(2019) 09 CAL CK 0014

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 75 Of 2019

Modern India Concast Limited & Ors APPELLANT

Vs

State Of West Bengal & Ors RESPONDENT

Date of Decision : 05-09-2019

Acts Referred:

Foreign Trade (Development And Regulation) Act, 1992 — Section 5
Constitution Of India, 1950 — Article 226

Citation : (2019) 09 CAL CK 0014

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Ashok Banerjee, Manjit Singh, Manmeet Singh, Anjan Datta, Swarvanu Saha, Biswajit Mal, Abhrotosh Majumder, S. Mukherjee, Debasish Ghosh, Ayan Banerjee, Suman Banerjee

Final Decision : Dismissed

Judgement

Debangsu Basak, J

1. Petitioners have sought a direction upon the respondents to disburse incentives under the West Bengal Incentive to Power Intensive Industry Scheme, 2005.

2. Learned Senior Advocate appearing for the petitioners has submitted that, the first petitioner carries on the business of manufacturing iron and steel. The first petitioner manufactures Ferro alloys such as silica manganese and other ancillary products. The first petitioner operates two production units situated at Bishnupur and Haldia. The first petitioner was registered under the West Bengal Incentive Scheme, 2004.

3. Learned Senior Advocate appearing for the petitioners has submitted that, a unit registered under the scheme of 2004 need not obtain a registration under the scheme of 2005. Separate registration under the scheme of 2005 is not required once a unit is registered under the scheme of 2004. He has referred to

the provisions of the scheme of 2005 and submitted that, the State is obliged to disburse incentives to all eligible units for a period of five years in group C and three years for units in group B from the date of commencement of power supply for its production/commercial operation of the approved project. He has referred to Clause B.8.1 of the scheme of 2005. He has submitted that, West Bengal Industrial Development Corporation is the recognised authorised agent under the scheme of 2005. The first petitioner applied for incentives on September 28, 2007 within the cut-off date for the same. West Bengal Industrial Development Corporation issued Eligibility Certificate of the scheme of 2004 on January 20, 2011 based on special package approved by the commerce and industries department on March 29, 2010. He has referred to the writing dated June 27, 2016 issued by the Commerce and Industries Department in this regard.

4. Learned Senior Advocate appearing for the petitioners has referred to the correspondence exchanged between the parties. In particular he has drawn the attention of the Court to the application of the first petitioner dated September 28, 2007. He has submitted that, special package was approved by the Department of Commerce and Industry by the letter dated March 29, 2010. He has drawn the attention of the Court to the fact that, the first petitioner was registered under the scheme of 2004 with the Directorate of Industries by virtue of the registration dated June 30, 2010. He has emphasised the fact that, on January 20, 2011, West Bengal Industrial Development Corporation issued Eligibility Certificate under the scheme of 2004 in respect of the Haldia unit of the first petitioner. West Bengal Industrial Development Corporation had issued the Eligibility Certificate for the scheme of 2004 in respect of the Bishnupur unit of the first petitioner on November 19, 2007. He has drawn the attention of the Court to the fact that, the first petitioner received letters from the West Bengal Industrial Development Corporation on November 30, 2010 for power incentives under the West Bengal Incentive to Power Intensive Industry Scheme, 2005. He has emphasized the fact that, by a letter dated June 27, 2016, the Assistant Secretary, Department of Commerce and Industry directed the Executive Director of West Bengal Industrial Development Corporation to process the case of payment of power incentive as per the recommendation of the Committee to the first petitioner since, the first petitioner was registered under the scheme of 2004. He has placed the letter dated June 27, 2016 in details. He has submitted that, the Department of Commerce and Industry was of the view that, the first petitioner is entitled to power incentive since, the first petitioner was registered under the scheme of 2004 and therefore, was entitled to power incentives under the scheme of 2005 even if the CCP was beyond March 31, 2009. He has referred to Clause B.7.3 of the scheme of 2005 in support of his contentions. He has drawn the attention of the Court to the minutes of the meeting dated June 9/11, 2015 of the Committee on the pending issues of incentive schemes under the Department of Commerce and Industry.

He has submitted that, the letter dated June 27, 2016 was issued on the basis of such minutes. He has submitted that, the first petitioner received a letter dated

September 26, 2016 from the West Bengal Industrial Development Corporation for awarding the eligibility certificate dated January 20, 2011 for a period from February 26, 2010 to February 25, 2015. He has contended that, the first petitioner applied for issuance of the eligibility certificate under the scheme of 2005 for its Haldia unit which was issued under cover of a letter dated September 26, 2016.

5. Learned Senior Advocate appearing for the petitioner has submitted that, the first petitioner applied under the Right to Information Act, 2005 on February 4, 2019 seeking information as to whether any funds received by West Bengal Industrial Development Corporation on account of power incentive disbursement under the scheme of 2005 during the period of April 1, 2018 to January 31, 2019 or not and the current status of such funds. He has submitted that, West Bengal Industrial Development Corporation did not reply to such query. However, the petitioners came to learn that, a sum of Rs. 35 crores was received for disbursement and that, although the first petitioner was first in the queue to receive the incentive and the disbursement under the scheme of 2005, the same was not done. The petitioner subsequently came to learn that, the fund was returned by West Bengal Industrial Development Corporation on January 30/31, 2019.

6. Learned Senior Advocate appearing for the petitioners has submitted that, the first petitioner made a representation dated February 6, 2019 to the West Bengal Industrial Development Corporation as also to the Chief Secretary for the State, Additional Chief Secretary, Department of Commerce and Industry and other officials seeking disbursement of the incentives under the scheme of 2005. Despite such representations being made and despite the petitioner standing first in the queue of the persons entitled to receive the incentive under the scheme of 2005, the petitioners did not receive any amount from the authorities.

7. Learned Senior Advocate appearing for the petitioners has submitted that, the first petitioner has a claim of Rs. 2.82 crores for the Bishnupur unit. He has referred to the writing dated November 19, 2007 as well as the minutes of the meeting dated June 9/11, 2015 and submitted that, the respondents have deliberately tried to mislead the Court relating to the matter referred to point number 16 of such minutes. He has submitted that, point number 16 has no connection with the present litigation.

8. Learned Senior Advocate appearing for the petitioners has submitted that, the respondents being State authorities are obliged to act fairly and reasonably. The respondents have not acted fairly and reasonably while dealing with the disbursement of incentives under the scheme of 2005 to the first petitioner. Moreover, the petitioners altered their material position by investing huge amount of money in erecting and running two industrial units at Bishnupur and Haldia. The petitioners having altered their material position on the assurances made by the State authorities as contained in the scheme of 2004 and 2005, the State authorities are obliged to disburse the incentives under such schemes to

the petitioners. The delay in making disbursements under the scheme of 2004 and 2005 are prejudicial to the petitioners. The respondents are now trying to deprive the petitioners of their legitimate claim under the scheme of 2005.

9. Learned Senior Advocate appearing for the petitioners has submitted that, the petitioners employ about 1200 employees who are under the threat of losing their employment. The first petitioner is a power incentive industry. If the operation of the first petitioner is affected then, West Bengal State Electricity Distribution Corporation Limited will also be affected. Moreover, the delay in disbursement of the legitimate claim of the petitioner is impacting the payment and statutory obligations of the petitioners.

10. Learned Senior Advocate appearing for the petitioners has relied upon 1983 Volume 3 Supreme Court Cases page 379 (Gujarat State Financial Corporation v. M/s. Lotus Hotels Private Limited) and 2004 Volume 6 Supreme Court Cases page 465 (State of Punjab v. Nestle India Limited & Anr.) in support of the contentions with regard to promissory estoppel. He has relied upon All India Reporter 1988 Supreme Court page 2181 and All India Reporter 2008 Supreme Court page 690 (State of Rajasthan v. Ganeshi Lal) in support of the contention that, facts must be pleaded and proved by evidence. According to him, in the facts of the present case, the petitioners have established their claims by necessary pleadings and evidence. He has also relied upon All India Reporter 1987 Supreme Court page 537 (The Comptroller and Auditor General of India and another v. K. S. Jagannathan & Anr.) for the proposition that, principles applicable to taxing statute should not be applied to welfare legislation or subordinate legislation.

11. Learned Additional Advocate General appearing for the respondents has submitted that, the first petitioner is not eligible to receive any incentive under the scheme of 2005. He has referred to the various clauses of the scheme of 2005 namely Clause 2.0, 3.0, 7.0, B. 8.0, and B. 8.1. He has referred to the facts of the case. He has submitted that, the Director of Industries issued registration certificate for the Bishnupur unit of the first petitioner on February 26, 2007. West Bengal Industrial Development Corporation had issued the Eligibility Certificate in respect of the Bishnupur unit of the first petitioner on November 19, 2007. He has submitted that, the Haldia unit of the first petitioner commenced commercial production on February 26, 2010. The case of the first petitioner for incentive under the scheme of 2004 was considered and approved for the Haldia unit on March 29, 2010. Petitioners made an application for registration of the same under the scheme of 2004 on April 30, 2010. On June 30, 2010, the Director of Industries issued registration certificate for the Haldia unit of the first petitioner. On January 20, 2011, West Bengal Industrial Development Corporation issued Eligibility Certificate under the scheme of 2014 in favour of the Haldia unit of the first petitioner. He has referred to the minutes of the meeting of the Committee dated June 9/11, 2015 which specified that, in order to be eligible under the scheme of 2005 a unit has to be registered under

the scheme of 2004 within March 31, 2009. The matter relating to the fourth and fifth unit of the petitioner at Bishnupur was deferred by the Cabinet Committee. On June 10, 2015, the Director of Industries categorically observed that, the unit was registered under the scheme of 2004 after two years of the expiry of the scheme. On August 4, 2015, the first petitioner applied for Eligibility Certificate under the scheme of 2005. On June 26, 2016, West Bengal Industrial Development Corporation incorporated power incentive under the scheme of 2005 in the Eligibility Certificate under the scheme of 2004. On June 21 2017, sum of Rs. 3, 78, 50, 406/-was disbursed in favour of the first petitioner. He has submitted that, the first petitioner was not entitled to receive such sum.

12. Learned Additional Advocate General appearing for the respondents has submitted that, the first petitioner is guilty of taking inconsistent stands in its pleadings. He has compared the stand taken by the petitioners in the writ petition as also in the subsequent affidavits relating to the eligibility to receive incentive under the schemes. He has submitted that, in view of such inconsistent stands, the first petitioner is not entitled to receive any relief. Moreover, according to him, the petitioners did not deny the material allegations made against them. He has submitted that, the affidavits filed by the petitioners, contains mechanical rebuttal. He has highlighted various passages of the affidavits in support of his contentions.

13. Learned Additional Advocate General appearing for the respondents has submitted that, the scheme of 2005 came into effect from April 1, 2004 and remained valid for five years thereafter or till March 31, 2009 whichever is earlier. According to him, an eligible unit under the scheme of 2005 would mean a unit having registration certificate issued by the Directorate of Industries or an eligibility certificate issued by the Authorised Agent under the scheme of 2004.

According to him, in the event, a unit obtains Eligibility Certificate from West Bengal Industrial Development Corporation before March 31, 2009, such unit would be eligible to receive incentives under the scheme of 2005. He has pointed out that, the petitioners made an application for registration before the Director of Industries on April 30, 2010, that is, after the expiry of the scheme of 2005. The Director of Industries issued registration certificate within two months thereafter, that is, on June 30, 2010. West Bengal Industrial Development Corporation had issued the eligibility certificate under the scheme of 2004 in respect of the Haldia unit of the first petitioner on January 20, 2011. Therefore, under no circumstances, are the petitioners entitled to receive any incentives under the scheme of 2005.

14. Relying upon 2006 Volume 4 Supreme Court Cases 772 (Kartar Rolling Mills v. Commissioner of Central Excise, New Delhi), learned Additional Advocate General appearing for the respondents has submitted that, and exemption notification has to be strictly construed. According to him, the petitioners cannot be allowed to invoke the jurisdiction under Article 226 of the Constitution for extending the period of the scheme. Unless the period of the scheme is

extended, according to him, the petitioners are not entitled to receive any incentive under the scheme of 2005. He has pointed out that, the first petitioner commenced commercial production of the Haldia unit on and from February 26, 2010. Therefore, the petitioners made investment in respect of the Haldia unit prior to its application for registration under the scheme of 2004. Therefore, the question of promissory estoppel does not arise as the investment was made prior to the application and registration under the scheme of 2004.

15. Referring to the memo dated March 29, 2010 issued by the Joint Secretary Commerce and Industries Department, West Bengal, learned Additional Advocate General appearing for the respondents has submitted that, the memo does not consider and approve the Haldia unit of the first petitioner. Therefore, the petitioners cannot claim incentive under the scheme of 2005 on the basis of such memo and no benefit under the scheme of 2005 can be extended to the petitioners. He has also referred to the minutes of the meeting of the committee constituted by the State Government to examine the issue of incentive under different schemes including the scheme of 2005. He has submitted that, the contents of paragraph 4 of such minutes make it clear that a unit in order to be eligible under the scheme of 2005 has to be registered within March 31, 2009. The petitioners not having such registration within the time period specified, they are not entitled to receive any incentive under the scheme of 2005. He has submitted that, the petitioners are not entitled to any relief in the writ petition.

16. The petitioners have claims under the scheme of 2005 against the respondents. The relevant clauses of the scheme of 2005 for the purpose of consideration of the claims of the petitioners are as follows: -

"2.0 COMMENCEMENT AND DURATION

The scheme shall come into effect on and from April 1, 2004 in the whole of West Bengal and shall remain valid for a period of 5 years or 31st March, 2009, whichever is earlier.

3.0 DEFINITIONS

....

(m) "Eligible Unit" means a unit in the large scale sector having registration certificate issued by the Directorate of Industries and eligibility certificate by the authorised agent under WBIS 2004;

....

(w) "Incentive" means reimbursement of part of the net energy charges for a certain period by the State Government.

B.7.0 ENTITLEMENT FOR INCENTIVE

B.7.1 The State Government through its Authorised Agent will offer incentive in the form of reimbursement from the State Government to all new units or expansion of existing units, in the districts falling in Group 'B' and Group 'C' areas as defined in the West Bengal Incentive Scheme, 2004, drawing power through HT (33 KV) and EHT (above 33KV) connection having actual monthly maximum demand of 1500 KVA and above, on the Net Energy Charge as stated in monthly electricity bill at the following rates:-

Area

Monthly average Load Factor

Admissible Incentive on Net Energy Charges

Period during which incentive will be available

Group 'B

Less than 40%

Nil

3 years

40% to 50%

20%

Above 50%

25%

Group 'C'

Less than 40%

Nil

5 years

40% to 50%

20%

Above 50%

Above 50%

However, all units in Special Economic Zones and 100% Export Oriented Units, having the same meaning as in the Export and Import Policy as formulated under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 save in respect of premises used for residential purposes anywhere in the State will be entitled to incentive for 5 years at the rate applicable to Group 'C'.

Provided, however, that the incentive shall be available only for those consumption months when the monthly average load factor is at least 40%.

Provided also however, the State Government will have the power to modify the extent of incentive keeping in view all facts including the average cost of power of various utilities in the State.

B.7.2. The incentive shall be allowed to the eligible unit for its approved project for a period of 5 years for units in Group 'C' and 3 years for units in Group 'B' area(s) from the date of commencement of power supply for production/ commercial operation of the approved project.

B.7.3. In order to become eligible, the unit will have to commence actual drawal of power within 24 months from the day of incorporation of the benefit in the Eligibility Certificate as per paragraph B.8.1.

B.7.4. For availing of the incentive in the case of expansion of an existing unit separate metering arrangement for the approved expansion project is to be made by the unit at its own cost.

B.8.0 IMPLEMENTATION OF THE SCHEME

B.8.1 The units eligible to receive incentives under the West Bengal Incentive Scheme, 2004, are issued Eligibility Certificate by the Authorised Agent. The eligibility of availing subsidy under part-B of this scheme will also be incorporated in the same Eligibility Certificate.

B.8.2 To claim incentive periodically, the unit will file application in Format-D to the designated officer of the designated power utility for recommendation of admitted claim of power incentive.

B.8.3 The incentive amount will be disbursed quarterly in April, July, October and January or part thereof through the Authorised Agent from the funds placed by the State Government upon receipt of recommendation of admitted claim of power incentive in Format-D from Chief Engineer (Commercial), WBSEB or any other officers nominated by the designated utility for this purpose with a certified copy of bill and receipt of the bill payment of the electricity bill.

B.8.4 The incentive will not be available to units which have availed State Capital Investment Subsidy on purchase and installation of captive power generation set(s).

B.8.5 Units availing of incentive under this Scheme will not get State Capital Investment Subsidy under WBIS 2000/2004 for the investment in Captive Power Plant. The unit will also not get benefit of inclusion of investment in Captive Power Plant for the purpose of calculation of Fixed Capital Investment for Industrial Promotion Assistance under WBIS, 2000/2004."

17. The scheme of 2005 is divided into two parts namely part A and part B. The petitioners have claimed that they come under part B. They have applied for eligibility certificate from the authorised agent in terms of Clause B .8 .1 of the scheme of 2005. Clause B.8.1 mandates that, units eligible to receive incentives under the West Bengal Incentive Scheme, 2004 will be issued Eligibility Certificate by the Authorised Agent. The Eligibility Certificate will have a clause

stating that, the unit is eligible to avail subsidy under part B of the scheme of 2005.

18. The petitioners have manufacturing units located at Bishnupur and Haldia. The scheme of 2005 considers each manufacturing unit as a separate entity for the purpose of considering grant of subsidy. Each manufacturing unit is assessed under the scheme of 2005 to find out whether such unit is entitled to subsidy or not. In a given case, a legal entity may have five units of which three may be found to be eligible to receive subsidy under the scheme of 2005 and the balance two not entitled to. A manufacturing unit of a legal entity is entitled to receive subsidy should such manufacturing unit be eligible to receive incentives under the West Bengal Incentive Scheme, 2004 and such manufacturing unit is also issued the Eligibility Certificate by the Authorised Agent. The scheme of 2005 has defined authorised agent to mean the West Bengal Industrial Development Corporation who has been specially authorised by the state government for operation of the scheme of 2005 in respect of large-scale industries. Eligibility certificate has not been defined in the scheme of 2005. However, the scheme of 2005 has defined Eligible Unit. It has defined Eligible Unit to mean a unit in the large-scale sector having Registration Certificate issued by the Directorate of Industries and Eligibility Certificate by the Authorised Agent under the scheme of 2004. Therefore, a unit to be eligible to receive subsidy under the scheme of 2005, has to possess, two certificates. One certificate is the Registration Certificate issued by the Directorate of Industries and the other is the Eligibility Certificate under the scheme of 2004, issued by the West Bengal Industrial Development Corporation, as the Authorised Agent.

19. The scheme of 2005 is of limited duration. Clause 2.0 of the scheme of 2005 has stipulated the commencement and duration of the scheme. It stipulates that, the scheme of 2005 shall come into effect on and from April 1, 2004 and shall remain valid for a period of five years or March 31, 2009 whichever is earlier. It has also stipulated that, the scheme of 2005 shall be applicable for the whole of West Bengal.

20. As noted above, the petitioners have manufacturing units located at Bishnupur and Haldia. The Director of Industries had issued Registration Certificate for the existing units of the first petitioner located at Bishnupur on February 26, 2007. West Bengal Industrial Development Corporation had issued an Eligibility Certificate for such unit at Bishnupur on November 19, 2007. Such Bishnupur unit of the petitioners therefore have both the Registration Certificate and the Eligibility Certificate within the validity period of the scheme of 2005 to receive the subsidy thereunder. The first petitioner apparently added to the units at Bishnupur. The Cabinet Committee is yet to take a decision on such added units at Bishnupur. The petitioners have a claim of Rs. 2,81,62,500.31 in respect of Bishnupur unit. The state authorities have paid the sum of Rs. 3,78,50,406/- to the petitioners. Therefore, the State authorities have made excess payment to the petitioners in respect of the Bishnupur unit of the petitioners eligible to

receive the subsidy under the scheme of 2005.

21. The balance claim of the petitioners being Rs. 168.89 crores approximately are in respect of the units of the petitioners at their Haldia location. The Haldia unit of the petitioners commence production on February 26, 2010. The petitioner made an application for registration certificate for the Haldia unit under the scheme of 2004 on April 30, 2010. The Director of Industries issued the Registration Certificate for the Haldia unit of the petitioners on June 30, 2010. West Bengal Industrial Development Corporation issued the Eligibility Certificate under the scheme of 2004 in respect of the Haldia unit of the petitioners on January 20, 2011. As noted above, the scheme of 2005 is of limited duration. It expired by efflux of time on March 31, 2009. The Eligibility Certificate and the Registration Certificates were issued subsequent to the expiry of the scheme of 2005. Therefore, the claim of the petitioners in respect of subsidy for the Haldia unit of the petitioners under the scheme of 2005 cannot be sustained.

22. M/s. Lotus Hotels Private Limited (supra) has considered the principles of promissory estoppel. In the facts of that case, the Supreme Court found that the State Financial Corporation had sanctioned credit facilities to the writ petitioner. In such factual matrix it has held that, the State Financial Corporation was estopped from resiling from its obligations.

23. Nestle India Limited & Anr. (supra) has considered the doctrine of promissory estoppel in the context of Punjab General Sales Tax Act, 1948. It has noticed the law on the subject. It has held that, promissory estoppel was recognised as a legitimate defence in equity when, the representation sought to be enforced was legally invalid in the sense that it was made in a manner which was not in conformity with the procedure prescribed by statute. It has also noticed that, there are limitations to the applicability of the doctrine of promissory estoppel. It has held that, doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires. It must yield when, proper and adequate material is placed by the Government to establish that, overriding public interest requires that, the Government should not be held to be bound by the promise. In such situation, the Court should refuse to enforce the promise against the Government. Moreover, no representation can be enforced which is not prescribed by law in the sense that, the person or authority making the representation of promise must have the power to carry out the promise. If the power is there, then subject to the preconditions and limitations, it must be exercised. It has noticed that, if a statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute. However, if the statute allows on the Government to grant exemption, the Government can legitimately to be held bound by its promise to exempt the promisee.

24. In the facts of the present case, the petitioners contend that, the respondents are estopped from contending that, the Haldia unit of the first

petitioner is not registered and that, the first petitioner is not entitled to the subsidy in respect of the Haldia unit by virtue of the writing dated March 29, 2010. The writing dated March 29, 2010 is of the Joint Secretary of the Commerce and Industries Department of Government of West Bengal and is addressed to the Director of Industries and the West Bengal Industrial Development Corporation. The writing dated March 29, 2010 notes that, the first petitioner applied to the Government for a package of incentives under the scheme of 2004, within the cut-off date as stipulated by the Government Order. It requires the Director of Industries and the West Bengal Industrial Development Corporation to disburse the benefits under the scheme of 2004 to the first petitioner in respect of the Haldia unit. Waiver of electricity duty on electricity consumed for its production/operation activity for a period of five years from the date of commercial production was directed to be given.

25. Commercial production of the Haldia unit of the first petitioner commenced subsequent to the expiry of the scheme of 2005. The scheme of 2005 was for a specific period of time. The scheme of 2004 may be an open ended scheme. The scheme of 2005 however is not. Therefore, even if a unit may be registered under the scheme of 2004, say in 2011, and entitled to receive the benefits under the scheme of 2004, such a unit, will not be entitled to receive benefit under the scheme of 2005, if, such unit commenced commercial production, subsequent to the closure of the scheme of 2005. None of the parties have placed any provisions of the scheme of 2004 to substantiate that, the scheme of 2005 remained live beyond the stipulated period prescribed in the scheme of 2005. The scheme of 2005 is an additional incorporation in the scheme of 2004. It is limited to a period of time. It is limited in its operation to specific industries. All industries receiving the benefits of the scheme of 2004 are not entitled to receive the benefits of the scheme of 2005. Therefore, merely because is a unit, is registered under the scheme of 2004, ipso facto does not entitled such a unit to receive the benefits under the scheme of 2005.

26. If estoppel is a genus then promissory estoppel is a species thereunder. Promissory estoppel applies against the promisor when the promise, pursuant to and acting on a promise made by the promisor, alters his material position to his prejudice, then the promisor, by the application of the doctrine of promissory estoppel is obliged to make good the promise. The promisee can enforce such promise in a suitable action. The doctrine is with limitations. When the doctrine is sought to be applied against the Government then it will fail, if the Government establishes that overwhelming public interest requires the Government not to be bound thereby.

27. The doctrine of promissory estoppel cannot be applied in the facts of the present case, on the strength of the writing dated March 29, 2010 or of any other conduct of the State. The scheme of 2005 contains the promise of the State. An action of the State dehors the scheme cannot be said to be promise under the scheme of 2005. The State authorities cannot be fastened with

responsibility, even if, any of them acted beyond the scheme of 2005. The scheme of 2005 is to be read and applied uniformly across every beneficiary under such scheme. A wrong reading of the scheme of 2005 and its wrong application in respect of particular unit such as the first petitioner, will not vest such person a right to claim benefit under the scheme of 2005, which is contrary to the scheme of 2005. Moreover, in the facts of the present case, the first petitioner commenced commercial production subsequent to the expiry of the scheme of 2005. The investments made by the petitioners therefore in respect of the Haldia unit were not made on any representation of the State Government to grant the petitioners subsidy under the scheme of 2005. The representation of the State for subsidy under the scheme of 2005 is limited to the parameters prescribed in the scheme of 2005. There is nothing on record to establish that, the petitioners satisfied the criteria under the scheme of 2005 to receive benefits for the Haldia unit. That being so, the writing dated March 29, 2010 of the Joint Secretary, Commerce and Industries Department, Government of West Bengal, does not fasten any liability or responsibility on the State to disburse any benefits under the scheme of 2005 to the petitioners.

28. Bharat Singh and others (supra) has, in a land acquisition proceedings, held that, there is a distinction between a pleading under the Civil Procedure Code and a writ petition. While, in a pleading, that is, a plaint or written statement, the facts and not the evidence are required to be pleaded, in a writ petition or in a counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. In the present case, the pleadings and the evidence disclosed by the parties, does not substantiate the claim of promissory estoppel.

29. Ganeshi Lal (supra) has held that, a decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes the precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. A decision is an authority for what it actually decides.

30. K. S. Jagannathan & Anr. (supra) has held that, the High Courts in exercising their jurisdiction under Article 226 of the Constitution have power to issue writs or pass orders or give necessary directions where the Government or a public authority failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner so as to frustrate the object of conferring such discretion or the policy for implementing. In the facts of the present case, there is nothing on record to suggest that, the authorities have acted beyond the scheme of 2005 in denying the claim for subsidy of the petitioner.

31. Kartar Rolling Mills (supra) has held that, an exemption notification has to be

construed strictly. In the facts of the present case, the Court cannot extend the validity period or the period of operation of the scheme of 2005 other than what is prescribed therein.

32. In view of the discussion above, the writ petition fails. W.P. No. 75 of 2019 is dismissed. No order as to costs.

