**(2018) 08 P&H CK 0077**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 11301 of 2017

M/s Sangam Chemical Industires — APPELLANT

Vs

State of Punjab and others — RESPONDENT

**Date of Decision :** 07-08-2018

**Acts Referred:**

**Citation :** (2018) 08 P&H CK 0077

**Hon'ble Judges :** JITENDRA CHAUHAN, J

**Bench :** Single Bench

**Advocate :** J.S. Toor, Deepali Puri

**Final Decision :** Allowed

# Judgement

By way of the present petition, the petitioner seeks issuance of a writ in the nature of mandamus directing the respondents to disburse

subsidy/industrial incentive Rs.26,41,500/- sanctioned on 09.03.2000 by the Committee appointed for the purpose vide letter No.5218-C dated

10.04.2000.

Learned counsel for the petitioner states that the case of the petitioner is squarely covered by the ratio of law laid down by this Court in CWP-19007

of 2002 titled as M/s Balak Gases Oxygen Gas Plant and another Vs. State of Punjab and others, decided on 20.05.2011 (Annexure P-11).

Learned State counsel is unable to controvert the submission made on behalf of the petitioner.

Heard.

â??39. In the present cases, the offer of subsidy is a manner of providing incentives for such investment and an entrepreneur that assumes a business

risk in investment, is entitled to believe that the scheme is not an empty promise but rooted on a sound government policy and is squarely covered

under the regime of promissory estoppel of the industrial units. The State could not legally be permitted to completely defeat the rights of petitioner-

Industries by constant reappraisal of the scheme retrospectively, that too by issuing administrative instructions of any kind and by its officers by

passing the impugned orders. Even in case of those industries, which after several years of operation has perforce to close its business by the only

reason that assured subsidy did not reach him or any other valid ground beyond their control. A businessman, who makes investment and obtains loans

from the market or financial institution for establishment of the industry, is at least entitled to assume that a portion of debt could be redressed from the

amount of subsidy/incentive and benefits as promised by the State emanating from the Industrial Policies and relevant rules framed thereunder.

40. Now adverting to the next celebrated contention of the State counsel that since the respondents have issued administrative instructions/guidelines,

altering the original Industrial Policies (Annexure P1) and the relevant rules framed thereunder, so, the petitioner-Industries, as such, are not entitled to

the subsidies/incentives contrary to the guidelines, is not only devoid of merit but misplaced as well. Once the Governor has issued the notifications

publishing the Industrial Policies (Annexure P1) in Government Gazette and State Govt. notified the relevant rules (Annexure P2) to implement the

indicated Policies, then, to my mind, the administrative/executive instructions/ guidelines cannot legally be issued, unilaterally to alter the eligibility

criteria and imposing such restrictions on the payment of amount of incentives detrimental to already accrued valuable rights of the petitioner-

Industries, that too, without issuing any notice and providing adequate opportunity of hearing to them. Such substantive rights of the petitioner-

Industries cannot be taken away by issuing the executive instructions/guidelines, which have no sanctity of law and did not contain any legal force. It

cannot possibly be denied that only the State Government (not its officers) has the power to amend the rules in a legal manner that too prospectively

and even State cannot take away any such rights already accrued to a party by way of subsequent amendment. In the present cases, as the impugned

guidelines are based on recommendations of the officers' committees, therefore, the administrative instructions/guidelines will not in any way override the effect and operation of Industrial Policies and relevant rules framed thereunder in this regard by the State.

41. Moreover, the respondents cannot be permitted to keep on changing the eligibility criteria for the benefit emitting from the scheme, which was

primarily intended to promote the industrial growth in the specified category of area and industry in general and production and employment in border

area in particular. As indicated earlier, the entitlement of petitioner-Industries to claim the incentives and subsidies under the scheme has not been

denied and was sanctioned, but the respondents did not release the amount for one or the other untenable grounds in the garb of impugned orders,

which are entirely beyond the scope and jurisdiction of the original Industrial Policies and relevant rules framed thereunder. In the same manner, a

welfare State cannot possibly be heard to say that the amount was not released on account of paucity of funds with

42. In this manner, to my mind, any subsequent administrative instructions/ guidelines issued by the State or any orders passed by its officers, impugned

in the present writ petitions, which have no sanctity of law and legal force, are illegal, contrary to the Industrial Policies and indicated relevant rules,

without jurisdiction and in operative on the rights of the petitioner-Industries. The State cannot deny the release of the amount of incentive/subsidies to

them (petitioner-Industries) in this relevant connection.

43. Therefore, there cannot be any gainsaying that the petitioner-Industries did act on the assurance of the State. If the crux of the pleadings,

materials placed on the records and admission of the respondents, as discussed hereinabove, is put together and the case is construed in its totality,

then the only possible conclusion, that can be drawn, is that the petitioner-Industries were given an assurance by the respondents-State and they

actually acted in pursuance of the assurance in this behalf. That by itself would be sufficient to attract the doctrine of promissory estoppel.

44. In this view of the matter, it is held that the State and its instrumentality/ officers are legally duty bound to fulfill their promises and are liable to

release the indicated benefits to the petitioner-Industries on the principle of promissory estoppel, which is deeply applicable to the facts and in the

special circumstances of the present cases. Therefore, the contrary arguments of State counsel â??stricto sensuâ? deserve to be and are hereby repelled under the present set of circumstances as the law laid down in the aforesaid judgment â??mutatis mutandisâ? is applicable to the present

controversy and is the complete answer to the problem in hand in this context.

45. No other legal point, worth consideration, has either been urged or pressed by the counsel for the parties.

46. In the light of aforesaid reasons, all the writ petitions are accepted. Consequently, the impugned guidelines and the impugned orders, in all the

cases, having the effect of denying the incentives/subsidies and other benefits to petitioner-Industries, emanating from the Industrial Policies and

relevant rules framed thereunder, are hereby set aside in the obtaining circumstances of the case. The respondents are directed to release the amount

of incentive/subsidies and other benefits, to the petitioner-Industries, (if they are otherwise eligible and entitled to it), within a period of six months from

the date of receipt of certified copy of this judgment, failing which, thereafter six months, they (petitioner-Industries) would also be entitled to interest

at the rate of 6% per annum on the accrued benefits till the realization of the amount in this context.â??

Since the issue involved in the present writ petition has been settled in M/s Balak Gases case (supra) which has attained finality upto Hon'ble the

Supreme Court and keeping in view the admitted position whereby the State has found the petitioner eligible for the claim raised in the present petition,

the instant petition is allowed in terms of M/s Balak Gases case (supra). The respondents are directed to release the admissible benefits in favour of

the petitioner within a period of three months from the date of receipt of a certified copy of this order.

 