(2013) 05 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 987 of 2005 and other connected matters

Naulakha Theatre — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Constitution of India, 1950 — Article 299

Citation : (2013) 171 PLR 354 : (2013) 64 VST 481

Hon'ble Judges : Ritu Bahri, J;Hemant Gupta, J

Bench : Division Bench

Advocate : J.P. Sharma, Rastu Chopra and Fateh Saini, for the Appellant; Pavit Mattewal, Addl. AG, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—This order shall dispose of afore-mentioned writ petition along with other writ petitions mentioned in the foot note of this order, wherein the petitioners have sought a writ in the nature of certiorari seeking quashing of demand of entertainment tax. The writ petitioners are the firms engaged in the business of cinema and have been granted licence under the provisions of Punjab Cinemas (Regulation) Act, 1952. The grievance of the petitioners is that they are required to deposit entertainment tax under the provisions of Punjab Entertainment Tax (Cinematograph Shows) Rules, 1954. The case of the petitioners is that cinema industry in the State was on the verge of closure, as cinema owners are suffering loss due to high rate of entertainment tax. The cinema owners had been taking up the issue with the Government to consider reduction in the entertainment tax. The petitioners pleaded that in response to the various representations, the Government took a decision to give 33% concession in the entertainment tax, if the tax is deposited in lump sum. Such decision was taken by the Cabinet and was incorporated in the annual budget for the year 2003-04 presented before the Legislative Assembly on 24.03.2003. The relevant extract from the budget proposal reads as under:

(v) Cinema owners are proposed to be allowed an option either to pay tax in lump sum or to opt for payment of tax on actual basis. The rate of lump sum tax is proposed to be reduced by 33% from the existing level and that of the entertainment duty from 125% to 50%.

2. The petitioners have allegedly deposited the lump sum entertainment tax in pursuance of such budget proposal. It was later somewhere in September, 2004, the demand was raised against the petitioners on the ground that the petitioners have deposited entertainment tax availing rebate of 33%, whereas no notification has been issued by the Punjab Government. In the afore-mentioned writ petition, the petitioner has pleaded that in view of the representation of the State, the petitioner has altered its position. It is averred to the following effect:

8. That the petitioner got encouragement on account of modified tax structure as decided by the Cabinet, which formed the part of the budget for the fiscal year and was announced by the Chief Minister and other Ministers in various public rallies. The petitioner made further investment for renovation of his Cinema Hall and providing better facilities and infrastructure to the Cinema goers and also purchased/screened the big budget films. The petitioner acted upon the promise of concession, relied upon it and altered his position for the purpose of carrying on his business in a big way. The savings occurred by way of tax concession to the extent of 33% were in fact ploughed back to make the business a viable and remunerative.

3. Relying upon the budget proposal for the year 2003-04, the petitioners, thus, contend that the State is bound by the principle of promissory estoppel, therefore, the petitioners are liable to pay only lump sum tax by availing concession of 33%.

4. In reply, it is averred that only a press statement was given by the Chief Minister and the Finance Minister that the matter regarding relief to the cinema owners is under consideration of the Government. In the budget speech for the budget of 2003-04, it was announced that the rate of lump sum tax is proposed to be reduced by 33%. Thus, it is averred that it was a simple proposal, which could not materialize as the Government could not identify the alternative avenues to compensate the loss going to be incurred due to this relief to the cinema industry. It is also averred that not even a Bill was introduced in the Assembly for discussion. The petitioners have filed rejoinder relied upon the representation of the State that entertainment tax has been reduced.

5. During the course of arguments, it is conceded by the counsel for the parties that subsequently in the year 2008, the entertainment tax has been abolished vide Notification No. 7/4/2008-ET. 2(9)/7/5 dated 07.04.2008.

6. Learned counsel for the petitioners have vehemently argued that the State Government has represented on the floor of the House that concession on entertainment tax has been given and acting on such representation, the petitioners have not only deposited the entertainment tax at the reduced rate,

but also invested in the renovation of the cinema theatres, thus, altering their status. Therefore, in terms of the judgment of the Hon''ble Supreme Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, and later judgment reported as State of Punjab Vs. Nestle India Ltd. and Another, . It is contended that the State is bound by such representation given by the highest functionary of the State. Reference is also made to the judgment reported as Mahabir Vegetable Oils Pvt. Ltd. and Another Vs. State of Haryana and Others, .

7. We have heard learned counsel for the parties and find no merit in the present bunch of writ petitions.

8. In M/s. Motilal Padampat Sugar Mills Co. Ltd. case (supra), the Supreme Court has dealt with doctrine of promissory estoppel. It has been held that it is 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 estoppels. The true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise 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 is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not 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 and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. The doctrine of promissory estoppel is equitable principle evolved by the courts for doing justice and there is no reason why it should be given only a limited application. It was held that it is not necessary that the promise should suffer in detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise.

9. The controversy in the aforesaid case arose on the basis of an news item appeared in the newspaper on 10.01.1968, wherein it was stated that the State has decided to give exemption from sale tax for a period of 3 years u/s 4A of the U.P. Sales Tax Act to all new industrial units in the State with a view to enabling them to come on firm footing in developing stage. The appellant addressed a letter on the basis of newspaper report to the Director of Industries and sought confirmation that the Hydrogenation Plant for manufacture of Vanaspati intend to set up by the appellant would be entitled to sales tax Holiday. The Director of Industries confirmed that there will be no sales tax for 3 years on the finished product of proposed Vanaspati from the date it gets power connection for commencing production. Subsequently, the Chief Secretary to the Government as also Adviser to the Governor reiterated the assertions that the appellant would be entitled to sales tax holiday. However, subsequently, on 20.01.1970, the State Government had taken a policy decision that new Vanaspati Units in the State which go into commercial production by 30th September, 1970 would be given partial concession in Sales Tax. Subsequently, the State Government rescinded

the decision set out in the letter dated 20.01.1970. A writ petition was filed by the appellant asking for a writ directing the State Government to exempt the sales tax on Vanaspati manufactured by the appellant for a period of 3 years by issuing a notification u/s 4A of the U.P. Sales Tax Act.

10. The Hon''ble Supreme Court concluded that the doctrine of promissory estoppel has been adopted in its fullness but it has been recognized as affording a cause of action to the person to whom promise has been made and that if a citizen acting in reliance on the terms has altered his position, it did not release the Government from its obligation to honour the promise made by it. The doctrine of promissory estoppel in such a case is applicable against the Government and it could not be defeated by undertaking the defence of executive necessity. It was pointed out that the doctrine of promissory estoppel must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government.

11. Still further, it was held that if the Government wants to resist the liability, it will have to disclose to the courts what are subsequent events on account of which, the Government claims to be exempted from the liability and it would be for the court to decide whether those events are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability. It was held that there cannot be promissory estoppel against the exercise of legislative power. The legislature can never be precluded from exercising its legislative function by resort to the doctrine of promissory estoppel. It was so held as under:

It may also be noted that promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law. There can also be no promissory estoppel against the exercise of legislative power. The Legislature can never be precluded from exercise its legislative function by resort to the doctrine of promissory estoppel.

12. The Court, thus, allowed the claim of the appellant, as it found that if the U.P. Sales Tax Act did 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, but since Section 4 of the U.P. Sales Tax Act, confers power on the Government to grant exemption from sales tax, the Government can legitimately be held bound by its promise to exempt the appellant from payment of sales tax.

13. The heavy reliance of the petitioners is on the judgment of Nestle India Ltd. case (supra), wherein a promise was made in the Budget Speech of the Finance Minister regarding abolition of purchase tax. It is contended that the present is the similar case, wherein doctrine of promissory estoppel has been applied.

Therefore, having made promise in the budget, the State is bound by the promise made and cannot be permitted to wriggle out of such promise. We find that judgment in Nestle India Ltd. case (supra) is clearly distinguishable and is on facts of that case. In the said case, the following circumstances were taken into consideration to return a finding that the State is bound by the promise of abolition of purchase tax:

(i) The Chief Minister of Punjab made an announcement on 26.02.1996 while addressing dairy farmers at a State-level function, that the State Government had abolished purchase tax on milk and milk products;

(ii) In the Budget Speech given by the Finance Minister while presenting the Budget for the year 1996-97, the announcement of the Chief Minister abolishing the purchase tax was reiterated:

(iii) A memo was issued by the Financial Commissioner on 26.04.1996 conveying the decision of the State Government in principle to abolish the purchase tax;

(iv) A circular was issued by the Excise and Taxation Commissioner on 18.05.2006 pursuant to memo dated 26.04.1996, to all the Deputy and Assistant Excise & Taxation Commissioners and the Deputy Directors (Enforcement) in the State in relation to abolition of purchase tax;

(v) The representatives of the petitioner and others were informed of the decision of the State Government exempting milk and milk products from purchase tax:

(vi) On 27.06.1996 in a meeting held under the Chairmanship of the Chief Minister attended by the Finance Minister, the Excise & Taxation Commissioner and various Financial Commissioners, the decision to abolish purchase tax on milk was reiterated and it was decided to issue a formal notification;

(vii) On 18.07.1996/24.07.1996, the Finance Minister made an announcement that with a view to encourage milk producers and for granting relief to the common people, traders and industrialists, the Government had abolished tax on milk;

(viii) The milk producers did not pay the purchase tax along with their returns with a note that purchase tax on milk and milk products stands abolished; &

(ix) The benefit on account of exemption of purchase tax was passed on by the milk producers to the farmers;

It was, in these circumstances, the Court held to the following effect:

43. It would appear that these observations are in conflict with the earlier and subsequent pronouncements of the law on promissory estoppel. Chandrasekhara Aiyar, J. had held that the representation was enforceable despite the "accident" that the grant was invalid inasmuch as it was contrary to statute. M.P. Sugar Mills (supra) had said that the promise was enforceable against the Government

despite the requirement of Article 299 of the Constitution. Similarly, Century Spinning (supra) held that despite the requirement of the statute prescribing the manner and form to grant exemption from payment of octroi, a promise not made in that manner or form could be enforced in equity. Then again in Godfrey Philips (supra), the Court directed an exemption to be granted on the basis of the principles of promissory estoppel even though Rule 8 of the Central Excise Rules 1944 required exemption to be granted by notification.

44. Of course, the Government cannot rely on a representation made without complying with the procedure prescribed by the relevant statute, but a citizen may and can compel the Government to do so if the factors necessary for founding a plea of promissory estoppel are established. Such a proposition would not "fall foul of our constitutional scheme and public interest". On the other hand, as was observed in Motilal Sugar Mills case and approved in the subsequent decisions:

It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel.

xxx xxx xxx

47. The appellants have been unable to establish any overriding public interest which would make it inequitable to enforce the estoppel against the State Government. The representation was made by the highest authorities including the Finance Minister in his Budget Speech after considering the financial implications of the grant of the exemption to milk. It was found that the overall benefit to the state''s economy and the public would be greater if the exemption were allowed. The respondents have passed on the benefit of that exemption by providing various facilities and concessions for the upliftment of the milk producers. This has not been denied. It would, in the circumstances, be inequitable to allow the State Government now to resile from its decision to exempt milk and demand the purchase tax with retrospective effect from 1st April 1996 so that the respondents cannot in any event re-adjust the expenditure already made. The High Court was also right when it held that the operation of the estoppel would come to an end with the 1997 decision of the Cabinet.

14. In the present case, there is no unequivocal statement made by any Government functionary in respect of reducing the entertainment tax. The Budget Speech, the reference of which has been made above, is to the effect that there is a proposal for demand of reducing the entertainment tax. Such proposal cannot acquire the status of law, so as to be treated as a deemed abolition of entertainment tax imposed under the Punjab Entertainment Tax (Cinematograph Shows) Rules, 1954. The proposal in the Budget Speech has not travelled to the stage of law nor the representation was categorical that

entertainment tax, if paid in lump sum, would be at reduced rate. The representation is only of "proposal" and not the decision. Therefore, mere payment of entertainment tax in lump sum by the petitioners will not create any equity in favour of the petitioners nor the respondents can be said to be bound by the principle of promissory estoppel on the basis of such representation.

15. In Nestle India Ltd. case (supra), it was time and again that the State Government had taken a stand that purchase tax on the milk and milk products has been abolished, but in the present case, there is not categorical representation in respect of abolition or reduction of entertainment tax.

16. The Supreme Court judgment in Mahabir Vegetable Oils Pvt. Ltd. case (supra) left the question of quantification of amount of exemption to be decided by the Authorities. Subsequently, after quantification, the dealer filed a writ petition, which was allowed. The appeal of the State against the order passed by this Court was allowed in a judgment reported as State of Haryana and Others Vs. Mahabir Vegetable Oils Pvt. Ltd., (for short ''Mahabir Vegetable Oils Private Limited - II''). The court found that the above stated judgment of Supreme Court only considered the retrospective operation of the amendments made on 16-12-1996 and subsequent amendments which sought to take away certain rights of the respondents. The Court only held that the amendment to Rule 28-A could not have any retrospective effect, in the sense that it could not affect an assessee''s pre-existing rights. With the said observation, the Court in Mahabir Vegetable Oils Private Limited - II held as under:

25. The doctrine of promissory estoppel is an equitable remedy and has to be moulded depending on the facts of each case and not straitjacketed into pigeonholes. In other words, there cannot be any hard-and-fast rule for applying the doctrine of promissory estoppel but the doctrine has to evolve and expand itself so as to do justice between the parties and ensure equity between the parties i.e. both the promisor and the promisee.

26. The principles of promissory estoppel is not applicable in the instant case as the decision to put the solvent extraction plant in the negative list was taken in public interest since the industry is in the category of polluting industry. It has never been the case of the respondent that the solvent extraction plant is a non-polluting industry. There is also no allegation that the decision to put the solvent extraction plant in the negative list was actuated by fraud or that the said decision was not bona fide.

27. In cases where the Government on the basis of material available before it, bona fide, is satisfied that public interest would be served by granting, withdrawing, modifying or rescinding an exemption already granted, it should be allowed a freehand to do so. The withdrawal of exemption "in public interest" is a matter of policy and the courts should not bind the Government in its policy decision. The courts should not normally interfere with fiscal policy of the Government more so when such decisions are taken in public interest and where

neither fraud nor lack of bona fides is alleged, much less established.

17. The issue; whether entertainment tax can be permitted to be paid in lump sum or not; is a matter of policy. Such policy could be given effect to only by amending Punjab Entertainment Tax (Cinematograph Shows) Rules, 1954. Neither the budget proposal nor the earlier statement of Chief Minister is to the effect that it has been decided to permit the payment of entertainment tax in lump sum. The representation is only that the State Government has proposed the payment of entertainment tax in lump sum so as to grant concession upto 33%. No promissory estoppel can be raised against the State on the basis of such promise, when the levy of entertainment tax is statutory.

18. In Brij Mohan Lal Vs. Union of India (UOI) and Others, , the Supreme Court has held that the policy decisions more so in fiscal matters raising financial implications are not to be interfered with in exercise of power of judicial review. The Court held to the following effect:

96. It is a settled principle of law that matters relating to framing and implementation of policy primarily fall in the domain of the Government. It is an established requirement of good governance that the Government should frame policies which are fair and beneficial to the public at large. It is for the Government to adopt any particular policy as it may deem fit and proper and the law gives it liberty and freedom in framing the same. Normally, the courts would decline to exercise the power of judicial review in relation to such matters. But this general rule is not free from exceptions. The courts have repeatedly taken the view that they would not refuse to adjudicate upon policy matters if the policy decisions are arbitrary, capricious or mala fide.

xxx xxx xxx

99. It is also a settled cannon of law that the Government has the authority and power to not only frame its policies, but also to change the same. The power of the Government, regarding how the policy should be shaped or implemented and what should be its scope, is very wide, subject to it not being arbitrary or unreasonable. In other words, the State may formulate or reformulate its policies to attain its obligations of governance or to achieve its objects, but the freedom so granted is subject to basic constitutional limitations and is not so absolute in its terms and it would permit even arbitrary actions.

xxx xxx xxx

101. Cases of this nature can be classified into two main classes: one class being the matters relating to general policy decisions of the State and the second relating to fiscal policies of the State. In the former class of cases, the courts have expanded the scope of judicial review when the actions are arbitrary, mala fide or contrary to the law of the land; while in the latter class of cases, the scope of such judicial review is far narrower. Nevertheless, unreasonableness, arbitrariness, unfair actions or policies contrary to the letter, intent and

philosophy of law and policies expanding beyond the permissible limits of delegated power will be instances where the courts will step in to interfere with government policy.

19. In view of the above, we find that the petitioners are not entitled to raise the plea of promissory estoppel. One of the essential ingredient so as to invoke doctrine of promissory estoppel is altering of position by a person. However, the averments, as reproduced above, do not show that the petitioners have altered their position on the basis of representation of the functionaries of the State. The petitioners were running cinemas and continued to run cinema even after the speech of the Chief Minister/Finance Minister. If the petitioners have provided better facilities and infrastructure though in the absence of any material, such fact cannot be taken into consideration, still such better facilities do not lead to alteration of positions by the petitioners on the strength of promise made. It is the convenience of the visitors, which was taken care of by the cinema owners, when they provided better facilities and infrastructures or when they screen big budget films, which will obviously gave better revenue to the petitioners as well. Therefore, it cannot be said that the petitioners have altered their position to their detriment on the basis of speech of the Finance Minister proposing the reduction of the entertainment tax. In view of the above, we do not find any merit in the present writ petitions. The same are accordingly dismissed.