
(2017) 11 PAT CK 0063

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12134 Of 2015, 3380, 3391 Of 2017

Radha Flour Mill And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 27-11-2017

Acts Referred:

Electricity Act, 2013 — Section 56, 78A
Customs Act, 1967 — Section 25

Citation : (2018) 2 PLJR 558

Hon'ble Judges : Shivaji Pandey, J

Bench : Single Bench

Advocate : Mriganjk Mauli, Prince Kumar Mishra, Sanket, Vinay Kirti Singh, Vijay Kr. Verma, Akhileshwar Singh, S. Kumar, Alok Kumar Agrawa, Yogendra Pd. Sinha, Ram Subhash Singh, Rakesh Ambasth, Shankar Kumar, Anand Kumar Ojha, Ashok Kumar Karn, Alok Kumar Agrawal, Anand Ojha, Kinkar Kumar

Final Decision : Allowed

Judgement

Heard learned counsel for the parties.

In all the cases, since common issue has been raised, these are being disposed of by this common order. For convenience, the facts of C.W.J.C. No.

12134 of 2015 are being taken into consideration.

In the present case, a question has been raised about entitlement of the benefit emanating from 2011 Industrial Policy issued by the Government of

Bihar which provides the operation period of the policy is for five years and the benefit would be given to those industry which have been established

and came in commercial production within five years from 1st July, 2011. So, a question has been raised if the person is covered under the policy

decision, whether the relief, which has been mentioned in the policy, will come to an end with the life of the policy or the person will be entitled for the

benefit of five years irrespective of the termination of the life of the policy.

The petitioner is a registered company under the Companies Act, 1956 having its registered office at Radha Nagar, Motihari, East Champaran, Bihar.

The petitioner has set up a flour mill under the name and style of Radha Flour Mill Private Limited for manufacturing Atta, Suji, Maida and Chhokar

and has been working since 10.2.1989. The Government of Bihar in order to attract domestic and foreign investment as well as revival and expansion

of business of the existing industrial unit by providing right industrial ambient and with an intention to generate employment and its promotion the

Government has come up with the Bihar Industrial Incentive Policy of 2011. For attracting the investors, certain benefits have been extended to the

establishment which fall under the parameter of the Industrial Policy. In terms of the 2011 Industrial Policy, different types of benefits have been

conferred under different heads having been mentioned in Clause-2 of the Industrial Policy, 2011 which includes benefit such as exemption for

Monthly Minimum Charges/Minimum Base Energy Charge/Demand/Billing Demand and the benefit has been conferred for five years. It will be

relevant to extract the sub-clause (vi) of Clause 2 which reads as follows:-

â??(vi) Monthly Minimum Charges/Minimum Base Energy Charge/Demand/Billing Demand -

Monthly Minimum Charges/Minimum Base Energy Charge/Demand/Billing Demand

tariff Minimum Guarantee (Energy & Demand)

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The Industrial Policy provides capital subsidy and has conferred tax incentive and different period has been provided in different nature of incentive,

so far the benefit for the electric charges is concerned, it has been limited to five years and under the heading of tax, the benefit for certain class of

the industries have been given 10 years with certain conditions which provides that the Brewery and Distillery will be reimbursed as maximum only

25% of the VAT charges applicable to 10 years and the ceiling will be 300% of the capital investment. So, different types of incentives under the

different heads were given and the present case is only confined to the benefit for the electrical charges. The Clause-4 of Annexure-1 Industrial

Policy, 2011 defines the â??New Industrial Unitâ? stipulates means of industrial

unit in which the commercial production has commenced within five years from July, 2011. Clause 9 of Annexure-1, Industrial Policy, 2011 contained in Annexure-2 has also mentioned date of production which reads as

follows:-

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â??9. Date of Production:

The â??Date of Productionâ? of an industrial unit shall mean the date on which the unit actually commences commercial production of the

item for which the unit has been registered.

As regards the date of production of Small and Medium units, the certificate issued by the respective General Manager, District Industries

Centre or Managing Director, Industrial Area Development Authority would be valid. For large industries, the certificate issued by Director

Technical Development will be acceptable. In case of any dispute regarding the date of production, the decision of the Industries Secretary

shall be final.â??

and Clause 10 stipulates option to the industrial units which mentions that the industrial unit is entitled to the benefit under the 2006 or the 2011 policy,

he will have to give written option to the Director of Industries within three months from the effective date either to adopt Industrial Policy, 2006 or

the Industrial Policy, 2011 not in a halfway 2006 and halfway 2011 policy and the list of industries has been mentioned in Annexure-II to whom the

benefit has not been extended. As per petitioner, the above list does not cover the flour mill of this nature.

As per statement made in paragraph no.6 of the writ application that the Company has gone for expansion/modernization during the period 5.4.2014 to

25.10.2014. The petitioner company increased the capacity applied for electric connection which was provided on 9.10.2014 in LTIS=11 category.

The bill raised was time to time paid. The petitioner company applied to the NBPCL for remission of electric bill in view of certificate of expansion

which was issued by the District Industry Center, East Champaran, Motihari, as the unit came to commercial production on 25.10.2014, inasmuch as,

the General Manager, District Industry Center vide letter no. 1295 dated 4.12.2014 informed to the Executive Engineer accordingly. The dispute has

arisen when the life of Industrial Policy 2011 Scheme came to an end after enforcement of the Bihar Industrial Investment Promotion Policy, 2016 for

promoting the industrial development in the State. As per averment made in the writ application, the petitioner from time to time continued to pay the

bill as per its liability but, the North Bihar Power Distribution Company has raised a bill including those charges which the unit was entitled for

remission under the Industrial Policy, 2011. Being aggrieved by the same, the petitioner company filed a representation on 28.2.2015 to the

Superintending Electric Engineer, North Bihar Power Distribution Company to correct the electric bill in terms of 2011 Industrial Policy. As the

petitioner company has come in commercial production in the year 2014 and, in terms of the Industrial Policy, it is not dependent on the life of the

Industrial Policy but, the period of relief mentioned in the Industry Policy, will govern the field but, no action was taken by the Power Company.

Further a representation was made on 20.4.2015 to the Superintending Electrical Engineer, High Tension (HT), North Bihar Power Distribution

Company and to the Chairman of North Bihar Power Distribution Company to grant remission as having been mentioned in the Industrial Policy, 2011

but, nothing happened which compelled the petitioner to approach this Court for extending the benefit of Industrial Policy for five years. In the

meantime, on account of non-payment of electric bill, without grant of remission, led to issuance of notice under Section 56 of the Electricity Act, 2013

for disconnection of the power supply in the event of non-payment of the bill and, ultimately, the power supply has been disconnected.

The NBPCL has taken a stand that the benefit of remission would be given subject to approval by the State Government. From the counter affidavit

filed by the State, it appears that in order to resolve the issue of entitlement was referred to Vyakahya & Samadhan Samiti (herein after mentioned as

Samiti) was referred. The meeting of the Vyakahya & Samadhan Samiti was held on 1.9.2016, one of the items for decision was the period of

admissibility of benefit of incentive under the Industrial Policy, 2011. The Samiti in its meeting on 1.9.2016 has interpreted the 2011 Industrial Policy

with respect to period of entitlement of the benefit of remission with respect to electric bill. The Item 4 of the meeting specifically reflects that the

issue came for consideration where life of 2011 Scheme has ended on 30.6.2016, in opinion part, it has been specifically opined that the commercial

production by unit started during the life time of Industrial Policy, 2011 and the benefit will be extended for five years subject to the approval from the

Finance Department and the matter was referred to the Finance Department. It will be relevant to quote Item No.4 Annexure-A which reads as

follows:-

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The matter was sent to Law Department, Government of Bihar for its opinion on period of entitlement and the Law Department recorded its opinion

that the industry set up and came in commercial production during the period 1.7.2011 to 30.6.2016, would get the benefit for 5 years as reflected from

Annexure-A (Page-150) of the counter affidavit of 2nd Supplementary Affidavit which reads as follows:-

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The matter was referred and considered by the Finance Department. The Finance Department deliberated the issue and gave its opinion which is

absolutely clear from the letter dated 2.8.2017 issued by the Director, Technical Development, Technical Development Directorate, Bihar, Patna

wherein it has been quoted verbatim the opinion of the Finance Department:-

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and finally the Samadhan Samiti has arrived to a finding that after considering the opinion of Finance Department as well as of the the Law

Department gave final decision is reflective from the letter dated 22.8.2017 issued by the Principal Secretary, Industry Department is as follows:-

â??â?? , 2011 2(vi) Monthly Minimum Charges/Minimum Base Energy Charge/ Demand/Billing

Demand Monthly Minimum Charges/Minimum Base Energy

Charge/Demand/Billing Demand tariff

Minimum Guarantee (Energy & Demand)

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01 , 2011 , 2011

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/ / 30.06.16 â??

So on the basis of opinion of Finance Department, finally the Industry Department has arrived to a finding that the benefit will be deemed to have been ceased on termination of the life of the Industrial Policy, 2011 i.e. on 30.6.2016.

Learned counsel for the petitioner submits that the refusal of grant of benefit for the period mentioned in the Industrial Policy is not sustainable in law

in view of the fact that by issuance of industrial policy, they have issued invitation to the industrialists to set up industry for the purpose of

industrialization of State of Bihar. Once they have set up the industry on the basis of the offer which has been mentioned in the resolution of the

Industrial Policy, now they cannot turn around and interpret the policy adverse to the interest of the industry and submitted that the interpretation

which has been given will not attract the investor in view of the destructive

interpretation of the policy. It has further been submitted that once the industry falls under the scheme, the benefit which has been given will be given full effect, it cannot be truncated in the midway. It has further been said that under the Industrial Policy, the tax benefit of remission has been given for 10 years whereas the life of the Industrial Policy is five years. If the interpretation enunciated by the respondents is accepted, then it will turn to be none effective in view of the fact that full benefit would not be given to the industry which has been set up the industry in the State of Bihar. It has further been said when the respondents have made a promise that in event of set up of industry or its expansion and its production came during the period mentioned in the Industrial Policy, 2011 would be bound by their promise, now State cannot resile from its promise which has been extended through Industrial Policy as promissory estoppel would apply, now the respondents cannot say as new Industrial Policy has been enforced. The benefit emanating from the Policy, 2011 will not cease to operate on the secession of the life of policy, has placed reliance on the large number of judgments in the case of M/s. Super Steel Casting Ltd. vs. The State of Bihar and Anr. : 2007 (3) PLJR 612, MRF Ltd., Kottayam vs. Assistant Commissioner (Assessment) Sales Tax and Ors. : (2006) 8 SCC 70, 2Tara Steel Industries vs. Assistant Commissioner of Commercial Taxes and Ors. : (1986) 61 STC 301, Shree Sanyeeji Ispat Pvt. Ltd. and Anr. vs. State of Assam and Ors. : (2006) 147 STC 146, State of Bihar and Ors. vs. M/s. Suprabhat Steel Limited & Ors. (1999) 1 SCC 3, 1Kamper Concast Limited vs. State of Bihar and Ors. : 2004 (3) PLJR 309, Kunwar Pal Singh (Dead) by L.Rs. vs. State of U.P. and Ors. 2007(5) SCC 8, 5Hukam Chand Shyam Lal vs. Union of India (UOI) and Ors. 1976 SC AIR 78, 9Bahadursinh Lakhubhai Gohil vs. Jagdishbhai M. Kamalia and Ors. : 2004 (2) SCC 65, The Purtabpore Co., Ltd. vs. Cane Commissioner of Bihar and Ors. : 1969 (1) SCC 30,8 Apar (P) Ltd. and Anr. vs. Union of India (UOI) and Ors. 1992 Supp 1 SCC 1.

Per contra, learned counsel for the State has taken a plea that the benefit cannot be extended beyond the life of the Industrial Policy, it will automatically would come to an end on the termination of life of 2011 Industrial Policy whereas learned counsel for the Electricity Board has submitted that the Board is ready to give benefit provided it is interpreted in

favour of the petitioner.

In the present case, the issue has been raised of aims and object of Policy, 2011 reflects clearly that the policy was/is meant for attracting the

domestic and foreign investors as well as local investors to establish the industry. From time to time, the industrial policy has been framed and brought

into force with certain changes to make it more attractive. Industrial Policy has basic approach and purpose of inviting investors to set up the industry

so that the financial conditions of the people of the State will improve and also generate opportunity of employment, the industrial policy should be read

in such a manner that it would subserve its purpose, advance justice and suppress mischief. It requires a purposive construction while interpreting the

policy, it has to be read strictly with respect to applicability of the policy, once the policy is found applicable the industrial establishment is covered

under that policy then benefit arising from that policy has to be given its full effect. It has been explained in the case of M/s Maa Mundeshwari Foods

Pvt. Ltd. Vs. The Union of India & Ors. reported in 2007 (1) PLJR 232, the interpretation of statute or the policy is dependent on the text and context,

if the text is the texture, context is what gives the color, neither can be ignored, both are important. The interpretation is best which makes the textual

interpretation match the contextual. The statute or the policy is best interpreted when we know why it was enacted. The statute must be read first as

a whole and then section by section, clause by clause, phrase by phrase and word by word. It is relevant to quote paragraph nos. 10 and 12 of the M/s

Maa Mundeshwari Foods Pvt. Ltd. (supra) which reads as follows:-

â??10. Before proceeding further I think it appropriate to deal with law of interpretation relating to these aspects of the matters. The Apex

Court in the case of Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd. since reported in AIR 1987 SC 102 3has

held thus:

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture,

context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual

interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be

read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With those glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression Prize Chit in Srinivasa and we find no reason to depart from the Court's construction.

12. In the case of Union of India and others vs. Wood Papers Limited and another since reported in AIR 1991 SC 2049, a case dealing with certain tax incentive for promoting industrial development the Apex Court held thus:

In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exception provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction.

The statute or the policy or any document should not be read in such a manner which should not lead to absurdity. It should not be interpreted to

defeat the purpose, aims and object for bringing the legislation or the policy. The interpretation which led to its destructiveness must be avoided. If any

policy comes forward with promise in the shape of grant of certain benefit and, on the basis of commitment, any party or industrial taking to be a

solemn declaration, acts on the basis of promise, the State cannot be allowed to renege and refuse to give benefit which has been extended by framing

the statute or the policy or by declaration. In the case of *MRF Ltd. Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax & Ors.* reported

in 2006 (8) SCC 702 wherein the fact of the case is that the Government of Kerala from time to time declared and introduced several incentives to

promote industrial growth and expansion in the State of Kerala by way of granting exemption, concessions or reduction in the sales tax, electricity duty

and electricity tariff etc. to new industry as well as to existing industrial unit undertaking, substantial expansion, diversification or modernization. Time

to time the Government of Kerala has notified the industrial policy for promoting the industry.

Acting on the tip of grant of incentive, concessions and benefits extended by the Kerala, MRF approached the Government of Kerala with its proposal

to make substantive expansion and diversification of industrial unit at unit, A Memorandum of Understanding was entered into between the MRF and

the State of Kerala which stipulates investment of huge amount for expansion/diversification of the existing industrial unit at Kottayam. The

Government of Kerala issued the notification, granted the tax exemption and, later on, the tax exemption was withdrawn. The matter went to the

Honâble Apex Court for the resolution of the dispute of entitlement of tax exemption. The Honâble Apex Court has held that once the

Government has held out the concession or the exemption through the industrial policy for the purpose of attracting investors, later on, the Government

withdraw such concession, it will be unsustainable on the principle of promissory estoppel, once the promise has been given and, on that basis, the

industrial unit has expanded or established a new industry, that cannot be allowed to be withdrawn, has placed reliance on several judgments of the

Honâble Apex Court. It will be relevant to quote paragraph nos. 30, 31, 32, 33, 34, 35, 36, 37 and 38 of the aforesaid judgment which reads as

follows:-

30. High Court in its judgment has recorded a finding that the notifications being statutory "no plea of estoppel will be against a statutory notification". This finding of the High Court is erroneous. The doctrine of promissory estoppel has been repeatedly applied by this Court to statutory notifications. Reference may be made to *Pournami Oil Mills v. State of Kerala*: 1986 Supp SCC 728 . In the said case the Government of Kerala by an order dated 11.4.1979 invited small scale units to set up their industries in the State of Kerala and with a view to boost industrialization, exemption from sales tax and purchase tax was extended as a concession for a period of five years, which was to run from the date of commencement of production. By a subsequent notification dated 29.9.1980, published on Gazette on 21.10.1980, the State of Kerala withdrew the exemption relating to the purchase tax and confined the exemption from sales tax to the limit specified in the proviso of the said notification. While quashing the subsequent notification, it was observed: (SCC pp. 732-33, paras 7-8)

"If in response to such an order and in consideration of the concession made available, promoters of any small-scale concern have set up their industries within the State of Kerala, they would certainly be entitled to plead the rule of estoppel in their favour when the State of Kerala purports to act differently. Several decisions of this Court were cited in support of the stand of the appellants that in similar circumstances the plea of estoppel can be and has been applied and the leading authority on this point is the case of *M.P. Sugar Mills v. State of U.P.* On the other hand, reliance has been placed on behalf of the State on a judgment of this Court in *Bakul Cashew Co. v. Sales Tax Officer*, (1986) 2 SCC 365. In *Bakul Company's* (supra) case this Court found that there was no clear material to show any definite or certain promise had been made by the Minister to the concerned persons and there was no clear material also in support of the stand that the parties had altered their position by acting upon the representations and suffered any prejudice. On facts, therefore, no case for raising the plea of estoppel was held to have been made out. This Court proceeded on the footing that the notification granting exemption retrospectively was not in accordance with Section 10 of the State Sales Tax Act as it then stood, as there was no power to grant exemption

retrospectively. By an amendment that power has been subsequently conferred. In these appeals there is no question of retrospective

exemption. We also find that no reference was made by the High Court to the decision in M.P. Sugar Mills' case : (1979) 2 SCC 409 . In our

view, to the facts of the present case, the ratio of M.P. Sugar Mills' case directly applies and the plea of estoppel is unanswerable.

...Such exemption would continue for the full period of five years from the date they started production. New industries set up after

21.10.1980 obviously would not be entitled to that benefit as they had noticed of the curtailment in the exemption before they came to set up

their industries. [Emphasis supplied]

31. This decision was followed by a three-Judge Bench in the case of State of Bihar v. Usha Martin Industries Ltd. 1987 Supp SCC 710

where it was stated that the matter stands concluded by the decision in Pournami Oils Mill's case (supra). In Shri Bakul Oil Industries v.

State of Gujarat: (1987) 1 SCC 31, it was observed in para 11:

...The exemption granted by the Government, as already stated, was only by way of concession for encouraging entrepreneurs to start

industries in rural and undeveloped areas and as such it was always open to the State Government to withdraw or revoke the concession.

We must, however, observe that the power of revocation or withdrawal would be subject to one limitation viz. the power cannot be exercised

in violation of the rule of Promissory Estoppel. In other words, the Government can withdraw an exemption granted by it earlier if such

withdrawal could be done without offending the rule of Promissory Estoppel and depriving an industry entitled to claim exemption from

payment of tax under the said rule. If the Government grants exemption to a new industry and if on the basis of the representation made by

the Government an industry is established in order to avail the benefit of exemption, it may then follow that the new industry can legitimately

raise a grievance that the exemption could not be withdrawn except by means of legislation having regard to the fact that Promissory

Estoppel cannot be claimed against a Statute....

32. Answering the question as to whether the Board is restrained from withdrawing the rebate prematurely before the completion of

three/five years period by virtue of doctrine of promissory estoppel, this Court in Pawan Alloys & Casting Pvt. Ltd. v. U.P. State Electricity

Board: (1997) 7 SCC 251, held: (SCC pp. 263 & 271-72, paras 10 & 24)

10. It is now well settled by a series of decisions of this Court that the State authorities as well as its limbs like the Board covered by the

sweep of Article 12 of the Constitution of India being treated as 'State' within the meaning of the said Article, can be made subject to the

equitable doctrine of promissory estoppel in cases where because of their representation the party claiming estoppel has changed its

position and if such an estoppel does not fly in the face of any statutory prohibition, absence of power and authority of the promisor and is

otherwise not opposed to public interest, and also when equity in favour of the promisee does not outweigh equity in favour of the promisor

entitling the latter to legally get out of the promise.

24. ...We, therefore, agree with the finding of the High Court on Issue No. 1 that by these notifications the Board had clearly held out a

promise to these new industries and as these new industries had admittedly got established in the region where the Board was operating,

acting on such promise, the same in equity would bind the Board. Such a promise was not contrary to any statutory provision but on the

contrary was in compliance with the directions issued under Section 78A of the Act. These new industries which got attracted to this region

relying upon the promise had altered their position irretrievably. They had spent large amounts of money for establishing the

infrastructure, had entered into agreements with the Board for supply of electricity and, therefore, had necessarily altered their position

relying on these representations thinking that they would be assured of at least three years' period guaranteeing rebate of 10% on the total

bill of electricity to be consumed by them as infancy benefit so that they could effectively compete with the old industries operating in the

field and their products could effectively compete with their products. On these well-established facts the Board can certainly be pinned

down to its promise on the doctrine of promissory estoppel. [Emphasis supplied]

33. In a recent judgment in the case of Mahabir Vegetable Oils (P) Ltd. v. State of Haryana: (2006) 3 SCC 620, this Court in para 25

observed that "it is beyond any cavil that the doctrine of promissory estoppel operates even in the legislative field." This was in connection

with a statutory notification under the Haryana General sales Tax Act.

34. In *Kasinka Trading's case* (supra) and *Rom Industries v. State of Jammu & Kashmir* 2005 (7) SCC 348 on which reliance has been

placed by the learned Counsel for the respondent do not disturb the settled position in law that where a right has already accrued, for

instance, the right to exemption of tax for a fixed period and the conditions for that exemption have been fulfilled, then the withdrawal of

the exemption during that fixed period cannot effect the already accrued right. Of course, overriding public interest would prevail over a

plea based on promissory estoppel, but in the present case there is not even a whisper of any overriding public interest or equity.

Notification SRO 38/98 was an amendment and not a clarification of SRO 1729/93 and was expressly made prospective w.e.f. 15.1.1998.

35. Besides, a plea of promissory estoppel is in the nature of an equitable plea and must be determined in the facts and circumstances of

each case where it is raised. In the case of *Rom Industries* (supra) the deciding factor was that the exemption notification in question had

been itself held to be unconstitutional in an earlier case as violative of Articles 301 and 304 of the Constitution of India and, therefore,

could not form the basis of any right. The observation made in para 8 of that judgment have to be read in that context. Besides, the State

Government in that case had no option except to withdraw the notification. It is so observed in that judgment in para 9:

...The State Government, in view of the decision of this Court had no other option but to place edible oils in the Negative List. The questions

whether *Shree Mahavir Oil Mills*: (1996)11SCC39 has been rightly decided or not and whether it is in conflict with the principles

enunciated in *Video Electronics*: AIR1990SC820 , are moot. But while the decision stands, the State Government is bound to comply with

it.??

36. In *Kasinka Tading 's case* (supra), the notification in question was a customs exemption Notification for a fixed period. The judgments in

Pournami Oils Mills's case (supra) and *Shri Bakul Oil Industries's case* (supra)

were distinguished in the said case on the ground that the notifications in those cases were incentive notifications. It was observed in para 27:

“Again in Bakul Oil Industries (supra) it was the incentive to set up industries in a conforming area that the exemption had been granted

and the Court held that the Government could withdraw an exemption granted by it earlier only if such withdrawal could be made without

offending the rule of promissory estoppels and without depriving an industry entitled to claim exemption for the entire specified period for

which exemption had been promised to it at the time of giving incentive. Both these cases therefore cannot advance the case of the appellant

and are distinguishable on facts because the exemption notification under Section 25 of the Act which was issued in this case did not hold

out any incentive for setting up of any industry to use PVC resins and on the other hand had been issued in exercise of the statutory powers,

in public interest and subsequently withdrawn in exercise of the same powers again in public interest. In our opinion, no justifiable

prejudice was caused to the appellants in the absence of any unequivocal promise by the Government not to act and review its policy even if

the necessity warranted and the “public interest” so demanded. Thus, in the facts and circumstances of these cases, the appellants cannot

invoke the doctrine of promissory estoppel to question the withdrawal notification issued under Section 25 of the and Act.” [Emphasis

supplied]

37. The decision in Kasinka Trading (supra) has been distinguished in the later decision by this Court in State of Punjab v. Nestle India

Ltd.: [2004]269ITR97(SC) , on the ground of the inherent nature of an exemption notification issued under Section 25 of the Customs Act.

Even in respect of a notification under Section 25 of the Customs Act this Court has taken the view that the withdrawal even of such a

notification must not be “arbitrary” or “unreasonable” (see Dai-Ichi Karkaria Ltd. v. Union of India: (2000) 4 SCC 57.

38. The principle underlying legitimate expectation which is based on Article 14 and the rule of fairness has been re-stated by this Court in

Bannari Amman Sugars Ltd. v. Commercial Tax Officer: (2005) 1 SCC 625. It was

observed in paras 8 & 9: (SCC pp. 633-34)

8. A person may have a 'legitimate expectation' of being treated in a certain way by an administrative authority even though he has no

legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the

authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important

place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note

that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain

the leave of the court to apply for judicial review. It is generally agreed that 'legitimate expectation' gives the applicant sufficient locus

standi for judicial review and that the doctrine of legitimate expectation to be confined mostly to right of a fair hearing before a decision

which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway

from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require

the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate

expectation is not fulfilled by taking a particular decision then the decision maker should justify the denial of such expectation by showing

some overriding public interest. (See *Union of India and Ors. v. Hindustan Development Corporation and Ors.*: AIR1994 SC 988).

9. While the discretion to change the policy in exercise of the executive power, when not trammled by any statute or ` is wide enough, what

is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was

so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its

validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness

in action by the State, and non- arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama

of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The

meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned

action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in

such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of

reasonableness.[Emphasis supplied]â??

This issue has also been earlier gone into by this Court in the case of Kamper Concast Limited Vs. State of Bihar & Ors. reported in 2004 (3) PLJR

309 wherein it has been held that if the industry is covered by the policy, it would get the power subsidy in terms of the Clause and the authority should

avoid unnecessary litigation. It will be relevant to quote paragraph no. 2 of the said judgment which reads as follows:-

â??2. On a plain reading of the afore-quoted clause it is clear that industrial units, covered by the policy that came into production

between 1.4.93 to 31.3.98 (i.e. the period of the policy) would get power subsidy as indicated in the clause for five years from the date of

production/of such expansion/diversification. In other words, if an industrial unit covered by the policy came into production on 1.2.1998,

it would get the power subsidy in terms of Clause 6 of the Policy till 31.1.2004. It seems that the Respondent authorities do not wish to

understand and accept this simple fact and that has given rise to this unnecessary and avoidable litigation.â??

That has been affirmed in the case of M/s Super Steel Casting Ltd. Vs. The State of Bihar & Anr. reported in 2007 (3) PLJR 61. 2In view of the

above, it is very much clear that the interpretation of the policy should be normal and plain so that real purpose should be derived. In the present case,

the policy has been stipulated in the following manner:-

â??3(vi) Exemption from Monthly Minimum Charges/Minimum Base Energy charge/ Demand/ Billing Demand

The existing operational units and new units would be granted exemption from Monthly Minimum Charges/Minimum Base Energy Charge/

Demand/Billing Demand or such charge being levied in any other name in the

tariff order of BERC with the effective date of the new

Industrial Policy. This facility will be available for five years.â??

On giving a plain reading it is completely clear the facility of exemption from monthly minimum charges has been stipulated for five years and there is

no dispute that these industries (petitioners) were granted the benefit of incentive provided under the industrial policy. There is no dispute that the

petitioners are not covered by the industrial policy of 2011 of the State of Bihar but, the question has to be seen in what manner the incentive, which

has been given in different way, will be interpreted. As has been explained hereinabove, the industry department, law department has given its opinion

that once the industry is established during the period mentioned in the industrial policy, 2011, they would be given the benefit of incentive for the

period mentioned therein and it cannot be curtailed in any manner in mid of its operation, it will not be dependent on the life of the policy but, the

Financial Department has turned turtle, has arrived to a finding that incentive will terminate on the day the life of the policy gets terminated. If the

view of the Finance Department is accepted, it will lead to an absurd situation. Example can be given in a manner, if the life of the policy comes to an

end on 30.6.2016, the Industrial Establishment establishes its industry or do the diversification of the existing industry on the basis of the industrial

policy on 30.6.2014 then, in no circumstances, the benefit can be extended to five years as the life of the policy comes just after two years, now take

another example of the policy wherein it has been mentioned that certain industry would be given the tax exemption for ten years, in such a situation, if

the concession is interpreted and treated to have only the life of five years then it will be anomalous situation in what manner the benefit of tax

exemption can be given, the claim of tax concession in no circumstances can be given. As the maximum life of the policy is for five years, so, in such

view of the mater, this Court is of the view that once the industry falls under the policy, the benefit, which has been mentioned, has to be given its full

effect to serve the purpose and object of floating the industrial policy in order to attract the foreign investors and the home investors. If it is read

otherwise, it will lead to absurdity and will not advance justice rather will create injustice to the industrialist who has established the industries on the

invitation and concession given through the industrial policy.

In such view of the matter, the view which has been taken by the Industry Department as well as the Law Department is correct and the view, that

has been taken by the Finance Department, is incorrect and, accordingly, the order dated 22.8.2017 passed by the Director, Technical Development

Department, Government of Bihar is quashed and this Court issue a mandamus to grant benefit of concession of exemption for Monthly Minimum

Charge/Minimum Base Energy Charge/Demand/Billing Demand in terms of Clause (vi) of the Clause 2 of the Bihar Industrial Incentive Policy, 2011.

With the aforementioned observations and direction, all the three writ applications are allowed.