

(2019) 12 JH CK 0167
In the Jharkhand High Court
Case No : Writ Petition (C) No. 4216 Of 2014

Niranjan Metallic Ltd

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Bihar Finance Act, 2006 — Section 7, 7(3)
Constitution Of India, 1950 — Article 14

Citation : (2019) 12 JH CK 0167

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Sumeet Gadodia, Anjani Nandan, Dhananjay Kumar Pathak, Shashi Kant Mishra

Final Decision : Dismissed

Judgement

Sl.

No.",Incentive,Category,"Maximum

Incentive

(%)", "Financial

Limits

(Lakhs)

1., "Interest

Subsidy", A B C, 25 50 60, "The subsidy

shall be

limited to a

sum of Rs.

100 lakhs
per annum
provided the
total interest
subsidy shall
not exceed
2% of the
total sales
amount
made in the
State of
Jharkhand
and / or in
course of
inter-state
sales as
supported by
the
certificate /
document
issued by
the
competent
commercial
tax
authority.
This subsidy
shall be
admissible
for a period

of 5 years
for all
categories
of industries
from the
date of
commercial
production.

only for Rs.35,69,655/- i.e. 2% of the total sale amount made by the petitioner-company during the financial year 2011-12. In the said representation it",,,,

was further stated that respondent no.4 had no jurisdiction and/or authority to reject the claim of one or the other industry for grant of subsidy under,,,,,

the Industrial Policy, 2001, as the claim is to be examined by the State Level Committee under the relevant Rules. However, later on the case of the" ,,,,

petitioner was considered by the State Level Committee of the respondent-State of Jharkhand for payment of interest subsidy.,,,,

He further submits that the petitioner was given a reminder letter vide Letter No.232 dated 04.02.2013 directing the petitioner to submit its clarification,,,,,

as sought for vide earlier letter no.127 dated 25.01.2013, in pursuant thereto, the petitioner vide its letter dated 13.02.2013, furnished the requisite" ,,,,

clarification sought for by the State Level Committee as contained in Annexure-7 to the writ petition. The petitioner was communicated that the,,,,,

scheduled departmental meeting with regard to interest subsidy of the petitioner will take place on 18.02.2013. The petitioner was directed to appear in,,,,,

the said meeting along with the representative of the petitioner's Banker so that the claim of the petitioner for payment of subsidy could be,,,,,

examined. The petitioner along with its Banker, attended the meeting held at the departmental level regarding examination of its claim for interest" ,,,,

subsidy for the financial year 2011-12 and all the requisite queries raised by the department were duly answered. He further submits that in view of,,,,,

the communication dated 06.03.2013, the petitioner has furnished requisite information to the department as contained in Annexure-10 to the writ" ,,,,

petition.,,,,

He further submits that the claim of the petitioner has been rejected on two

grounds i.e.;,,,,

(i) Application of the petitioner for claim of interest subsidy was incomplete;,,,,

(ii) The petitioner's unit is, at present, closed and, thus, as per Jharkhand Industrial Incentive Rules 2003, the petitioner cannot claim interest",,,,,
subsidy.,,,,,

By referring to the impugned order dated 05.06.2014, Mr. Gadodia, submits that from the impugned order it is crystal clear that the State Level",,,,,

Committee held the meeting on 05.03.2013, the required documents were submitted on 08.03.2013 whereas the impugned order has been passed on",,,,,

05.06.2014 i.e. after more than one year, although the required documents were submitted in spite of that the claim of the petitioner has been rejected",,,,,
arbitrarily.,,,,,

He further submits that so far the condition imposed by the subsequent rule to the effect that the unit has to complete five years of commercial,,,,

production then only be provided interest subsidy, and it has also not in accordance with the intent of Industrial Policy, 2001.",,,,,

To buttress his argument, Mr. Sumeet Gadodia, learned counsel appearing for the petitioner relied upon the judgment passed by the Hon'ble",,,,,

Supreme Court in the case of State of Bihar & Ors. Vrs. Suprabhat Steel Ltd. & Anr. reported in (1999) 1 SCC 31 wherein paragraph 7 which is,,,,

being quoted herein below:,,,,

7. Coming to the second question, namely, the issuance of notification by the State Government in exercise of power under Section 7 of the",,,,,

Bihar Finance Act, it is true that issuance of such notifications entitles the industrial units to avail of the incentives and benefits declared by",,,,,

the State Government in its own industrial incentive policy. But in exercise of such power, it would not be permissible for the State",,,,,

Government to deny any benefit which is otherwise available to an industrial unit under the incentive policy itself. The industrial incentive,,,,

policy is issued by the State Government after such policy is approved by the Cabinet itself. The issuance of the notification under Section 7,,,,

of the Bihar Finance Act is by the State Government in the Finance Department which notification is issued to carry out the objectives and,,,,

the policy decisions taken in the industrial policy itself. In this view of the matter, any notification issued by government order in exercise of",,,,,

power under Section 7 of the Bihar Finance Act, if is found to be repugnant to the industrial policy declared in a government resolution," ,,,,

then the said notification must be held to be bad to that extent. In the case in hand, the notification issued by the State Government on 4-4-" ,,,,

1994 has been examined by the High Court and has been found, rightly, to be contrary to the Industrial Incentive Policy, more particularly," ,,,,

the policy engrafted in clause 10.4(i)(b). Consequently, the High Court was fully justified in striking down that part of the notification" ,,,,

which is repugnant to sub-clause (b) of clause 10.4(i) and we do not find any error committed by the High Court in striking down the said ,,,,

notification. We are not persuaded to accept the contention of Mr Dwivedi that it would be open for the Government to issue a notification ,,,,

in exercise of power under Section 7 of the Bihar Finance Act, which may override the incentive policy itself. In our considered opinion, the" ,,,,

expression "such conditions and restrictions as it may impose" in sub-section (3) of Section 7 of the Bihar Finance Act will not ,,,,

authorise the State Government to negate the incentives and benefits which any industrial unit would be otherwise entitled to under the ,,,,

general policy resolution itself. In this view of the matter, we see no illegality with the impugned judgment of the High Court in striking" ,,,,

down a part of the notification dated 4-4-1994. ,,,,

By relying upon this judgment, Mr. Gadodia, submits that the industrial policy was brought by the State of Jharkhand with the objectives that in the" ,,,,

State, industry may grow up." ,,,,

Mr. Gadodia, further relied upon the judgment passed by the Honâ??ble Supreme Court in the case of Manuelsons Hotels Private Limited Vrs. State" ,,,,

of Kerala and Ors. reported in (2016) 6 SCC 766 wherein at paragraphs 11 and 19 which are quoted herein below: ,,,,

11. Having heard the learned counsel for both the sides, we are of the view that it will first be necessary to examine the doctrine of" ,,,,

promissory estoppel as laid down in Motilal Padampat Sugar Mills and as followed in State of Punjab v. Nestle India Ltd. ,,,,

19. In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable" ,,,,

departure by one party from the subject-matter of an assumption which may be

of fact or law, present or future, and which has been",,,,

adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to",,,,

be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the",,,,

aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court in Commonwealth of",,,,

Australia v. Verwayen, by Deane, J. in the following words:",,,,

1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law, the factual",,,,

ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take",,,,

the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That",,,,

being so, an estoppel by conduct can be the origin of primary rights of property and of contract.",,,,

2. The central principle of the doctrine is that the law will not permit an unconscionable"or, more accurately,",,,

unconscientious"departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis",,,,

of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not",,,,

adhered to for the purposes of the litigation.",,,,

3. Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction",,,,

and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an",,,,

issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.",,,,

4. The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the",,,,

circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of",,,,

unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an",,,,

affirmative answer to that question may be justified, namely, where that party:" ,,,,

(a) has induced the assumption by express or implied representation;,,,,

(b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption;,,,,

(c) has exercised against the other party rights which would exist only if the assumption were correct;,,,,

(d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so.,,,,

Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to" ,,,,

some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the" ,,,,

reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would,,,,

sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within Category (a), a" ,,,,

critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other,,,,

party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within Category (b), " ,,,,

actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be" ,,,,

such that it falls within more than one of the above categories.,,,,

5. The assumption may be of fact or law, present or future. That is to say, it may be about the present or future existence of a fact or state of" ,,,,

affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct)." ,,,,

6. The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, â??equitable estoppelâ??" ,,,,

should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g.,,,,

acquiescence, encouragement, promissory estoppel or proprietary estoppel)." ,,,,

7. Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is ,,,,

estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under,,,,

ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. In,,,,

some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives",,,,,

effect to the assumption itself (e.g. where the defendant in an action for a declaration of trust is estopped from denying the existence of the,,,,

trust).,,,,

8. The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a,,,,

Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law,,,,

doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such",,,,,

relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a,,,,

case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice",,,,,

between the parties should be framed.â???,,,,,

By relying upon the above cited judgment, he submits that the case of the petitioner is fully covered under the doctrine of promissory estoppel.",,,,,

He further submits that the newly added Rule with regard to five years mandatory commercial production, is repugnant to industrial policy of the State",,,,,

of Jharkhand. He further submits that this Rule is not under any statute and due to some exigency if the industry was forced to close, this rule may not",,,,,

come in the way for granting the subsidy interest in view of the Industrial Policy, 2001.",,,,,

4. Per contra, Mr. Dhananjay Kumar Pathak, learned G.A.-III appearing for the respondent-State of Jharkhand submits that there is no illegality in",,,,,

passing the impugned order as the petitioner is not entitled under the Industrial Policy for the interest subsidy as the unit in question was closed without,,,,

completing five years of production which is a condition precedent under the Rule.,,,,,

Mr. Pathak, further submits that the documents on which the petitioner is relying that is also not completed. By way of referring to the said documents",,,,,

he submits that the certificate of sales has been issued by the Director of the petitioner-company wherein it was required to issue by the Sales Tax,,,,

Department for the year 2011-12. He further submits that since the documents were incomplete thatâ??s why the State Level Committee has rightly,,,,

come to the conclusion. He further submits that the petitioner-company has also not been provided interest subsidy in view of the Industrial Policy,",,,,

2001, however, due to the interim order passed by this Court in one of the writ petition filed by the petitioner the subsidy was released in favour of the",,,,,

petitioner for the year 2008-09 that too after obtaining the bank guarantee. He further submits that the commercial production date of the petitioner-,,,,

company is not issued by the competent authority, the Director of Industries is the competent authority whereas the production certificate has been",,,,,

issued by the General Manager, District Industry Center.",,,,,

By way of referring to the Clause-37.1 of the Industrial Policy, 2001, he submits that the State Government has got the power by issuance of",,,,,

notification in the official gazette may amend or withdraw any of the provisions and/or the schemes mentioned in the Industrial Policy, thus, the",,,,,

argument of the learned counsel for the petitioner with regard to newly added Rule of 5 years commercial production has got no stand as the State,,,,

Government is in its domain to amend or withdraw any of the provision in view of the Clause 37.1 of the Industrial Policy, 2001. He further submits",,,,,

that this matter relates to financial transaction and it is a policy decision of the State Government and as the petitioner has not fulfilled the criteria as,,,,

envisaged under the Industrial Policy, 2001, is not entitled for subsidy interest.",,,,

Mr. Dhananjay Kumar Pathak, learned G.A.-III appearing for the respondent-State of Jharkhand relied upon the judgment passed by this Court in the",,,,,

case of State of Jharkhand through the Secretary & Ors. Vrs. Bir Steel (P) Limited, Giridih in L.P.A. No.211 of 2012, as reported in (2018) SCC",,,,,

Online Jhar 402 which was disposed of vide order dated 13.06.2018 wherein paragraph 27, which is being quoted herein below:",,,,,

27. Having heard learned counsels for both the sides, we find that the cases relied upon by the learned counsel for the respondent,",,,,

including the decision of the Honâ??ble Supreme Court in *Globe Energy Ltd.* (supra), relied upon by the Honâ??ble Single Judge in the",,,,

impugned Judgment, relate to the matters where the Rules framed by the State Government were contrary to the provisions of the Act framed",,,,

by the Legislature. In other words, provisions of the Act enacted by the Legislature were sought to be modified / curtailed by the Rules",,,,

framed by the State. In the present case, the situation is quite different. Jharkhand Industrial Policy, 2001, is not at all the creation of the",,,,

Legislature. The Industrial Policy of 2001, as well as, the 2003 Rules, both of them are only the creations of the State Government in",,,,

exercise of its executive power. In other words, both of them stand at equal pedestal and both of them may be termed as the policies of the",,,,

State Government. The preamble of 2003 Rules nowhere states that it has been issued in exercise of Clause 36.2 of the Industrial Policy of",,,,

2001, rather it is an independent Rule framed by the State Government, prescribing eligibility and procedure for giving the benefits to the",,,,

newly established industries under the Jharkhand Industrial Policy, 2001. We also find that since the period of limitation has been",,,,

prescribed under Rule 4.3 (Gha) (1) and (2) of the 2003 Rules, which relates to claiming interest subsidy, it can very well be construed that",,,,

this policy decision of the State Government relates to an economic policy of the State Government. The law in this regard is well settled in",,,,

Balco Employeesâ?? Union (Regd.) (supra), wherein, upon discussing the earlier decisions in this regard, the Honâ??ble Supreme Court",,,,

has laid down the law that economic policies are not amenable to judicial review, unless it can be demonstrated that the policy is contrary to",,,,

any statutory provision or the Constitution, or if the policy decision is patently arbitrary, discriminatory or mala fide. In *Col. A.S.*",,,,

Sangwanâ??s case (supra), the Honâ??ble Supreme Court has gone to the extent of stating that it is entirely within the reasonable",,,,

discretion of the Government, either to stick to its earlier policy or to give it up, but one imperative of the Constitution implicit in Article 14",,,,

is that if policy is changed, it must be done fairly and not arbitrarily. In *N. Balakrishnaâ??s case* (supra), it is categorically held that the rules",,,,

of limitation are not meant to destroy the rights of the parties, rather they are meant to see that the parties do not resort to dilatory tactics",,,,

but seek their remedy promptly. Thus the submission of learned counsel for the respondent company, that the Rule 4.3 (Gha) (1) and (2) of",,,,

the 2003 Rules, destroys or curtails the substantive right conferred by the Industrial Policy, 2001, has no legs to stand in view of the law",,,,

laid down by the Honâ??ble Supreme Court of India, as discussed above. Indeed, the Honâ??ble Apex Court has gone to the extent",,,,

stating that even if the matter is governed by the general law of limitation under the Limitation Act of 1963, the separate provision for",,,,

prescribing limitation could still be made. In Shivam Coke Industries case, (supra), relied upon by the learned counsel for the respondent, it",,,,

has been held that the Limitation Act applies to Courts and not to quasi-judicial authority. It is not in dispute that the Secretary / Director of",,,,

Industries, while exercising the power under Rule 4.3 (Gha) (2) of the 2003 Rules, act as a quasi-judicial authority. As such, the contention",,,,

of the learned counsel for the respondent, that the claim of interest subsidy being a money claim, it would be governed by the general laws",,,,

of the Limitation Act, 1963, cannot be accepted, as the Limitation Act, 1963, shall have no application in the present case. Accordingly, it",,,,

was absolutely necessary for the State Government to make the provision for limitation separately and specifically, if it intended to do so.",,,,

Jharkhand Industrial Policy, 2001, not being a creation of the Legislature, and having been framed by the State Government in exercise of",,,,

the executive power, the State Government was quite competent to frame yet another policy making the provision for limitation separately",,,,

and specifically, which has been done by framing the 2003 Rules.",,,,

5. Having heard the learned counsel for the parties, this Court finds that the industrial policy has been brought with the objective to encourage the",,,,

industry entrepreneurs for investment in the State of Jharkhand. On perusing the documents which has been submitted before the authority concerned",,,,

which has been annexed with the writ petition it transpires that the certificate of sales of commercial production has been submitted under the",,,,

signature of the Director of the petitioner-company so far as the claim of the petition for the year 2011-12 is concerned, thus it cannot be said that it is",,,,

in compliance of the demand of the State Level Committee dated 04.02.2013. Moreover, the petitioner has not completed five years of commercial",,,,

production, this condition precedent in view of the Rule for subsidy interest under the Industrial Policy, 2001. The date of production certificate",,,,,

provided by the petitioner is also under cloud. For the earlier years, the petitioner has not been paid subsidy interest except in the year 2008-09 that too",,,,,

by way of depositing bank guarantee in view of the interim order passed by this Court in one of the writ petition earlier preferred by the petitioner.,,,,,

Clause 37.1 of the Industrial Policy, 2001, the State has got every power to amend or withdraw the policy, this policy relates to an economic policies of",,,,,

the State Government. It is well settled principles of law that an economic policies are not amenable to judicial review, unless it can be demonstrated",,,,,

that the policy is contrary to any statutory provision or the Constitution, or if the policy decision is patently arbitrarily, discriminatory, or mala fide.",,,,,

This Court, further finds that so far the subsequent Rule with regard to 5 years commercial production is concerned, is not overriding the incentive",,,,,

policy itself, the said rule is not negating the incentives and benefits which any industrial units could be otherwise entitled to. The five years condition",,,,,

imposed for commercial production cannot be said contrary to the industrial incentive policy in view of the Clause 37.1 of the Industrial Policy, 2001.",,,,,

In the case of State of Bihar & Ors. Vrs. Suprabhat Steel Limited & Ors. (supra), the Honâ??ble Supreme Court has considered that the State of",,,,,

Bihar with the object of accelerating the industrial progress in the State have been declaring the industrial policies from time to time and prior to 1993,",,,,

Policy, but all the policies have not achieved the desired industrial progress in all district of the State and to achieve balance industrial growth in",,,,,

planned manner, the industrial incentives required new dimensions, the State Government introduced the new industrial policy of 1993.",,,,,

It is also considered that old industries units like the respondents are entitled to the facility of sales tax exemption on the purchase of raw materials in,,,,,

terms of Clause 10.4(i)(b) of the Policy, 1993 but no such exemption can be claimed until and unless the State Government issues notification of",,,,,

exemption in exercise of its power under Section 7 of the Bihar Finance Act. Thus it is apparent that in that case, by way of notification dated",,,,,

04.04.1994 the industrial units were not provided the sales tax exemption thatâ??s why the Honâ??ble Supreme Court came to the conclusion that it,,,,,

is against the policy, wherein the case in hand is concerned, there is no such

issues involved in this writ petition and from perusing the industrial" ,,,,

policies as well as the 4.3 of the Rule cannot be said that the industries are not being extended the facilities.,,,,

As a cumulative effect of all the discussions made hereinabove, this Court finds that there is no illegality in the impugned order as the petitioner has" ,,,,

not submitted the documents in its entirety and has not completed five years of commercial production in view of the Rule 4.3.,,,,

So far as the argument of Mr. Gadodia, learned counsel for the petitioner with regard to the promissory estoppel is concerned, is not tenable as this is" ,,,,

not a case of unconscionable departure by the State of Jharkhand from the subject matter of the Industrial Policy.,,,,

6. Accordingly, the writ petition stands dismissed." ,,,,