the sugar policy and would still be available to the petitioner since the notification under the Act has not been rescinded or withdrawn and, therefore, the action of the respondents in issuing the notices was per se illegal and without jurisdiction. The learned counsel further submitted that initially when the sugar policy was announced, the said policy was challenged by a number of existing sugar mills in which the State Government filed a counter affidavit indicating therein the benefits of the policy which would be derived not only by the entrepreneurs but also by a large number of farmers, workers and that the policy would also benefit the State Government in the long run. The learned counsel contended that the State Government could not resile from the admission made in the counter affidavit nor a contradictory stand could now be taken, and that, the respondents were bound by their actions and could not withdraw on the ground that the exemption so granted by the State Government was bringing a loss to the State exchequer or that it was not in public interest. In support of his submissions he has cited various judgments, which will be referred hereinafter.

18. On the other hand, Sri Avinash Chandra Tripathi, the learned counsel for the State submitted that no eligibility certificate was granted to the sugar mill that was established in Maqsudapur, District Shahjahanpur and, therefore, no exemption can be granted to this unit. The learned counsel submitted that the policy was withdrawn on 04.06.2007 and as per the own admission of the petitioner, the said unit started commercial production on 09.12.2007 much after the policy was withdrawn. The learned counsel subsequently submitted that this unit was not entitled for any exemption under the sugar policy.

19. The learned counsel for the State further submitted that under the sugar policy, the exemption is for a particular unit where the investments are required to be made as per the sugar policy and that exemption is to be granted to a sugar unit and not to a Company. The learned counsel admitted that the remaining 07 units were granted the eligibility certificate but they were no longer entitled for any exemption after the policy was withdrawn on 04.06.2007 and, therefore, the demand notices issued for payment of sugarcane purchase tax was valid and justified. The learned counsel contended that when the sugar policy was withdrawn, the notifications issued under various statutes for granting exemption were automatically withdrawn and it was not necessary that a fresh notification is issued under each Act rescinding the exemption notification. The learned counsel submitted that on account of changed circumstances namely, that the policy was involving a loss to the public exchequer and that it was not in public interest to continue such policy, the State Government was justified to reconsider the matter and withdraw the benefit granter earlier. The learned

counsel submitted that where a policy is withdrawn in public interest, the principle of promissory estoppel cannot be invoked and that the said doctrine of promissory estoppel apply where the sugar policy was made contrary to law. In support of his submissions, he has relied upon various judgments, which will be considered hereinafter.

20. Having heard the learned counsels for the parties, and after giving a thoughtful consideration in the matter, we find that where a government makes a promise and the promisee acts in response to that promise, there is no reason why the government should not be compelled to make good such promise like any other individual. The doctrine of promissory estoppel is well established in the administrative law. It represents a principle evolved by equity to avoid injustice. The basis of this doctrine is the interposition of equity stepped in to mitigate the rigour of strict law.

21. In *Profulla Chorone Requitte and Others Vs. Satya Choron Requitte*, the Supreme Court explained the principles of promissory estoppel and held:

The law may, therefore, now be taken to be settled as a result of this decision that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations, but let it be said to the eternal glory of this Court, this doctrine was emphatically negated in the *Indo-Afghan Agencies* case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that

it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislature must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible."

22. In Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., the Supreme Court held:

"The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or effect 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 or representation is made and it is in fact so acted upon by the other party, the promise or representation 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."

23. and again held:

"There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel."

24. In Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others, the Supreme Court held:

"Unlike an ordinary estoppel, promissory estoppel gives rise to a cause of action. It indisputably creates a right. It also acts on equity. However, its application against constitutional or statutory provisions is impermissible in law."

25. and again held:

"We, therefore, are of the opinion that doctrine of promissory estoppel also preserves a right. A right would be preserved when it is not expressly taken away but in fact has expressly been preserved."

26. In State of Bihar and Others Vs. Kalyanpur Cements Ltd., the Supreme Court held:

"We are also unable to accept the submission that the decisions dated 6-1-2001 and 5-3-2001 had been taken due to the change in the national policy. This was sought to be justified by Dr. Dhavan on the basis of the Conferences of Chief

Ministers/Finance Ministers. It is settled law as noticed by Bhagwati, J. in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, that the Government cannot claim to be exempt from the liability to carry out the promise on some indefinite and undisclosed ground of necessity or expediency. The Government is required to place before the Court the entire material on account of which it claims to be exempt from liability. Thereafter, it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from liability. It is only when the Court is satisfied that the Court would decline to enforce the promise against the Government. However, the burden would be upon the Government to show that it would be inequitable to hold the Government bound by the promise. The Court would insist on a highly rigorous standard of proof in the discharge of this burden."

27. In the instant case, the petitioner made a huge investment in the State of U.P. under a promise to it that it would be granted an exemption from payment of purchase tax, etc. under various statutes for a period of 10 years. The petitioner was granted an eligibility certificate. Exemption was also availed of by the petitioner. Consequently, it is not open for the State Government to resile from its promise and deprive the petitioner the benefit of the tax exemption in view of the substantial investments made by the petitioner. We find that the State Government was also benefited by the investment made by the petitioner in the form of industrial development in the State and increase in employment which is in the larger interest of the State. Consequently, the impugned action on the part of the respondents is patently unreasonable, arbitrary and violative of Article 14 of the Constitution. Similar view was held by the Supreme Court in *MRF Ltd., Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax and Others*, We are of the opinion that the attempt of the respondents in taking away the benefit of exemption with effect from 04.06.2007 and thereby deprive the benefit of the exemption for the remaining period is wholly arbitrary and unreasonable. The petitioner entered into a solemn exercise and discharged its performance pursuant to a promise made by the State Government. The petitioner acted upon the promise. The respondents cannot be allowed to act arbitrarily so as to cause harm and injury following from such unreasonable conduct which in the instant case is writ large and is apparent. In such a situation, the Court is not powerless in directing the respondents to keep its promise. The Court has the power to issue a writ directing the respondents to enforce its promise and perform its obligation.

28. We may also notice the doctrine of legitimate expectation is now considered to be part of the principles of natural justice. If a party is going to understand that the other party shall not take away the benefit without complying with the principles of natural justice, the said doctrine would be applicable. The legislature, indisputably, has the power to legislate but cannot take away an existing right especially where the principles of legitimate expectation are

applicable.

29. In *National Buildings Construction Corporation Vs. S. Raghunathan and Others*, the Supreme Court held:

"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. In *Navjyoti Co-operative Housing Society etc. Vs. Union of India and Others*, the decision of the House of Lords in *Council of Civil Service Unions Vs. Minister for the Civil Service*, 1985 AC 374 was followed and that decision was summarised in the following words:

"It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons"

31. The Supreme Court further observed:

"The existence of "legitimate expectation" may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the "legitimate expectation" without some overriding reason of public policy to justify its doing so. In a case of "legitimate expectation" if the authority proposes to defeat a person's "legitimate expectation" it should afford him an opportunity to make representations in the manner"

32. In *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries*, the Supreme Court held:

"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."

33. In the light of the aforesaid, we are of the opinion that the principles of promissory estoppel are fully applicable. The State Government issued a sugar policy inviting entrepreneurs to invest in the sugar industry and, in return, incentives/exemptions would be given. The petitioner responded and invested Rs. 3000.00 crores and gave employment to over 1,000 persons. The exemption granted by the State Government was availed of by the petitioner. The State Government, at this stage, cannot resile and contend that since the policy has been discontinued, the exemption would no longer be made available to the petitioner. Having acted on the promise made by the State Government, the action of the respondent in issuing the demand notice on the ground that no further exemption would be granted is wholly arbitrary and cannot be sustained. The petitioner has been benefited by the promise made by the State Government. The petitioner has been granted exemption which the petitioner availed of in the past. The petitioner should be permitted to continue to enjoy the exemption till the remainder of the period as per the original promise. This is part of the legitimate expectation which is reasonable and which has to be given due weight failing which the action of the respondents in denying the exemption would be unreasonable and arbitrary. The petitioner has a legitimate expectation of being treated in a certain way on account of the promise made by the State Government.

34. A bonafide decision of the State Government would justify the requirement of non-arbitrariness and would withstand the test of judicial scrutiny failing which the rule of law would prevail. The ground urged is, that the policy was bringing losses to the State Government and that it was in public interest to withdraw the sugar policy. No details of the loss incurred has been specified nor reason has been given for invoking public interest. Merely stating that the policy was bringing a loss to the State exchequer or that it was not in public interest to continue with the policy was not sufficient. Something more was required to be stated to justify its stand which in the instant case was totally lacking.

35. The contention of the State that the Government can change the policy in public interest cannot be doubted. Their contention that the Government cannot be compelled to do something, which is not allowed by law or prohibited by law, again cannot be doubted. The doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law because none can be compelled to act against the statute, as held by the Supreme Court in *Shree Sidhali Steels Ltd. and Others Vs. State of U.P. and Others*, However, this

contention is patently unwarranted as nothing has been brought on record to indicate that the policy was withdrawn on account of public interest or that the policy was contrary to law. In fact, according to us, the policy was issued and implemented in public interest, which has benefited not only the entrepreneurs but the public at large as well as to the State Government.

36. In *Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttranchal and Others*, , the Supreme Court held that public authorities have liberty and freedom in framing policies and has a power to withdraw the policy in public interest but such withdrawal, in our opinion, is not absolute unqualified or uncannalized. There is no doubt that the Government while framing policies keep in view several factors and it is not possible for the Courts to consider competing claims and conflict interest but, nonetheless, the Government cannot change its stand arbitrarily merely because it will not follow the policy laid down by the earlier Government, the moment the new Government comes into power.

37. On the other hand, the State Government has filed a counter affidavit in writ petition no. 4031 of 2006 in which the sugar policy was challenged. The State Government in its counter affidavit has justified the issuance of the sugar policy.

38. The State Government in its counter affidavit stated:

"The policy itself sets out, in its preface, elaborately the circumstances and the valid and genuine economic factors considered necessary to grant fiscal incentives/exemptions to new sugar industries established under the policy. The policy is in the best interest not only of the sugar industry but in the larger public interest as well. The state has extensively analyzed the pros and cons of the impugned policy before formulating it and the policy has been adopted not just keeping the short term benefit of the state but also guarding the long term growth of the Sugar sector and the economy of the State."

39. At another place, the State Government took a stand that:

"This will bring about over all development of the State and particularly in sugarcane intensive areas, the infrastructure development namely, roads, bridges, culverts etc. would be rapid and adequate. The farmers would get better remuneration of their cane. The drawl capacity of the mills shall increase from 40-42% at present to about and upto 60%. The new, proposed factories shall provide direct employment to 30,000 persons besides providing indirect employment to about 1,00,000 persons in addition to providing better livelihood to about 08 lacs farmers. The New Policy shall also encourage the growth of other ancillary industries like distilleries for alcohol/ethanol, paper and co-generation of power. As a result of increase in the purchasing power of farmers, development of ancillary industries and consumer goods industries would get a boost."

40. At another place, the State Government stated:

"(b) In short, the SIPP aims to gear up investment climate in U.P. and to provide

a fillip to sugar industry in the State, which in turn will contribute to growth of rural economy and generate employment in the State.

(c.) Thus the SIPP aims to provide new climate for entrepreneurs in the State and growth of sugar industry. The benefits of the policy shall be available to any person or company investing the requisite amount in the sugar industry in the State of U.P."

41. At another place, the State Government stated:

"So far as revenue is concerned the State may lose some benefit in the short term but after the expiry of exemption period the revenue will increase considerably. Even in present revenue increase will result from downstream industries. In addition the investments under the policy have created new job opportunities. Thus the policy should be examined on the whole and comprehensively for judging the impact."

42. The State Government further stated:

"When policy was made no sugar factory had made the investment envisaged by the policy, while now already 10 new sugar factories have been set up and 18 Sugar Mills are under construction. This has been possible only on account of policy incentives, otherwise since 1998, even after delicensing only one or two sugar mills were set up in U.P. The policy is available to all sugar factories and the investments are to be made post policy. Even the petitioner can also make the envisaged investment and avail the benefits."

43. And at another place, the State Government took a stand:

"Thus with the aid of the policy the State Government would derive more revenue from the down stream industry and there would be substantial economic development. The policy must be considered from the macro view point and the micro analysis approach off the petitioner is fallacious."

44. In the light of the aforesaid admission by the State Government, it is no longer open to the successive Government to take a contradictory stand without supporting it with any documentary evidence. The State Government may be relieved from the liability to carry out its promise on the ground of necessity or expediency. The burden to prove such ground is upon the State Government. The standard of proof required to discharge such burden is strict, heavy and rigorous which the State Government has failed miserably. The State Government has failed to show the material by which action was taken to withdraw the sugar policy. Consequently, we are of the opinion that the principle of promissory estoppel is fully attracted.

45. The State Government has the competence to float a policy, modify it or to rescind it. That is the executive power given to it by law. The discretion to withdraw the policy is wide enough, but what is imperative is that the withdrawal of the policy must be fairly made on the ground of necessity or expediency and

should not be arbitrary. Every action of the State has to be tested on the touchstone of the basic requirement of Article 14, namely, fairness in the action by the State. We find, that in the instant case, the decision taken by the State Government in withdrawing the policy was not taken in public interest and that the decision taken was arbitrary, and unreasonable.

46. There is another aspect. Pursuant to the sugar policy, various notifications were issued under various statutes, granting exemption, remissions, reimbursements and subsidy. The details are extracted hereunder:

47. These notifications are still existing and are in force. The sugar policy may have been revoked but the notifications issued under the statutes still continue to be operative. The benefit accrued under a notification is still available to the petitioner and can be availed of since the same has not been withdrawn. The exemption from purchase tax on purchase of sugarcane was granted to the petitioner company vide notification no. 502/S.Chi.U.Ana-1-06-2528-2004 dated 16.05.2006 issued u/s 14(1) of the Act, which are still in existence and are operative. Thus, the respondent State is bound to provide exemption and benefit of purchase tax to the petitioner.

48. The Government Order, by which the policy was withdrawn is an executive order. Such Government Order can only apply prospectively and at the same time cannot unsettle the vested right that has already accrued in favour of the petitioner. The promise made in the policy was changed from a purely executive order to a legislative measure. Once a legislative enactment is made by a notification under a statute, the same cannot be taken away by an executive order by revoking the policy. Such revocation of the policy does not affect the existence of the notification which will continue to remain operative till it is revoked. The submission of the learned standing counsel appearing for the State, in this regard, cannot be accepted.

49. So long as the notifications are in force, the petitioner would be eligible to avail the benefits available therein. The action of the respondents in not allowing the benefits under the notification and raising a demand for payment of sugarcane purchase tax is wholly illegal. So long as a statutory notification exists, the same cannot be annulled by an executive order.

50. In the light of the aforesaid, on the principle of promissory estoppel and legitimate expectation, the action of the respondents in denying the benefits under the sugar policy and the notifications issued under various Acts is deplorable, unreasonable and arbitrary which cannot be sustained. The petitioners are liable to be given the benefits under various notifications issued in pursuance of the sugar policy on the units established by it.

51. The contention that the petitioner is not entitled to receive the benefits since the commercial production started in 19.12.2007 after the withdrawal of the policy is patently erroneous. The petitioner acted on the policy and established a unit which came into production on 19.12.2007 when the crushing season

started for the year 2007-2008. The respondents are bound by their promise. The petitioner has a legitimate expectation that the State Government and its department would honour their commitments as per the sugar policy. The doctrine of legitimate expectation gets assimilated in the rule of law.

52. The contention of the State that the eligibility certificate is only granted to a unit and not to a Company is patently erroneous. From a perusal of various paragraphs of the sugar policy as well as the eligibility certificate, it is apparently clear that the eligibility certificate has been granted to the petitioner and not to its units. However, the petitioner's unit at Maqsudapur can only avail exemption from the date of starting commercial operation on the basis of the terms and conditions specified in the sugar policy. To avail the incentive/exemption, the petitioner would have to produce necessary documents in support of their claim which will be examined by the State Government or by its Committee constituted for this purpose.

53. Even though the withdrawal of the sugar policy is arbitrary and has been passed without any application of mind, we are not inclined to quash the said order dated 04.06.2007 as we are of the opinion that the petitioner would get the relief even without the quashing of the order dated 04.06.2007.

54. In the light of the aforesaid, the petitioner is entitled for the relief. The impugned demand notices demanding payment of sugarcane purchase tax from all the petitioner's existing units are quashed. The petitioners are entitled for the incentive/remission/exemption etc. as per the sugar policy and the notifications issued under the statutes for the remaining period. In so far as Maqsudapur unit is concerned, the petitioner will produce necessary documents before the State Government, in support of their claim which would be examined by the State Government or its Committee constituted for this purpose and pass appropriate orders for exemption/remission, etc. or otherwise within six weeks thereafter. In the result the writ petitions are allowed with costs.