

(1995) 11 CAL CK 0038
In the Calcutta High Court
Case No : C.O. 5334 (W) of 1994

M/s. Mahalaxmi Rice Mills and others

APPELLANT

Vs

State of W.B. and others

RESPONDENT

Date of Decision : 10-11-1995

Acts Referred:

Evidence Act, 1872 — Section 115

Rice Milling Industry (Regulation) Act, 1958 — Section 5

Citation : AIR 1996 Cal 162 : (1996) 1 ILR (Cal) 39

Hon'ble Judges : N.K. Batyal, J

Bench : Single Bench

Advocate : Bholanath Sen, Bar-at-law and Samir Kr. Chakraborty, for the Appellant; Prabir Roychowdhury and Mrs. Ila Chatterjee, for the Respondent

Judgement

1. The writ-petitioner No. 1 is a partnership firm of which the other writ petitioners are partners. The petitioner No. 1 is also registered as an S. S. I. Unit of the State. On 11-8--88, the petitioners applied for a permit under S. 5 of the Rice Milling Industrial (Regulation) Act, 1958, before the Dist. Controller, F. & S. Dept., West Dinajpur, to set up a Modern Rice Mill at Detolhat, West Dinajpur (now in Dakshin Dinajpur). Permit No. 29837 dated 26-10-88, was issued accordingly. Thereafter, the petitioners submitted a scheme on 31-8-88, for their rice mill in November 1988. The banker of the petitioners, viz. Allahabad Bank, Fulbani Branch, sanctioned a loan of Rs. 30.75 lakh on certain terms and conditions as per annexure - "D". On 30-10-89, the Dist. Controller, F. & S. Dept., West Dinajpur, granted a licence in favour of the petitioners being licence No. 34385 dated 30-10-89. The business started commercial production on and from 5-12-89.

2. The petitioners submitted their application for subsidy in conformity with the State Incentive Scheme, 1989, before the Extension Officer (Ind.) Banshihari Block on 13-5-91. The said officer forwarded it to General Manager, Dist. Industrial Centre, Raiganj on 13-5-91. That scheme was framed to promote

growth and development of such, industries in the backward areas of W. B. Object of the Scheme was to extend fiscal incentives to entrepreneurs to set up and, expand SSI units. Such applications for incentives were required to be placed before the concerned committee for consideration within two months from the receipt thereof. But in the case of the petitioners, the concerned authorities sat tight over the matter for more than the stipulated period in spite of several reminders. At last, by a letter dated 22-4-92, as per annexure-"H" the petitioners were informed by the Respondent No. 4, that the processing of subsidy (State incentive) claimed by the Unit of the petitioners was stopped. But that stoppage was temporarily withdrawn and the Manager (Credit) of the concerned respondent visited the unit and completed investigation on 18-11-92.

3. Ultimately, without considering the pending subsidy scheme, the Govt. introduced a new subsidy scheme on 26-5-93 excluding the Rice Mills from the benefit of the Subsidy Scheme, as per annexure "L". This is arbitrary and illegal. The petitioners state that they cannot be victimised for the delay in the disposal of the disbursing of the subsidy as the petitioners relying on the benefits of the Scheme of 1989, spent a lot of money in modernising their rice mill after borrowing money from Allahabad Bank, Phulbani Branch, for which they are subjected to pay interest. The petitioners stated that the notification dated 26-5-93 without taking into consideration the pending application under Incentive Scheme, 1989, is arbitrary, unconstitutional and illegal. Hence, the petitioners, have approached this Court for appropriate reliefs.

4. The State-Respondents state that it appears from the writ petition that the Unit started its commercial production on or about 5-12-89. From Annexure A, it appears, permanent registration was granted on 1-6-90. The said writ petitioner for the first time, made an application for subsidy on 13-5-91, when the said writ petitioners had already set up the rice mill and started commercial production. It is pertinent to point out that prior to 13-5-91, there was not a single correspondence with the respondents which assured the writ petitioners that on setting up the said rice mill at the she, the government would make payment/ release any sum as subsidy. Before setting up of the said Unit, the writ petitioners did not make any representation that on the basis of government assurance to release subsidy, the said writ petitioners has acted by spending money detrimental to their interest.

5. The survey conducted by the department shows that the entrepreneurs who have established the cold storages and rice mills are not suffering from paucity of funds for establishing these units and the quantum of subsidy are so high that the said amount of subsidy could otherwise fulfil the requirements of small units more than the double of these two types of units. The scheme of incentive was made to bridge the gap of financial sources for genuine capital hungry small scale industries, there is no possibility of generating new employment and such investment of capital are disproportionately low to other types of small scale units. In the background of these facts, the government on the ground of

necessity and expediency have withdrawn the subsidy to these two types of industries after the department made surveys and appraised the situation. These have resulted in the initiation of the new incentive scheme of 1993 and prompted the government to withdraw the old scheme. This withdrawal is based on rational and logical basis. There is no arbitrariness or any extraneous consideration in withdrawing the subsidy from these two types of industries i.e., rice mills and cold-storages.

6. The respondents submit that in the facts and circumstances as stated hereinbefore, the writ petitioners are not entitled to claim any subsidy from the government.

7. Mr. Sen, learned Advocate appearing on behalf of the petitioners has relied upon the principles laid down in *Vij Resins Pvt. Ltd. and Others Vs. State of Jammu and Kashmir*, In that case, by the provisions of J. & K. Extraction of Rasin Act, 1986 the existing contracts between the parties and the State of existing grants in respect of collection, transport, storage and otherwise dealing with rasins have been forthwith terminated and a monopoly situation was created qua the operations in rasins in favour of the government company. The Act did not provide for any compensation. In paragraph 25 of the reported decision at page 1637, it has been stated as follows :--

"25. Petitioners in the writ petition No. 794/86 had claimed that pursuant to the agreement entered into between them and the state following invitation by the State, they had invested Rs. 1.68 crores in shape of plant and machinery and 63 lacs of Rupees by way of land and building. The petitioner in the other two cases stated that investment had been made by them. The petitioners were invited to set up industries by assuring them supply of raw material. They changed their position on the basis of representation made by the State and when the factories were ready and they were in a position to utilise the raw material, the impugned Act came into force to override their rights and enabled the State to get out of all the commitments. We are inclined to agree with the submissions made on behalf of the petitioners that the circumstances gave rise to fact situation of estoppel. It is true that there is no estoppel against the legislature and the vires of the Act cannot be tested by invoking the plea but so far as the State Govt. is concerned, the Rule of estoppel does apply and the precedents of this Court are clear.....".

8. Mr. Sen has next referred to the principles laid down in *A.P. State Electricity Board and Others Vs. Sarada Ferro Alloys Ltd.*, of the reported decision at page 1523, it has been stated as follows:--

"11. We are of the view that the promise or representation made by the Board in its letter dated 13th July, 1976 if any, was directly linked with the date of the commencement of the production by the Company. It is not disputed that the respondent-company commenced production on commercial scale on August 11, 1990. The incentive was withdrawn by the Board on December 8, 1987 and by the Government on July 27, 1989, whichever date is taken into account, the

company was not entitled to the incentive as it had not commenced production on or before either of these two dates. If it is assumed that promise or representation was made by the Board in its letter dated July 13, 1976, the doctrine of promissory estoppel is not attracted in this case as the Company failed to act upon the said representation. We do not agree with the assumption entertained by the High Court that once the company started the process of setting up an industry and had incurred expenditure, the Board was bound to keep incentive open for the company till it started production.....".

The learned advocate appearing on behalf of the State-respondents has relied upon the principles laid down in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, . According to the learned advocate for the State since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it cannot be shown by the Govt. that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Govt. to the promise made by it, the Court would not raise any equity in favour of the promisee and enforce the promise against the Govt. When the Govt. is able to show that in view of the facts which have transpired since the making of the promise, public interest would be prejudiced, if the government were required to carry out the promise, the Court would have to balance the public interest in the Govt. carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and and the public interest likely to suffer, if the promises were required to be carried out by the Govt. and determine which way the equity lies".

9. In the instant case, in para 11 of the writ-petition, it has been stated that the writ petitioners submitted a revised scheme for a modern rice mill before the Project Manager, Dist. Industries Centre, West Dinajpur, Raiganj, who was pleased to approve the said scheme as technically and economically viable. There is no denial of this statement, again in para 28 of the writ petition, it has been stated that the writ petitioners acted to their prejudice by spending a considerable amount taken as loan from Allahabad Bank, Phoolbari Branch, for a modern rice mill in the backward district in expectation of getting the benefits of subsidy as declared by the concerned respondents and as such the concerned respondents should not be allowed to fall back and deny the benefits of the said scheme to the petitioners.

10. In the affidavit-in-opposition, paragraphs 23-34 of the writ petition have been covered by para. 12 of the A. O. The statement that the petitioners spent considerable amount taken as loan for modernisation of the rice mill in expectation of getting benefits of subsidy stands unrebutted. At the time of argument, the learned State advocate has emphasized the point that the writ petitioners started the commercial production long before the incentive scheme of 1989 was introduced. Therefore, they have got no case for invoking the doctrine of estoppel. But it appears from Annex. G to the writ petition which is the state scheme of incentives, 1989 that in paragraph 5 of the said scheme

dealing with eligibility, sub-paragraph (ii) & (iii) shows that an existing industrial Unit going in for a substantial expansion after 1st April, 1988, may also be considered for assistance in respect of expansion programme only under the scheme provided its expansion Scheme has been approved by the Directorates under Cottage & Small Scale Industries Dept., W. B. or the concerned District Industries Centre or Small Industries Service Instt., Govt. of India, or Small Industries Development Agency, W. B. It has also been stated in sub-para (ii) that in case of Industrial Unit registered permanently on or before 1 st April, 1988, the unit must start its production processing or servicing operation on or before 1st April, 1988. The writ petitioner No, 1 started commercial production on 5-12-89 and get permanent registration on 1-6-90. The application for incentive was made on 13-5 91, the new Incentive Scheme of 1993 was introduced long thereafter. Therefore, it is obvious that though the business was started before the introduction to Incentives Scheme of 1989, the writ petitioners are entitled to come within the benefit of the said Incentives Scheme provided, they complied with the requirements of paragraph 5, sub-paragraph (iii) of the Incentives Scheme of 1989. In the affidavit-in-opposition, there is no denial of heavy investment was made by the writ petitioners for modernisation of the rice mill. It may be recalled that there is no denial of the statement made in paragraph 28 of the writ petition. It is one thing to say that the petitioners come within the benefit of the Scheme of 1989 and it is a different thing to say that they changed their position being induced by the Incentive Scheme of 1989. The investment for modernisation" was made admittedly before the Scheme was introduced. It is true that in view of the discussions made above the petitioners could apply for the benefit under the Scheme but it cannot be said in the factual set-up of the case that the writ petitioners were induced by the Incentives Scheme of 1989 to change their position by spending a huge sum of money as stated by them. Under para. 5 of Annexure-"G" to the writ petition, the Scheme for expansion etc. is required to be approved by the concerned authority in case of existing units. In this case, nothing has been shown to establish that the scheme of expansion was approved by the competent authority. The last page of Annexure-"G" is a forwarding letter from the Block Development Officer to the General Manager District Industrial Centre, Raiganj. It is not an approval. Annexure-"C1 is a letter written by the General Manager, District Industrial Centre, Raiganj, stating that the Scheme referred to in the letter of the Company (Petitioner No. 1) dated 30-10-88 was technically feasible and economically viable. It is not known what was the subject-matter of the letter dated 31-10-88. Moreover, sub-para (iii) of para. 5 of Annex.- "G" refers to the fact that the approval to any Scheme, must be recorded in the Registration Certificate of the Unit concerned on permanent or final basis. No such certificates of approval has been filed. Annexure-"A" is the Certificate of Permanent Registration of the Company as S.S.I. Unit. But there is no record of approval on it as required under the Scheme of 1989. In view of the principles laid down in Viji Rasin's case (supra)-, the rule of estoppel cannot be invoked in this case. In A. P. State Electricity Board case (supra), their Lordships of the Supreme Court reiterated

the principles laid down in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., where Their Lordships explained the principle of promissory estoppel in the following words : --

"The true principle of promissory estoppel is that where one party has by his word or command 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 effect so acted upon by the other party, the promise or representation would be binding on the party making it and he would 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".

11. It is clear from above that the writ petitioners did not act to their prejudice at the time when they incurred investment for modernisation of the rice mill on the unequivocal representation made by the State Govt. in the Incentive Scheme of 1989. Therefore, the writ petitioners are not entitled to get any relief in this case. As a result, the petition fails.

12. The writ petition is accordingly dismissed. No order is made as to costs in the circumstances of this case.

13. Petition dismissed.