

(2022) 05 GUJ CK 0049

In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 1438 Of 2013 In R/Special Civil
Application No. 4030 Of 2004

Naroda Enviro Projects Ltd

APPELLANT

Vs

Union Of India & 1 Other(S)

RESPONDENT

Date of Decision : 13-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2022) 05 GUJ CK 0049

Hon'ble Judges : R.M.Chhaya, J; Nirzar S. Desai, J

Bench : Division Bench

Advocate : Megha Jani, Mit S Thakkar, Devang Vyas, Viral K. Shah, Tirthraj Pandya

Final Decision : ?Dismissed

Judgement

Nirzar S. Desai, J

1. By way of the present Letters Patent Appeals under Clause 15 of the Letters Patent Act, the present appellant has challenged the oral judgment dated 30.09.2013 rendered by the learned Single Judge in Special Civil Application No.4030 of 2004 whereby the petition preferred by the petitioner was dismissed.

2. Heard learned advocate Ms.Megha Jani for learned advocate Mr.Mit Thakkar for the appellant, learned Central Government Counsel Mr.Viral Shah for the Respondent No.1 and learned Assistant Government Pleader for Respondent No.2 – State.

3. The brief facts giving rise to the present appeal are stated as under:

3.1 The present appellant association is a limited company promoted by 229 member units having their industries of different nature located in Naroda Industrial Estate, GIDC, Ahmedabad and was incorporated under relevant provisions of the Companies Act, 1956. The object of the appellant is to reduce

the intensity of pollution caused by member units by Commissioning and running a Common Effluent Treatment Plant ('CETP', for short).

3.2 In the decade of 1990's, the Industrial Pollution Control Project ('IPCP', for short) was floated by Union of India to meet with the problem of pollution. The object of the scheme was to assist the establishment of pollution treatment plants by providing some financial assistance. The Central Government used to disburse the funds received by it from the World Bank to assist the establishment of 'CETP' and to strengthen the Pollution Control Board of States affected by pollution.

3.3 As per the scheme, for receiving the grant for project, concerned company or society must have "constituted specifically to own, operate and maintain common facilities for treatment and disposal of solid, liquid and gaseous wastes generated by small and medium scale units located in industrial estates / clusters". As per the scheme, the eligible units would be provided financial assistance to the extent that State and Central Government both would release 25% of the project cost each and remaining 50% was to be borne by promoters of the companies or society. Accordingly, the present appellant also made an application for grant of 7.95 crores to the respondent on 26.03.1997. As the appellant was found eligible, State Government sanctioned the subsidy of Rs.155.06 lakhs vide letter dated 24.03.1999. Out of sanctioned subsidy, the State Government released the total amount of Rs. 124.80 lakhs in March, 2000 and in March, 2001. However, though Respondent No.1 – Union of India received an application of the appellant, it did not release its share of grant to the tune of 25%.

3.4 Thereafter, some communication took place between the appellant and the Respondent No.1 for disbursement of 25% share of Central Government, some meeting also took place and in the month of May, 2002, the Respondent No.1 informed the appellant that the scheme had concluded. It is the case of the appellant that appellant was advised to apply afresh under the new scheme for subsidy for 'CETP', as the scheme under which the appellant – original petitioner had applied was already over. Accordingly, the appellant applied afresh for subsidy for its 'CETP'.

3.5 After having applied afresh, as the Central Government did not disburse the amount of subsidy to the tune of 25% of the total project cost, the appellant preferred writ petition being Special Civil Application No.4030 of 2004 praying for issuance of writ of mandamus and thereby sought direction against the respondent to release the corresponding share of Central Government towards the grant of subsidy under the said scheme.

3.6 The writ petition preferred by the present appellant – original petitioner being Special Civil Application No.4030 of 2004 was opposed by the Union of India by taking a stand that the said petition suffers from delay and laches and there was no promise by Union of India in the year 1997 to 1999, for the release

of part of grant as the petition was filed in the year 2004. It was also the stand taken by Union of India before the learned Single Judge that the scheme was to be funded from the funds received from World Bank and it would be subject to the availability of funds. Once the funds exhausted, the petitioner cannot claim such subsidy as a matter of right. The appellant was required to furnish the complete details for processing the application to enable the respondent to release the subsidy. The appellant was also required to meet with all requirements for being entitled to get the subsidy. One of the requirements was to commence the CETP project before 31.03.1999 as the scheme was to get over in the year 1999 and, therefore, the appellant – original petitioner could not have prayed for disbursement of grant of subsidy in the year 2004.

3.7 The learned Single Judge, after taking into consideration the submissions of both the sides, took a view that any such subsidy could always be subject to fulfillment of various conditions and availability of funds and hence it cannot be said to be a firm commitment or promise or any assurance given by the Government of India is flouted and hence the learned Single Judge vide, its oral judgment dated 30.09.2013, dismissed the petition. Being aggrieved and feeling aggrieved by the same, the appellant has preferred the present appeal under Letters Patent Act challenging the oral judgment dated 30.09.2013 rendered by the learned Single Judge.

4.1 Learned advocate Ms.Megha Jani with learned advocate Mr.Mit Thakkar for the appellant submitted that the appellant is eligible and entitled to get the subsidy under the scheme and, therefore, benefits must be extended to the appellant. She further submitted that the eligibility of the appellant is required to be considered as on date of first application i.e. 23.03.1997. She submitted that appellant is eligible and entitled to get the subsidy as it is an obligation on the part of the Government that once the scheme of incentive is framed by the State, a State is under obligation to disburse the benefits available under the scheme. The benefits are required to be extended to all eligible and the appellant's eligibility was never questioned by the authorities and in fact, the State Government has already disbursed the portion of its share and, therefore, the action of Central Government of non-disbursement of the share of subsidy to the appellant would amount to violation of legal obligation of the State and also amounts to infringement on the legal aspect of the appellant to receive such benefits. She further contended that the action of the Central Government would amount to baking out from a promise held by the Ministry of Environment and Forest. A state is thus under an obligation to release the disbursement of the subsidy to appellant. To substantiate her claim, Ms.Jani, learned advocate for the appellant relied upon the judgment reported in case of State of Jharkhand and others vs. Brahmaputra Metalics Ltd, Ranchi and another reported in 2020 SCC Online SC 968.

4.2 She thereafter submitted that the action of the respondent of non-disbursing the amount of subsidy in favour of present appellant would amount to violation

of Article 14 of the Constitution of India. She further submitted that the learned Single Judge has committed an error by dismissing the petition on two counts i.e. (i) the petitioner has missed the bus as the project was initiated by the Union of India in the year 1993 for a period from 1993 till 1999 whereas the petition was filed in the year 2004 and (ii) no promise was held out by the Central Government. She further submitted that the respondent cannot take a stand that it is not mandatory to consider all applications for financial support. Once an application from an eligible unit comes under a scheme, it is mandatory for the authority to sanction the application of all those who are eligible. She further submitted that though the learned Single Judge has taken a view that the claim of the petitioner cannot be considered for repayment of the borrowed finance or the subsidy, is erroneous as there is no stipulation that funding has to be sanctioned prior to 'CETP' came into force. She further submitted that question of delay would not come in the way of appellant as the Law is that even if there is delay in filing the writ petition, it cannot be treated as ground to deny the benefits of financial incentive.

4.3 It was submitted by learned advocate for the appellant that once the ground of grant of subsidy is acquired, the right to sanction is also acquired. If the concerned authority delays or denies the sanction, the appellant has right to seek judicial review. In support of her contention, she relied upon the judgment of Division Bench of the High Court of Bombay rendered on 22.10.1992 in the case of Ras Marketing and Exports Pvt. Ltd. And Ors. vs. Union of India in Writ Petition Nos.2832 of 1991 and allied matters and the judgment dated 22.06.1993 rendered by the Division Bench of Madhya Pradesh High Court in case of Shri Bajrang Extraction Pvt. Ltd. And others vs. The Secretary to the Government of M.P. and others in M.P.No.1593 of 1989. She also relied upon the decision of Hon'ble Supreme Court in the case of Undersecretary, Ministry of Industries vs. Marchon Textile Inds. (P) Ltd. reported in (2005) 10 SCC 554. By making aforesaid submissions, she prayed for allowing the appeal by quashing and setting aside the oral judgment dated 30.09.2013 passed by the learned Single Judge and prayed for issuance of appropriate direction to the Respondent No.1 – Central Union of India for disbursement of subsidy as per the entitlement of present appellant i.e. to the tune of 25% of the total project cost.

5.1 Per contra, learned Central Government Counsel Mr.Viral Shah for the Respondent Union of India submitted that the Planning Commission had approved the scheme under which the petitioner - appellant is seeking benefits as part of World Bank in its industrial Pollution Control Project. It started in the year 1991 and the scheme was over in the year 1999. It appears that there is no scheme of such nature framed by Respondent No.1 subsequently in respect of 'CETP' and, therefore, present appellant is not entitled to any reliefs. He also opposed the appeal on the ground that the scheme under which the benefits are prayed for by the present appellant was concluded in March, 1999 whereas the appellant preferred the petition only in the year 2004. In support of the aforesaid contention, he relied upon the judgment in the case of State of Maharashtra vs.

Digambar reported in (1995) 4 SCC 683 and in the case of Banda Development Authority vs. Moti Lal Agarwal reported in (2011) 5 SCC 394.

5.2 The learned Central Government Counsel Mr.Shah further contended that the submission of the advocate for the appellant that the appellant is entitled to get the subsidy on the ground of doctrine of promissory estoppel is completely misplaced as there was no promise at any point of time and from the record also the same is not evident or established. It is a settled law that doctrine of promissory estoppel can be invoked only when (i) there is a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee and (ii) such acting upon the promise the promisee, it would be inequitable to allow the promisor to go back on the promise. In the present case, all these contentions are absent and hence the doctrine of promissory estoppel cannot be pressed into service. He further submitted that the petitioner was very well aware that the original scheme was concluded in the month of March, 1999 and thereafter he applied afresh for benefit of the said scheme in the year 2002. Therefore also the appellant cannot press into service the doctrine of promissory estoppel. Mr.Shah further submitted in an identical case in the case of Union of India vs. Shree Hanuman Industries reported in (2015) 6 SCC 600 it is held that the Government can deny relief based on promissory estoppel if there is delay and other factors make such relief inequitable. Mr.Shah draws attention of the Court that the facts of aforesaid case are similar to the facts of the present case and thus prays for dismissal of appeal. Mr.Shah also submitted that it is settled propositions of law that if there are disputed questions of fact, petition invoking writ jurisdiction cannot be entertained and the same is required to be adjudicated before the Civil Court by leading evidence. In support of his contention, he relied upon the decision in the case of Roshina T. vs. Abdul Azeez K. T. reported in (2019) 2 SCC 329. In view of aforesaid submissions, Mr.Shah prayed for dismissal of appeal by confirming the order of the learned Single Judge.

6. This Court has considered the rival submissions. Heard learned advocate Ms.Megha Jani for the appellant and learned advocate Mr.Viral Shah for the respondent.

6.1 On perusal of the record, it transpires that as per the Industrial Pollution Control Project, on the basis of which the present appellant is seeking release of subsidy for the project floated by Respondent No.1 – Union of India, to utilize the support of the World Bank to prevent environmental degradation caused by the pollution in the country. As per the para:2.1 of the project, the project was planned to be completed during the eighth five-year plan. To avail the benefits of the scheme, an application was made by the appellant for the first time on 27.03.1997 for sanctioning of grant for the project of which estimated cost of Rs.795 lakhs. As per the scheme, for the purpose of meeting with the cost of project, Central Government would grant subsidy of 25% of the project cost. 25% of the subsidy would be provided by the State Government and rest of the

50% was to be borne by the unit itself.

6.2 Accordingly the State Government disbursed the subsidy of Rs.155.06 lakhs by considering the project cost as Rs.620.25 lakhs vide order dated 24.03.1999. In the order dated 24.03.1999, in condition no.11, it was specifically stated that;

"11. As on policy is in force upto 31.3.1999 therefore it is required to commence the project before 31.3.1999."

However, it seems that the project could not be commenced before 31.03.1999. As can be seen from letter dated 31.08.1999, which is produced by the appellant only at page:43, the Respondent No.1 addressed communication to the Principal Secretary, GPCB in respect of five companies and stated that the World Bank insisted that no funds would be released until there is proper sludge management in each of the CEPTs.

However, according to the appellant, sludge management site was developed and CEPTs had commissioned since last two years. The fact remains that the appellant vide communication dated 25.11.1999 addressed to Ms.Archana Joshi, Deputy Secretary, Ministry of Environment Forests admitting that they have commissioned CETP on 19.10.1999 and still DG Sets and other standby machineries were to be installed but for the want of finance the same were not yet procured. This would go to show that the date i.e. 31.03.1999, which was the last date on which the CETP was to be commenced, to avail the benefits was not commenced and ultimately it commenced as per admission of the appellant itself on 19.10.1999, which would indicate that the appellant could not meet with the conditions for getting subsidy.

6.3 The aforesaid letter written by the appellant is produced at page:56 of the appeal by the appellant himself and, therefore, the same can be treated as admission on the part of the appellant and hence we would consider the subject matter keeping the aforesaid aspect in mind.

6.4 The submissions made by learned advocate Ms.Jani were based upon the fact that once a scheme for subsidy is floated by the Central Government and as the appellant was meeting with the requirements for being entitled to get the subsidy, the Central Government is bound to grant the benefits of subsidy to the appellant as the doctrine of promissory estoppel would come into play and hence the State is bound to disburse the amount of 25% of the subsidy of the total project cost in favour of the appellant. She submitted that it was legitimate expectation of the appellant that once a scheme of subsidy is floated by the State and once the appellant has acted in furtherance by fulfilling condition to avail the benefits of subsidy, it is not open for the State to deny the benefits promised by way of scheme for subsidy.

6.5 Learned advocate Ms.Jani also made a submission that once there is promissory estoppel in favour of the appellant, such promise cannot be breached on the ground of delay. In support of her argument, learned advocate Ms.Jani

relied upon the judgment in the case of State of Jharkhand and others vs. Brahmputra Metalics Ltd, Ranchi and another (supra).

6.6 As far as aforesaid judgment cited by learned advocate Ms.Jani for the appellant is concerned, in the view of this Court, it would not be applicable to the facts of the present case for the reason that in respect of case on hand what is sought for by the appellant is disbursement of amount of subsidy claimed by the appellant, whereas the judgment relied upon by learned advocate Ms.Jani was in respect of an exemption Notification wherein the respondent was denied the rebate / deduction for election duty. Not only that the facts of this case are different from the judgment cited by learned advocate Ms.Jani, in fact, the basic foundation behind both the policies are different. In the instant case, from the benefits aided from the World Bank the amount was to be disbursed in favour of small scale industrial units which were meeting with the requirements. One of the conditions to avail the benefits of subsidy was to ensure that the appellant or applicant unit must commence CETP by 31.03.1999 whereas the judgment cited by learned advocate for the appellant is in respect of rebate / deduction from election duty which was to be paid by the company. In the instant case, the Government, on its own, was not to make payment of subsidy but the subsidy was to be paid from the aid it receives for specific purpose from the World Bank and that also was categorically stated in policy itself that the project is planned to be completed during the eighth five-year plan and, therefore, the judgment in the case of State of Jharkhand and others vs. Brahmputra Metalics Ltd, Ranchi and another (supra) would not help the appellant – original petitioner.

6.7 As far as submission of learned advocate Ms.Jani in respect of promissory estoppel is concerned, learned advocate Ms.Jani relied upon (i) the judgment dated 22.06.1993 rendered by the Division Bench of Madhya Pradesh High Court in case of Shri Bajrang Extraction Pvt. Ltd. And others vs. The Secretary to the Government of M.P. and others in M.P.No.1593 of 1989, (ii) judgment of Division Bench of the High Court of Bombay rendered on 22.10.1992 in the case of Ras Marketing and Exports Pvt. Ltd. And Ors. vs. Union of India in Writ Petition Nos.2832 of 1991 and (iii) the decision of Hon'ble Supreme Court in the case of Undersecretary, Ministry of Industries vs. Marchon Textile Inds. (P) Ltd. (supra) and submitted that Government is bound by the principle of promissory estoppel when it tries to walk out the promise made by it during the scheme for providing incentives. In this regard, this Court is of the view that in the instant case, question of promissory estoppel would not arise simply for the reason that as per the scheme itself the project is planned to be completed during the eighth five-year plan. Further, the respondents have categorically stated in the affidavit-in-reply that the IPCP project under which the CETP scheme was floated was a project aided the World Bank fund and the same was completed in the year 1999. As per one of the conditions to avail the benefits of the scheme, the unit must commence before 31.03.1999 whereas as per the admission of the appellant himself, which was on page:56 of the appellant, in a communication dated 25.11.1999, the appellant had admitted that the CETP was commenced on

19.10.1999 and DG Sets and other standby machineries were still to be installed which would indicate that even the condition to avail the subsidy was not fulfilled by the appellant. The first and the foremost requirement to avail any benefit promised by the State is to fulfill the conditions for being eligible for the same. When there is admission on the part of the appellant himself that the plan was commissioned after the deadline of 31.03.1999 when the appellant itself could not fulfill the condition to get the subsidy, question of promissory estoppel would not come in the way of respondents while denying the benefits to the appellant.

6.8 Further, this Court has also noted the fact that initially the appellant made an application for subsidy under the IPCP scheme in the year 1997, however, vide letter dated 04.05.2002 the appellant itself made a fresh application under new scheme for subsidy under CETP. In the said communication dated 04.05.2002, the appellant has also made a reference to the fact that he was told that the scheme under which the appellant had applied was already over and hence the appellant had made fresh application under new scheme for subsidy under CETP which would indicate that the appellant had already given up its demand under the old scheme and, therefore, when the fresh application was made in the year 2002, as stated in forgoing paras, the CETP was already set on in October, 1999. The Government floats the scheme and offers the subsidy to the small scale industrial units with a view to help them to establish the unit. But once a unit is set-up, that unit would not require any subsidy on the ground that they may be given subsidy to meet with the borrowings and to repay the debts and, therefore, once the CETP was already set in the year 1999, as per the admission of the appellant, there is no question of considering the request of the appellant for the grant of subsidy at belated stage just to repay the borrowings or debts. Further, merely because a unit is fulfilling specific condition, it is not mandatory for Government to grant the amount of subsidy. In fact, any subsidy can be paid only in respect of amount earmarked for the said scheme. Once that fund get exhausted, the Government can stop funding that particular project as the Government also cannot be expected to have unlimited resources.

6.9 Further, the appellant preferred petition for the first time in the year 2004 i.e. after almost five years after CETP project was commenced. As per the application of the appellant that CETP was commenced in October, 1999. To avail the benefits of subsidy if a person is really in need of financial assistance and if his project was really unable to be commenced in want of subsidy, he would not have waited for long five years. Therefore, on the ground of delay also this appeal requires to be dismissed.

7. In view of the aforesaid discussion, we are in complete agreement with the view taken by the learned Single Judge and we do not see any reason to interfere with the view taken by the learned Single Judge. Accordingly, the present appeal requires to be dismissed and the same is dismissed. No order as to costs.