
(2009) 04 AP CK 0058

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9986 of 1999

Penna Cement Industries Ltd.

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 299

Citation : (2009) 6 ALD 576 : (2009) 5 ALT 356

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : P. Vasudeva Reddy, for the Appellant; GP For Energy, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, J.—The petitioner, a cement manufacturing company, seeks to have Clause 14 of G.O.Ms. No. 117 dated 17.03.1993 declared as illegal, arbitrary and without jurisdiction or in the alternative for a declaration that Clause 14 of the said G.O. is applicable only to industries set up on or after 03.10.1992 and that G.O.Ms. No. 117 dated 17.03.1993 has no application to the petitioner - industry. Petitioner seeks a further declaration that the order of the General Manager, District Industries Centre, Anantapur, in so far as he had restricted the power tariff rebate to Rs. 50.00 lakhs, was illegal and without jurisdiction. Petitioner also seeks to have the order of the Government dated 21.06.1995 declared as illegal, without jurisdiction, inoperative and violative of G.O.Ms. No. 654 dated 13.07.1976, for a direction to the respondents to extend the benefit of power rebate at 25% on the aggregate power bills of the petitioner company for the initial period of three years without imposing a monetary ceiling of Rs. 50.00 lakhs and to forthwith refund the excess amount collected by them together with interest at 18% per annum.

2. Facts, in brief, are that the Government of A.P. issued orders, in G.O.Ms. No. 654 dated 13.07.1976, declaring, among others, that newly set up industries

would be entitled to a power rebate of 25% in the initial period of three years after commencement of production. The A.P. State Electricity Board, (hereinafter referred to as "the Board"), issued B.P.Ms. No. 689 extending the said benefit to industries set up in specified areas.

3. G.O.Ms. No. 498 dated 16.10.1989 was issued by the Government and thereunder entrepreneurs setting up new industries, other than those listed in the Annexure, were entitled to the incentives specified therein, provided the industries were set up on or after 03.10.1989 and went into commercial production before 31.03.1995. The Government published a brochure titled "Industrial Clearances", in December, 1991, wherein the incentives, available to entrepreneurs establishing industries in the State, were detailed to include power subsidy, at 25% of the power tariff, in terms of G.O.Ms. No. 654 dated 13.07.1976.

4. The Government introduced a new comprehensive scheme of state incentives in G.O.Ms. No. 117 dated 17.03.1993 which was in operation from 03.10.1992 to 31.03.1997. Under this G.O, all new industries, other than those listed in Annexure I and those set up in municipal corporation areas of Hyderabad, Vijayawada and Visakhapatnam, were eligible for 25% rebate in power bills for a period of 3 years from the date of commencement of commercial production subject to a maximum admissible rebate of Rs. 50.00 lakhs in respect of large and medium industries and Rs. 30.00 lakhs in respect of small scale industries. This was confirmed by the Board, vide B.P.Ms. No. 51 dated 24.05.1993, wherein, under para 3(ii), the Board put a ceiling for power rebate as specified in G.O.Ms. No. 117 dated 17.03.1993.

5. Petitioner would submit that, during the period 1985 to 1992, the Board was extending power tariff concessions to all industries set up in the Andhra Pradesh except to certain specified industries listed in the Annexure to G.O.Ms. No. 498 dated 16.10.1989, that the directions issued by the Government were binding on the Board, that the Board had accepted the directions in G.O.Ms. No. 654 dated 13.07.1976 and had issued proceedings from time to time extending the said incentives, that, until the Government issued G.O.Ms. No. 117 dated 17.03.1993, this incentive, of 25% rebate on the total power tariff, continued to hold the field and that all industries situated in Andhra Pradesh were extended the said benefit of power subsidy.

6. According to the petitioner, industries which had been set up prior to 03.10.1992, pursuant to G.O.Ms. No. 375 dated 23.08.1985 or G.O.Ms. No. 498 dated 16.10.1989, continued to be governed by G.O.Ms. No. 654 dated 13.07.1976 and B.P.Ms. No. 689 dated 17.09.1975 in respect of power rebate, that the restrictive ceiling, subsequently specified in G.O.Ms. No. 117 dated 17.03.1993, could not be made applicable to such industries, that, relying on the representation of the Government in G.O.Ms. No. 654 dated 13.07.1976, G.O.Ms. No. 498 dated 16.10.1989 and the brochure titled "Industrial Clearances", they had established a cement manufacturing industry in Tadipatri, Anantapur District,

which was notified as industrially the most backward area in Andhra Pradesh, that the said modern cement plant was established in medium scale with a capacity outlay of Rs. 62.80 crores, that the General Manager, District Industries Centre, Anantapur, had issued registration certificate to the petitioner on 14.04.1992 on the basis of the application submitted by them on 06.03.1992, that the petitioner had acquired 87 acres of land at a cost of Rs. 14.37 Lakhs between March, 1992 and June, 1992 and had paid Rs. 59.89 Lakhs for purchase of machinery during the said year, that the petitioner had taken various steps for appointment of technical and financial personnel, that they had got the land alienated in their favour from appropriate agencies and had obtained provisional power sanction for 6000 KVA from the Board in the year 1992. Petitioner claims to have spent Rs. 1231.72 Lakhs for purchase and improvement of the land, civil works, purchase and erection of machinery during the period between 04.10.1992 and 17.03.1993. They would submit that, while trial production began on 10.08.1994, commercial production commenced on 01.09.1994, that they satisfied the requirements of G.O.Ms. No. 498 dated 16.10.1989 and were entitled to such of the incentives that were issued during the relevant period including the one covered by G.O.Ms. No. 654 dated 13.07.1976 as they did not figure in the excluded categories mentioned in the Annexure. Petitioner also contends that any application of the restrictive conditions in G.O.Ms. No. 117 dated 17.03.1993 would amount to its enforcement with retrospective effect, that the 2nd respondent had issued orders dated 21.06.1995 informing them that the eligibility certificate issued by the General Manager, District Industries Centre, restricting the ceiling on power tariff to Rs. 50.00 lakhs, was valid as the petitioner unit had commenced commercial production on 01.09.1994 i.e, after G.O.Ms. No. 117 was issued, that, aggrieved thereby, they made another representation to the 2nd respondent on 17.07.1995 contending that Chapter V of the industrial clearance standard norms and procedures specified that power tariff concession shall be extended without any ceiling limit in terms of G.O.Ms. No. 654 dated 13.07.1976 and as such the petitioner industry, which was set up pursuant to the said representation made by the Government, was entitled to the benefit of 25% rebate on power tariff without any ceiling limit, more so as the unit was set up during the period when G.O.Ms. No. 498 dated 16.10.1989 was holding the field. Petitioner would also contend that applying the conditions, incorporated in G.O.Ms. No. 117 dated 17.03.1993, to units which had already come into existence by the said date was arbitrary and unfair. They would submit that the action of the Board, in restricting power rebate to Rs. 50.00 lakhs, was arbitrary and violative of Article 14, that the Board, having allowed them to arrange their affairs relying on the representation, was estopped from denying the benefit, that the doctrine of promissory estoppel would apply and that the respondent authorities were duty bound to extend the benefit of power rebate at 25% for the initial period of 3 years, without the ceiling limit of Rs. 50.00 lakhs, as the petitioner had taken all necessary steps to set up the industry before 03.10.1992 or, at any rate, before G.O.Ms. No. 117 dated 17.03.1993 was issued. Petitioner would submit that they had acquired a vested right of being

granted the incentives specified in G.O.Ms. No. 654 dated 13.07.1976 and G.O.Ms. No. 498 dated 16.10.1989 read with B.P.Ms. No. 689 dated 17.09.1975, that such a vested right could not be unsettled or disturbed when the State's agencies had no power to issue orders with retrospective effect, more so, when such orders had an impact or affected the rights of a citizen, that, since a vested right accrued to the petitioner by reason of its taking steps to set up its unit prior to 03.10.1992 when G.O.Ms. No. 498 dated 16.10.1989 was holding the field, its right could not be unsettled or disturbed by any order subsequently issued by the Government and it was, therefore, reasonable that the restrictive ceiling limit imposed in G.O.Ms. No. 117 dated 17.03.1993 would apply only to such of those industries which took steps to set up the industry after 17.03.1993. According to the petitioner, G.O.Ms. No. 117 dated 17.03.1993, when reasonably construed, would apply only to entrepreneurs who took steps to set up an industry after 17.03.1993 and not to those who had already taken steps to set up an industry prior thereto, that, based on the brochure "Industrial Clearance", published by the Government, the petitioner had arranged its affairs accordingly and that the respondents, having represented and allowed the petitioner to arrange its affairs, should not prevaricate from its stated position to the petitioner's detriment. Petitioner would contend that, since they had commenced production by 01.09.1994 i.e., before the specified date stipulated in G.O.Ms. No. 498 dated 16.10.1989, it should not be excluded from the purview of the said G.O. or G.O.Ms. No. 654 dated 13.07.1976, that, at any rate, the petitioner industry could not be classified as falling within the purview of G.O.Ms. No. 117 dated 17.03.1993 and that they should not be deprived of the incentives under G.O.Ms. No. 654 dated 13.07.1976. They would also claim to have structured their sale price on produced cement keeping in mind these incentives, that deprivation of such a substantial incentive had resulted in huge loss and that the excess amount of Rs. 4.23 Crores collected from the petitioner was liable to be refunded to them.

7. In his counter affidavit, filed on behalf of respondents 2 and 3, the Assistant Director of Industries would submit that the petitioner had commenced commercial production on 01.09.1994 and had applied for an essentiality certificate for 25% CPT on 03.09.1994, that the eligibility certificate, for availing power concession, was issued in terms of G.O.Ms. No. 117 dated 17.03.1993 vide letter dated 03.09.1994, that by letter dated 21.06.1995 the petitioner was informed that the eligibility certificate, issued by the District Centre restricting the ceiling on power tariff to a limit of Rs. 50.00 lakhs, was valid and held good, that the brochure published by the department was merely informative and did not confer any right to claim the benefits mentioned therein, that the petitioner was granted eligibility certificate under G.O.Ms. No. 117 dated 17.03.1993, that 25% power concession was not part of the scheme announced in G.O.Ms. 498 dated 16.10.1989, that they could not claim the incentive without any ceiling, that the petitioner had set up their unit in a backward district, not because incentives were offered by the Government, but as abundant raw material was

available there.

8. In the counter affidavit filed on behalf of respondents 4 and 5, it is stated that while, under B.P.Ms. No. 152 dated 13.02.1978, 25% rebate was allowed to certain specified industries for a period of 3 years from the date of going into regular production, revised orders were issued in B.P.Ms. No. 51 dated 24.05.1993 restricting the rebate to Rs. 50.00 lakhs and Rs. 30.00 lakhs as the case may be, that the said orders were effective from 24.05.1993, that an industry was eligible for rebate without ceiling limit only when it was in operation, that the petitioner could not expect the Board to keep the incentives open till it started production, that the rebate was directly linked with the date of commencement of production, that the petitioner had taken H.T. supply on 17.07.1994, that, by the time regular production was commenced on 01.09.1994, both the orders of the Government, in G.O.Ms. No. 117 dated 17.03.1993, and B.P.Ms. No. 51 dated 24.05.1993 had come into force and a ceiling was fixed on the quantum of rebate, and that the petitioner was, therefore, sanctioned 25% rebate with effect from 01.09.1994 with the ceiling limit vide proceedings dated 18.11.1994.

9. In the additional counter affidavit filed on behalf of respondents 4 and 5, it is stated that G.O.Ms. No. 498 dated 16.10.1989 related to incentives offered on investment subsidy, deferment of sales tax etc., and not to electricity charges, that the petitioner's contention that they were entitled to 25% rebate for energy charges, in terms of G.O.Ms. No. 498 dated 16.10.1989 and G.O.Ms. No. 375 dated 23.08.1985, was misconceived, that in B.P.Ms. No. 51 dated 24.05.1993 it was made clear that 25% power rebate would be available to units which commenced commercial production by 31.03.1997, that it was clarified in para 4 of the said proceedings that the orders would come into force with immediate effect, that industries which commenced production after 25.04.1993 were subjected to the monetary restriction prescribed in B.P.Ms. No. 51 dated 24.05.1993 within the 3 year period, and, as the petitioner's unit commenced commercial production thereafter, they were subjected to the monetary restrictions in availing power subsidy. It is stated that G.O.Ms. No. 117 dated 17.02.1993 and B.P.Ms. No. 51 dated 24.05.1993 were prospectively applied to industries which commenced production after B.P.Ms. No. 51 dated 24.05.1993 was issued, that the petitioner was not a unit entitled for 25% power subsidy for any year during which it was in the process of establishment and that it was entitled to power rebate only after it started commercial production. It is further stated that the Board realized in the year 1975 that industrial growth was necessary to create reliable consumers from whom sizeable revenues would be achieved and, with this objective and to encourage the developers to establish industries in the State, the Board had announced 25% power rebate, that, as the Board was incurring losses, it had no alternative but to restrict the pecuniary limit and, therefore, the petitioner could not raise any grievance against B.P.Ms. No. 51 dated 24.05.1993.

10. Sri S.R.Ashok, Learned Senior Counsel appearing for the petitioner company, would submit that G.O.Ms. No. 117 dated 17.03.1993 was inapplicable to the petitioner as it applied only to new units which came into existence after 03.10.1992, that G.O.Ms. No. 498 dated 16.10.1989 held the field till then, that the petitioner had fulfilled both the inner and outer time limit specified in G.O.Ms. No. 498 dated 16.10.1989, that the respondents had made a promise based on which the petitioner had arranged its affairs, that the promise made could be altered by the respondents provided only that such an alteration was dictated by public interest, that there was neither a plea in the counter affidavit nor was there any evidence to suggest that the benefit, or denial, under G.O.Ms. No. 117 dated 17.03.1993, was to be made applicable to enterprises which had come into existence before 03.10.1992, that, if the said G.O. was held applicable to industries which came into existence during the subsistence of G.O.Ms. No. 498 dated 16.10.1989, it would amount to giving retrospective operation to G.O.Ms. No. 117 dated 17.03.1993 which was impermissible, that para 14 of G.O.Ms.117 dated 17.03.1993 was applicable only to units born/which came into existence after the said G.O. was issued and this was also evident from para 15 of the said G.O., that the said G.O. would only apply to industries which had taken steps to set up their units after 03.10.1992, that subsequent orders had to be read in the light of the understanding of the Government as reflected in the earlier G.Os, that executive power could not be exercised retrospectively, that the respondents were estopped from denying the benefit under G.O.Ms. No. 654 dated 13.07.1976, that the respondents could not withdraw the benefits available under G.O.Ms. No. 654 dated 13.07.1976 by way of G.O.Ms. No. 117 dated 17.03.1993 as it affected the vested rights of the petitioners, that no public interest was involved in withdrawing the concession available under G.O.Ms. No. 654 dated 13.07.1976 or in placing a monetary limit on such a concession by way of a subsequent G.O. and that Clause 14 of G.O.Ms. No. 117 dated 17.03.1993 should be made applicable only to units set up after 03.10.1992. Learned Senior counsel would place reliance on State of Punjab Vs. Nestle India Ltd. and Another,

11. Learned Government Pleader for Industries would submit that, since the petitioner unit went into commercial production and an eligibility certificate was issued to them subsequent to issuance of G.O.Ms. No. 117 dated 17.03.1993, their entitlement for power rebate was rightly considered only in terms of G.O.Ms. No. 117 dated 17.03.1993, that G.O.Ms. No. 498 dated 16.10.1989 provided certain incentives such as investment subsidy and sales tax deferment and did not provide for the incentive of power rebate and, on the other hand, the incentives under G.O.Ms. No. 117 dated 17.03.1993 included rebate in energy charges. Learned Government Pleader would submit that, while G.O.Ms. No. 654 dated 13.07.1976 provided for 25% power rebate without monetary limit, the petitioner unit had started commercial production only after G.O.Ms. No. 117 dated 17.03.1993 had come into force and, accordingly, their entitlement for being extended the benefit of power rebate could only be granted in terms of

G.O.Ms. No. 117 dated 17.03.1993 and not the earlier orders in G.O.Ms. No. 654 dated 13.07.1976.

12. Sri O. Manohar Reddy, Learned Standing Counsel for A.P.TRANSCO, would submit that, even for claiming the benefit of power rebate under G.O.Ms. No. 654 dated 13.07.1976, applications were required to be submitted within six months of the unit having commenced commercial production, that the emphasis placed in G.O.Ms. No. 654 dated 13.07.1976 was also on the date on which the unit went into commercial production, that the brochure relied upon by the petitioner was issued prior to G.O.Ms. No. 117 and provided for power tariff concession in terms of G.O.Ms. No. 654 dated 13.07.1976, that, even in the said brochure, the procedure prescribed for claiming incentives was that the claim application should be made within six months from the date of commencement of commercial production and, since the petitioner commenced commercial production on 01.09.1994, which was more than a year after G.O.Ms. No. 117 dated 17.03.1993 was issued, the petitioner's case was rightly considered in terms of the said G.O. and not on the earlier G.Os. Learned Counsel would submit that G.O.Ms. No. 498 dated 16.10.1989 had no application as it related to incentives other than power rebate. He would submit that the respondents had made no promise to the petitioner to grant them 25% power rebate without monetary limit and as such the doctrine of promissory estoppel had no application. He would rely on A.P. State Electricity Board and Others Vs. Sarada Ferro Alloys Ltd., in this regard.

13. Under G.O. Ms. No. 498 dated 16.10.1989, the State Government decided to extend certain concessions to industries set up in the State of Andhra Pradesh. The concessions related to investment subsidy and deferment/tax holiday on sales tax. Under para 9 of the said G.O, it was made clear that separate orders would be issued with regard to concessions on power tariff. Admittedly, no orders were issued, thereafter, in this regard. Para 10 of the said G.O. provides that only new industrial units, which held valid registration/letters of intent, and had taken steps on or after 03.10.1989 for project implementation such as applying for project finance, placing orders for any part of the machinery, commencement of construction etc., would be eligible for those concessions, provided they went into commercial production before 31.03.1995. The concessions in G.O. Ms. No. 498 dated 16.10.1989 were to be in force till 02.10.1992. While the petitioner may have satisfied the conditions prescribed in para 10 of G.O.Ms. No. 498, of having set up the unit during the period 03.10.1989 to 31.03.1995, that would only enable them to claim the concessions prescribed in the said G.O., and, since power tariff concession did not fall within the ambit of the said G.O., G.O.Ms. No. 498 cannot be relied upon by the petitioner in support of their claim to power tariff rebate.

14. G.O.Ms. No. 654, dated 13.07.1976 provides for 25% power tariff concession to all new industrial units, going into regular production on or after 01.01.1976, without any monetary ceiling. This concession in G.O.Ms. No. 654 has also been

referred to in the brochure published by the State government in 1991. Para V prescribes the procedure for claiming incentives and, thereunder, new industrial units eligible for the incentives should file their claim application in the prescribed form within six months from the date of commencement of commercial production. Thus, both under G.O.Ms. No. 654 dated 13.07.1976, and the brochure issued by the Government, the date from which the industrial unit goes into commercial production is the relevant date for their entitlement for concession of power tariff.

15. G.O.Ms. No. 117 dated 17.03.1993 was brought into force retrospectively from 03.10.1992 and remained in force till 31.03.1997. The validity of retrospective operation, of G.O.Ms. No. 117 dated 17.03.1993, from 03.10.1992 would have necessitated examination if the petitioner unit had gone into commercial production during the period from 03.10.1992 (when G.O.Ms. No. 117 was brought into force), and 17.03.1993 (when G.O.Ms. No. 117 was notified). It is not in dispute that the petitioner unit went into commercial production only on 01.09.1994, more than a year after G.O.Ms. No. 117 was notified on 17.03.1993. It is, therefore, unnecessary for this Court to examine the question whether G.O.Ms. No. 117 dated 17.03.1993 could have validly been given retrospective operation.

16. Under G.O.Ms. No. 117 dated 17.03.1993, the Government decided to introduce certain modifications in its earlier orders, (including G.O.Ms. No. 654 dated 13.07.1976), in order to accelerate industrial development in the State. The concessions under the said G.O. included investment subsidy, deferment/tax holiday on sales tax and rebate in electricity charges. All industries, other than those listed in Annexure-I and those set up in Municipal Corporation areas of Hyderabad, Vijayawada and Visakhapatnam, were eligible for 25% rebate on power bills, (both demand and energy), for a period of three years from the date of commencement of commercial production. The rebate was to be allowed by the A.P. State Electricity Board in their monthly bills. The maximum admissible rebate for the total three year period was to be Rs. 50 lakhs in respect of large and medium industries and Rs. 30 lakhs in respect of small scale industries. In effect, while the 25% rebate, available under G.O.Ms. No. 654 dated 13.07.1976, was continued in G.O.Ms. No. 117 dated 17.03.1993, a monetary ceiling was placed on the total concession to be provided. Para 14 of the said G.O reads as under:

The concession of rebate in power charges at para 5C above will be available for new industries which go into production on or after 03.10.1992. The existing procedure of issuing eligibility certificate by the Dist. Industries Centre and admission of claims by A.P. State Electricity Board will continue.

17. Since the petitioner unit went into commercial production on 01.09.1994, after G.O.Ms. No. 117 dated 17.03.1993 was issued, the question which necessitates examination is whether they are entitled to 25% power tariff rebate, without any monetary ceiling, as provided for under G.O.Ms. No. 654 dated

13.07.1976, or only the concession granted to them under G.O.Ms. No. 117 dated 17.03.1993. It is not in dispute that the petitioner has been given concession of power tariff under G.O.Ms. No. 117 dated 17.03.1993 i.e., 25% power rebate subject to the monetary ceiling prescribed therein. As the entire edifice of petitioner's case is founded on the premise that the respondents are estopped from going back on the promise made in G.O.Ms. No. 654 dated 13.07.1976, and the brochure published in 1991, the scope and purport of the doctrine of promissory estoppel needs to be examined in the first instance.

18. The doctrine of promissory estoppel is not really based on the principle of estoppel, but is a doctrine evolved by equity in order to prevent injustice where a promise is made by a person knowing that it would be acted on by the person to whom it is made, and in fact it is so acted on, and it is inequitable to allow the party making the promise to go back upon it. (Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ; P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others,). The doctrine would apply even where there is no pre-existing legal relationship between the parties, but the promise is intended to create legal relations or affect a legal relationship which will arise in future. (Halsbury's Laws of England 4th Edn., p. 1018, Note 2 to para 1514; Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,). The Government is equally susceptible to the operation of the doctrine in whatever area or field the promise is made - contractual, administrative or statutory, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution, (State of Punjab Vs. Nestle India Ltd. and Another, ; Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ; Union of India v. Anglo-Afghan Agencies AIR 1968 SC 718 ; and Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others,), and can be compelled to carry out the promise made by it. (Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others, ; Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,). It is not necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise. (Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,).

19. Courts are bound to consider all aspects, including the results sought to be achieved and the public good at large. (Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others,). The Court would have to balance the public interest in the Government carrying out a promise made to a citizen, which has induced the citizen to act upon it and alter his position, and the public interest likely to suffer if the promise was required to be carried out by the Government and determine which way the equity lies. The Court would not act on the mere ipsi dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from

liability. (Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,).

20. A notification granting a benefit can be withdrawn, in the public interest, at any point of time. What would be in public interest would, however, depend upon the facts of each case. (Tamil Nadu Electricity Board and Another Vs. Status Spinning Mills Ltd. and Another,). Where there is supervening public interest, the Government is free to change its stand and withdraw the benefit already granted. One such reason for changing its policy decision can be resource crunch and loss of public revenue. (Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others, ; Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others,). In the additional counter affidavit filed on behalf of respondents 4 and 5, it is stated that as the Board was incurring losses, it had no alternative but to limit the pecuniary limit. Courts will not interfere in such cases as public interest must override any consideration of private loss or gain. (Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another, ; Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others, ; Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others,).

21. Grant of 25% power rebate, under G.O.Ms. No. 654 dated 13.07.1976, is a policy decision of the Government. The Government, in its wisdom, considered it necessary to amend its policy and place a monetary ceiling on the power rebate concession to be granted to industries. Is the Government bound by its previous policy for all times to come or can it revise its policy in the light of changed circumstances? It is true that, in a given set of facts, the Government may be bound by the doctrine of promissory estoppel. The question, however, revolves around limits being placed on a previous policy by introduction of a new policy. The power to lay policy by executive decision includes the power to withdraw the same. In matters of economic policy, the Court gives a large leeway to the executive. When the Government is satisfied that change in the policy is necessary in the public interest, it would be entitled to revise the policy and lay down a new policy. (P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others,). The Government can change its policy if the situation so warrants. A party claiming application of the doctrine of promissory estoppel, on the basis of an earlier notification, should know that such a notification is liable to be amended or rescinded at any time, if the Government feels that it is necessary to do so in public interest. (M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, ; Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another, ; Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others,).

22. Even if G.O.Ms. No. 654 dated 13.07.1976, and the brochure issued in the year 1991, are held to be representations made by the Government, based on which the petitioner has altered its position, the Government is not barred from changing its policy thereafter. Accepting the contention of Sri S.R.Ashok, Learned Senior Counsel, would mean that a policy decision once taken must be continued

for all times to come.

23. Now the judgment relied upon by the learned Senior counsel. In *State of Punjab Vs. Nestle India Ltd. and Another*, the respondents were factories producing various milk products, and registered dealers under the Punjab General Sales Tax Act, 1948 paying purchase tax on milk except during the period 01-04-1996 to 04-06-1997 as, according to them, the Government had decided to abolish purchase tax on milk during the said period and was estopped from contending to the contrary. The Chief Minister of Punjab, while addressing dairy farmers at a State-level function, had announced that the State Government had abolished purchase tax on milk and milk products in the State. The said announcement was given wide publicity in several newspapers in the State. In his budget speech, the Finance Minister of the State had stated that purchase tax on milk had been abolished. The Finance Commissioner had issued a memo to the effect that, in principle, it had been decided to abolish purchase tax on milk. The Excise and Taxation Commissioner had also issued a circular to this effect. These representations, by various Government functionaries, formed the basis of the respondents' claim of promissory estoppel.

24. Thereafter, on 04.06.1997, the Council of Ministers held a meeting to consider various items on the agenda, one of which related to abolition of purchase tax on milk. The minutes cryptically recorded that the decision to abolish purchase tax on milk was not accepted. Consequently, on 03.07.1997, the Excise and Taxation Officer issued notices to the respondents requiring them to pay purchase tax for the whole of the year 1996-97.

25. The State of Punjab did not dispute its having so represented. It, however, contended that the principle of promissory estoppel would not arise when the relevant statute prescribed a particular mode for grant of relief, that there could be no estoppel against a statute and that no notification had been issued as required by the statute. The Supreme Court noted that the State Government had the power to amend the schedule and remove goods from imposition of tax altogether as also to exempt any class of persons from payment of tax. Having so noted, the Supreme Court observed:

...In the case before us, the State Government had the power to exempt or abolish milk as a taxable commodity. There was nothing in law which prohibited it from doing so. The representation to exempt milk was made by persons who had the power to implement the representation. Can it not be said that there are such circumstances in this case which required the State Government to exercise its powers to exempt milk from the burden of purchase tax, a power which it undoubtedly had?....

...As we have noted earlier, each of the respondents in these appeals has given a detailed account of how the monies which were otherwise payable on account of purchase tax have been expended on the milk-shed areas and producers of milk. No dispute has been raised by the appellants to this....

...The appellant has 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 1-4-1996 so that the respondents cannot in any event readjust 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.

26. It is evident that, in Nestle India Ltd¹ also, the Supreme Court upheld the conclusion of the High Court that operation of estoppel would come to an end with the cabinet's decision in 1997 not to accept abolition of purchase tax on milk. In the present case, while the petitioner may well have taken steps to establish its industry, to acquire land, purchase machinery, etc., even under G.O.Ms. No. 654 dated 13.7.1976 they would have been entitled to make an application seeking benefit of 25% power rebate only after they commenced regular production. If the petitioner had commenced regular production before G.O.Ms. No. 117 dated 17.03.1993 came into force they may well have been justified in claiming the benefit of 25% power rebate without a monetary ceiling in terms of G.O.Ms. No. 654 dated 13.07.1976. The fact, however, remains that the petitioner commenced commercial productions more than a year after G.O.Ms. No. 117 dated 17.03.1993 was notified and not prior thereto.

27. In A.P. State Electricity Board and Others Vs. Sarada Ferro Alloys Ltd., , the Electricity Board had issued an order dated 17.09.1975 granting rebate of 25% in demand and energy charges for High Tension Industries. The said rebate was to be allowed from the date of going into regular production on or after 01.01.1976. The State Government issued order dated 13.07.1976 extending the rebate to all industries except the 65 notified in its order dated 09.03.1976. Thereafter, the Board issued order dated 10.08.1976 extending the concession to all High Tension Industries except the 65 industries excluded by the State Government. The State Government issued order dated 23.08.1985 granting certain incentives to industries established in the three backward districts of the State. The concession of 25% tariff, already granted by the Board, was extended by two more years i.e., a total of five years. The Board withdrew the concession of 25% rebate, to High Tension Industries, by its order dated 08.12.1987. The State Government also issued a similar order dated 27.07.1989 withdrawing the rebate. The respondent company obtained a certificate for establishment of its industry on 05.09.1986. It entered into an agreement with the Board on 21.08.1989 for supply of electricity and commenced production on regular basis

on 11.08.1990. The company requested the Board, by its letter dated 29.06.1991, to extend the concession of 25% rebate for a period of five years from the date it started production. It based its demand on the State Government order dated 23.08.1985. The Board, by its letter dated 09.07.1991, declined to extend the said concession to the company on the ground that the said benefit had already been withdrawn by the Board by its order dated 08.12.1987. The said order of the Board was challenged before this Court and the writ petition was allowed on the ground that the respondent-company had acted upon the representations made by the Board and the State Government and, as the doctrine of promissory estoppel was attracted, the Board and the State Government were bound to grant 25% rebate. In appeal, the Division Bench observed that by 30.06.1987 the company had incurred an expenditure of Rs. 11,07,328/- towards purchase of land and, even if 08.12.1987 was taken as the relevant date, it could not be disputed that by that date considerable expenditure had already been incurred by the consumer for setting up the industry and this was done on the basis of the promise held out by the Government in G.O.Ms. No. 375 dated 23.08.1985 and the Board in B.P.Ms. No. 689 dated 17.09.1975, B.P.Ms. No. 691 dated 10.08.1976 and B.P.Ms. No. 152 dated 13.02.1978. The Division Bench held that whichever date was taken into account, either 27.07.1989 or 08.12.1987, there was no valid reason for the Electricity Board to withdraw the concessions granted earlier and, since the first respondent had acted on the promise held out by the Government and the Electricity Board, both of them were bound by the promise. In appeal, the Supreme Court held:

...We may now examine the promise or representation said to have been made by the appellant and acted upon by the company. The operative part of the order dated July 13, 1976 issued by Board is as under:

The revised power tariff notified by the A.P. State Electricity Board with effect from October 20, 1975 offers a rebate of 25% on demand and energy charges for specified H.T. consumers as an incentive to new industries for the first three years from the date of their going into production." The High Court has primarily based its conclusions on the Government letter dated August 23, 1985. The relevant part of the said order is as under:

Power.- At present the Andhra Pradesh State Electricity Board offers 25% tariff concession for the first three years for certain industries. This concession would be extended for two more years i.e. a total of five years. Twenty-five per cent concession tariff would be met for the additional 2 years from out of the Industries budget.

It is clear from the Government order reproduced above that the Government extended the concession already granted by the Board for three years for a further period of two years. We have, therefore, to see what is the promise or the representation held out to the company in the order of the Board dated July 13, 1976 reproduced above....

...We are of the view that the promise or representation made by the Board in its letter dated July 13, 1976, if any, was directly linked with the date of commencement of 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. Even if it is assumed that a 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 its incentive open for the company till it started production. We are of the view that only those industries were entitled to the benefit of the incentive who fulfilled the requirements during the period the incentive was operative....

28. The decision in A.P. State Electricity Board and Others Vs. Sarada Ferro Alloys Ltd., also related to grant of power rebate. Applying the law laid down by the Supreme Court, in the aforesaid judgment, to the facts of the present case, even assuming that a promise or representation had been made by the Board in its order in G.O.Ms. No. 654 dated 13.07.1976, the doctrine of promissory estoppel has no application as the petitioner failed to act on the said representation and did not commence commercial production prior to 17.03.1993 when G.O.Ms. No. 117 was notified. G.O.Ms. No. 654 dated 13.7.1976 is among the orders referred to in G.O.Ms. No. 117 dated 17.3.1993. As is evident from para 3 of G.O.Ms. No. 117, the said G.O. was issued in modification of G.O.Ms. No. 654 dated 13.7.1976. Reliance on G.O.Ms. No. 654 dated 13.7.1976, after G.O.Ms. No. 117 dated 17.3.1993 came into force, is, therefore, misplaced. Since the petitioner commenced commercial production only on 1.9.1994, much after G.O.Ms. No. 117 dated 17.3.1993 was notified, their entitlement for power rebate is subject to the monetary ceiling prescribed in the said G.O and not without limit as stipulated in the earlier G.O.Ms. No. 654 dated 13.7.1976. The petitioner is, therefore, not entitled to the relief sought for in this writ petition.

29. The writ petition fails and is, accordingly, dismissed. However, in the circumstances, without costs.