

(1990) 08 MAD CK 0077

In the Madras High Court

Case No : Writ Petition No's. 11221 and 11222 of 1989

M/s. Jayahar Fire Works

APPELLANT

Vs

Union of India, The General Manager, Small Industries
Development Corporation and The Branch Manager, Small
Industries Development Corporation, Virudhunagar

RESPONDENT

Date of Decision : 30-08-1990

Acts Referred:

Citation : (1990) 08 MAD CK 0077

Hon'ble Judges : Bhakthavatsalam, J

Bench : Single Bench

Advocate : R. Krishnamoorthy and R. Janakiraman, for the Appellant; A.S. Venkatachalamoorthi, Additional Central Government Standing Counsel on behalf of the Respondent 1 and M/s. V. Sridharan and P. Rajagopal, Advocates for the Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Bhakthavatsalam, J.—The prayer in W.P. No. 11221 of 1989 is as follows: ...To issue a writ of certiorarified mandamus or any other appropriate writ or order or direction in the nature of the writ calling for the records of the 3rd respondent in Letter No. L.Dis. 866/C/88 dated 3.11.1988 and quash the same and further direct the respondents to pay the subsidy at 15% on the investment of Rs. 4,81,000 made by the petitioner in pursuance of the Central Investment Subsidy Scheme ...

The prayer in W.P. No. 11222 of 1989 is as follows:

...To issue a writ of certiorarified mandamus or any other appropriate writ or order or direction in the nature of the writ calling for the records of the 3rd respondent in letter No. L.Dis. 529/C/88 dated 1.12.1988 and quash the same and further direct the respondents to pay the subsidy at 15% on the investment of Rs. 21,65,419 made by the petitioner in pursuance of the Central Investment Subsidy-Scheme ...

The allegations made in both the petitions are almost similar. The petitioner registered himself for grant of Central Investment Subsidy Scheme which was in force till September, 1988. When the petitioner filed all the required particulars for grant of subsidy for the industry run by the petitioner, (sic) and register his unit for grant of subsidy, he was informed that he was not entitled to get subsidy on the ground that he was not entitled to have the subsidy applied for. The petitioner alleges that he made huge investment in the industry on the basis of the promise held out by the respondents and the first respondent is estopped from going back on the promise made by it. It is further alleged that the first respondent knows that the promise or the representation would be acted upon and hence the doctrine of promissory estoppel would apply to the facts of this (sic) and the petitioner is entitled to enforce the representation made by the first respondent. The first respondent made wide publicity of the Central Investment Subsidy Scheme (sic) is also alleged that the petitioner has fulfilled his part of the obligation and he filed the application as required by the Scheme and has also registered with the respondents. The petitioner alleged further that the petitioner's industry is a manufacturing unit and the respondent has not even applied its mind whether the petitioner is a manufacturing unit or not. It is also stated that even before the first respondent revised the guidelines for eligibility, the petitioner fulfilled his part of the obligation and that it is not open to the respondents to say that the petitioner is not entitled to subsidy in view of the revised Scheme.

2. Notice of motion was ordered by the on 18.8.1989. A common counter affidavit has been filed by the first respondent. It is stated that the Central Government framed a Scheme with reference to industrial units to be set up or expansion of the units already in existence in selected backward areas with a view to promoting the growth of industries and the scheme was known as Central (sic) right Grant or Subsidy Scheme, 1971 (sic) Industrial Units to be set up in selected (sic) ward districts/areas. It is also stated that a manual called, Manual for Central investment Subsidy Scheme was also published setting out various orders and guidelines. It is stated in the counter, that the petitioner has not given complete details in the (sic) petitions, such as, when they were registered as small scale industry, when they got themselves registered for subsidy. It is stated in the counter that the allegations stated in the affidavit are vague and bald. It is further (sic) that mere filing of an application for the grant of subsidy even assuming that the application was in order would not automatically entitle the applicant to be eligible for the subsidy. It is for the respondents to go into the merits of each case to decide whether the industrial units qualify for the grant of subsidy and also determine the quantum of Central Investment subsidy admissible to the Unit. It is stated that as and from 22.9.1988 the Government of India issued revised guidelines according to which it was decided to discontinue with immediate effect the grant of Central Investment Subsidy to non-manufacturing activities, such as printing, fire crackers, etc. As far as the two petitioners are concerned, they are engaged in

non-manufacturing activity. As such, no subsidy or grant was sanctioned by respondents 2 and 3 to the petitioners prior to the date 22-9-1988 and they are not entitled to subsidy or grant thereafter.

3. The second respondent has filed a counter affidavit in which it is stated that the first respondent decided to discontinue with immediate effect the grant of Central Investment Subsidy to non-manufacturing activities which include fire crackers and printing industry. It is stated that the doctrine of promissory estoppel will not apply to the facts of this case since subsidy was never sanctioned to the petitioner. It is also stated that the firm did not furnish necessary particulars asked for and the firm was not eligible to claim subsidy in view of the guidelines issued by the first respondent. It is stated that the respondents are entitled to reject the application of the petitioner for subsidy based on the guidelines dated 22.9.1988.

4. An additional counter-affidavit was also filed by the second respondent. It is stated in the additional counter that the Government of India had announced in 1971 a Scheme and the Scheme was amended from time to time. Under the Scheme a State Level Committee was constituted for the purpose of deciding whether an industrial unit qualifies for grant of Central Investment Subsidy and also to determine the quantum of Central Investment Subsidy admissible to the industrial unit. The Units who want to avail the Central Investment subsidy have to register their units. After registration the Units have to submit applications for claiming subsidy with certain information and documents as stated in para 3 of the counter-affidavit. The procedure adopted is that the State Level Committee will consider the application to sanction the subsidy or reject the subsidy. If subsidy is sanctioned by the State Level Committee and on receipt of sanction from the State Level Committee, the concerned disbursement agency, that is, the second respondent in this case, will issue a sanction letter to the eligible Industrial Unit intimating the cost of the fixed capital investment and project approved by the State Level Committee and also the amount of Central Investment subsidy sanctioned in respect of the project. The entire procedure is detailed in para 5 of the counter-affidavit and it is not necessary to detail them out here. The second respondent stated that the State Level Committee did not sanction Central Investment Subsidy to She petitioner unit and so any investment made for the petitioner unit will not be eligible to claim financial assistance by way of (sic) bridge loan against subsidy. It is stated that when the Government of India notified that the scheme would not continue beyond September, 1988, the second respondent's role effectively came to an end. The second respondent is bound by the guidelines issued by the Government of India the first respondent herein, and the second respondent has no authority to go beyond the terms and conditions governing the scheme as notified by the first respondent. It is also stated that any investment made prior to the sanction by the State Level Committee will not be taken into account for the purpose of disbursement of Central Investment subsidy.

5. Mr. R. Krishnamurthi, learned senior counsel appearing for the petitioners contends that once the petitioners got their applications registered a right accrues to them and as such the impugned order based upon the circular of the Government of India in September, 1988 cannot be supported especially on the ground of the principle of promissory estoppel. The Learned Counsel argues that once the petitioners are eligible under clause 2 of the scheme the respondents are bound to consider their applications on merits and the respondents cannot fall back on the new guidelines issued in September, 1988, especially when they have fulfilled their obligations under the Scheme on that day. The sum and substance of the argument of the learned senior counsel, Mr. R. Krishnamurthi, is that simply because the scheme has been withdrawn in respect of certain industries in September, 1988, the right which has been accrued to the petitioners cannot be taken away. The Learned Counsel contends that the petitioner is entitled to obtain a direction from this Court to the respondents to consider their applications on merits. The Learned Counsel relied on the decision of the Supreme Court to make out a case that the impugned order is hit by the principle of promissory estoppel enunciated by the Supreme Court. The Learned Counsel referred to the decisions in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., Pournami Oil Mills and Others Vs. State of Kerala and Another*, , *Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others*, and *State of Bihar v. Usha Martin Industries Ltd.* 65 S.T.C. 430 (S.C.), in support of his contentions based on the principle of promissory estoppel.

6. Mr. V. Sridevan, Special Government Pleader, appearing for respondents 2 and 3, has taken me through various paragraphs in the Scheme and contends that the petitioner's application has not been considered by the State Level Committee at all and that no question of estoppel arises in this case because no right accrues in favour of the petitioner before getting sanction from the State Level Committee. The Learned Counsel contends that the State Level Committee has to go into the merits of each case and decide whether an industrial unit qualifies for grant of subsidy and also decide the quantum of subsidy. The learned Special Government Pleader points out that if the petitioner has done anything in regard to the alleged industry, before sanction has been ordered by the respondents it is done at his own risk and simply because the petitioner has registered his application, that does not mean that the petitioner will get subsidy automatically.

7. Mr. Krishnamurthi, learned Senior Counsel for the petitioner replied that eligibility is based on the Central Investment Subsidy Scheme and that the subsequent Circular issued in September 1988 cannot stand in the way of the petitioner getting subsidy. The Learned Counsel states that the Scheme formulates only the procedure and it cannot be said that the petitioner is not eligible for subsidy.

8. The Manual for 15% Central Investment Subsidy Scheme produced before me defines New Industrial Unit as follows :

New industrial unit means an industrial unit which has made investments in land, building and plant and machinery as defined in sub-S.(e) during the operative period of the scheme.

Para 1-4 (e) defines "Fixed Capital Investment" as follows :

"Fixed capital investment" means investment in land, building and plant and machinery. Total fixed capital investment will be assessed as follows :

x x x x x

Para 2 of the Scheme states the "Eligibility" Paras 4.2 and 5 are important for the purpose of deciding the issue in this case. Para 4.2 is to the effect :

Powers and Functions of the State Level Committee. The State Level Committee will go into the merits of each case to decide whether the industrial unit qualifies for grant of Central Investment Subsidy and will also determine the quantum of Central Investment Subsidy admissible to the industrial unit. The State Level Committee is authorised to sanction 15% subsidy upto Rs. 15 lakhs even in cases where projects cost more than Rs. 1 crore.

Thus it is seen that the State Level Committee will go into the merits of each case to decide whether the industrial unit qualifies for grant of Central Investment Subsidy and will also determine the quantum of subsidy. Para 5.1, runs as follows :

On receipt of sanction from the State Level Committee the concerned disbursing agency will issue a sanction letter to the eligible industrial unit intimating the cost of the fixed capital investment and project approved by the State Level Committee as also the amount of Central Investment Subsidy sanctioned in respect of the project. Along with sanction letter, there shall be enclosed a legally enforceable agreement to be executed by the eligible industrial Unit for the purpose of drawing the Central investment Subsidy sanctioned by the State Level Committee.

9. Thus it is seen that on receipt of sanction from the State Level Committee, the concerned disbursing agency will issue a sanction letter to the eligible industrial unit intimating the cost of the fixed capital investment and project approved by the State Level Committee as also the amount of Central Investment Subsidy sanctioned in respect of the project. Along with the sanction letter, a legally enforceable agreement to be executed by the eligible industrial unit shall be enclosed. Para 5.5 explains the mode of disbursement of subsidy to units assisted by Financial Institutions. Hence, on a reading of the Scheme, it is clearly seen that the contention raised by Mr. R. Krishnamurthi, learned Senior Counsel for the petitioner, that once the petitioner gets himself registered, the right accrues to the petitioner cannot be accepted. I am not able to see how a right

accrues to the petitioner for grant of subsidy by the respondents till a decision is arrived at by the State Level Committee and a sanction letter is issued to the eligible industrial unit enclosing a legally enforceable agreement to be executed by the eligible industrial unit, in terms of paras 4.2, and 5.1 of the Scheme. Till then I do not think that the petitioner is having any right to claim subsidy as of right. More so, the principle of promissory estoppel does not apply to the facts of this case. It is very clear from the Circular issued on 22nd September, 1988 that the scheme of subsidy is withdrawn in so far as the petitioner's industry is concerned on the ground of non-manufacturing activities and the petitioner is not eligible for subsidy. When such is the case, I do not think that the State Level Committee can process the application of the petitioner. I am of the view that just putting in an application and registering it with the respondent does not give any right to the petitioner to come to this Court and complain that he is entitled to subsidy. In *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, , the Supreme Court while considering the question of promissory estoppel has clearly held:

The doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority.

10. On the facts stated by me earlier, it is very clear that the respondents cannot be restrained to raise the contention on the doctrine of promissory estoppel. Doctrine of promissory estoppel represents a principle evolved by equity to avoid injustice, and though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the inter-position of equity which has always, true to its form, stepped in to mitigate the rigour of strict law. When the first respondent decided to withdraw the subsidy scheme in September, 1988 when the petitioner's application could not be considered and when no sanction has been made by the State Level Committee and when no agreement has been executed by the petitioner, I do not see how the petitioner can invoke the principle of promissory estoppel in this case. It is not open to the petitioner to invoke the principle of promissory estoppel in this case. On the facts of this case, it is clearly seen that there is neither a promise nor representation made by the respondents to the petitioner. By the mere existence of the Scheme, it cannot be said that a right accrues to the petitioner. The scheme envisages certain obligations and registration on the part of the petitioner and then only if the subsidy is sanctioned, a right can accrue to the petitioner. I am of the view that the doctrine of promissory estoppel is displaced in such a case because on the facts equity does not require that the respondents should be held bound by the promise or representation if at all anything made by it. In the circumstances of the case, I do not think that it is

necessary to refer to other decisions referred by the Learned Counsel for the petitioner. There are no merits in the petitions. The petitions are dismissed. No costs.