

(2018) 05 RAJ CK 0255

In the Rajasthan High Court

Case No : Civil Writs No. 12992, 12990 of 2016

Smt. Renu Jangu @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 22-05-2018

Acts Referred:

Citation : (2018) 05 RAJ CK 0255

Hon'ble Judges : SANJEEV PRAKASH SHARMA, J

Bench : Single Bench

Advocate : Mahendra Goyal, Neeraj Chandrana

Final Decision : Allowed

Judgement

1. Since facts of both the aforesaid writ petitions are identical and the dispute involved is common, both the writ petitions have been heard together.

Facts of writ petition No.12990/2016 have been noted for the purpose of disposal.

2. The petitioners by way of this writ petition are claiming subsidy as declared by the State Government vide their circular dated 03.07.2012 through

Agricultural department under a scheme to the farmers who have established food processing units on their own agricultural lands. The said scheme

was extended vide order dated 26.12.2013 for the year 2013-2014 also.

Vide order dated 09.01.2014, the petitioners' application preferred for grant of subsidy for the year 2012-2013 was rejected on the ground of being

immature in absence of sanction of loan by the Bank. Fresh applications for both the petitioners were forwarded for grant of subsidy as per the order

dated 26.12.2013. The requisite inspection was conducted and the petitioner was found eligible for grant of subsidy but the same was not released.

Petitioner submitted representation and also filed complaints on the Rajasthan Sampark Portal. Whereafter the petitioner was informed vide letter

dated 10.08.2016 that in absence of an allocation of budget by the Finance

Department, the subsidy could not be released. It is the case of the petitioner that under the scheme of subsidy it was nowhere required that a khatedar could establish a unit. As per the Clause 5.1 of the scheme 50% of the subsidy was payable on establishment of the unit. The petitioners submit that they were not declared ineligible once the petitioners have submitted their application for grant of subsidy. The respondents were bound by principles of promissory estoppel and declining to release the subsidy only on the ground of want of allocation of budget by the finance department, the respondents cannot shift from their responsibility and liability to pay the subsidy amount. This is so, the petitioner has set up his plant waiting for approval of the final decision. It is submitted that once the petitioner had relied upon the representation held out by the respondents and altered its position and had made investment in setting up an industry, government could not turn around and receipts from its representative and it was bound by it. The further submission of the petitioner is that even the respondents in their reply have not denied the eligibility of the petitioner but the only ground taken is non-allocation of budget for the financial year 2013-2014.

3. Per contra, learned counsel for the respondents submits that the scheme of subsidy was continued for the year 2013-2014 but the order of extension specifically mentioned that the fully complete proposals with regard to grant of subsidy should be forwarded on or before 31.01.2014. The application of the petitioner was however submitted only on 17.01.2014 to the Assistant Director. Although the application on the petitioner for seeking subsidy of establishing a food processing unit in the name of M/s Jai Santoshi Cotton Ginning and Pressing Factory was submitted and considered for further proceeded to the Directorate, vide letter dated 09.01.2014, it was submitted that the proposal was not supported by an application and the same was therefore turned down by the Committee proceeded by the Additional Director, vide its order dated 10.02.2014 as it was not supported by an application and revenue record of the land the document of minutes of meeting held on 02.02.2014 had been filed by the respondents alongwith an additional affidavit.

4. A look at the reply to the writ petition, however shows different reasons. In the reply, the respondents have set out that because there was no approval from the Finance Department, the subsidy could not be granted. It is

their case in the reply that the proposal of the petitioner was sent on 13.05.2015 but the same was declared as there was no budget allocation for grant of subsidy for the year 2013-2014.Â The another ground taken by the respondents is that without seeking approval she had set up the plant on her own accord, and therefore, she cannot claim that she has incurred loss in setting up of the plant. Learned counsel for the respondents alongwith written submissions, has also relied on law as laid down by the Supreme Court in the case of State of Rajasthan & Anr. Versus M/s. Mahaveer Oil Industries and Others, AIR 1999 Supreme Court 2302.

5. Having noted the aforesaid facts, I find that law relating to promissory estoppel has been considered time and again by the Supreme Court in the aforesaid case of State of Rajasthan & Anr. Versus M/s. Mahaveer Oil Industries and Others (supra) and has held as under:-

â??14. Are the respondents justified in holding the State to the promise made by it in the form of an incentive scheme which is made available for a

specified period of time, when new industries are set up on the basis of that scheme relying on the promise of benefits held out by it?

Public interest requires that the State be held bound by the promise held out by it in such a situation. But this does not preclude the State from

withdrawing the benefit prospectively even during the period of the scheme, if public interest so requires. Even in a case where a party has acted on

the promise, if there is any supervening public interest which requires that the benefit be withdrawn or the scheme be modified, that supervening public

interest would prevail over any promissory estoppel.

15. After examining a large number of authorities, this Court in the case of Kasinka Trading and Anr. v. Union of India and Anr. (1995 (1) SCC 274)

held that when there was a supervening public interest in withdrawing the promise held out, the Government cannot be estopped from withdrawing the

benefit held out under an existing scheme. In the case of Shrijee Sales Corporation and Anr. v. Union of India(1997 (3) SCC 398), once again this

Court after examining a number of authorities has held that if any supervening public interest so demands, the benefit under any incentive scheme can

be withdrawn. The same view has been again reiterated in Union of India and Ors. v. Godhawani Brothers and Anr. (1997 (11) SCC 173).

16. The State Government has, with the permission of this Court, relied upon an

affidavit in this connection which they had filed in Civil Appeal

No.5738 of 1994 State of Rajasthan and Anr. v. Gopal Oil Mills and Anr. (Supra). The appellant - State has pointed out that their experience with

regard to implementation of the said incentive scheme during the years 1988 and 1989 revealed that the object of having more new industries in the

areas specified could not be achieved, particularly in the case of oil industry and cotton industry. On the contrary, the policy had adversely affected

existing units in the State. Since the tax liability of new units was much less, and the tax liability on the old units was high, old units gradually started

closing down while new units started coming up. As a result, in the two years 1988 and 1989, 64 old units were closed down and 74 new units were

started. The closure of old units and their replacement by new units resulted in blocking of capital and funds invested in the old units. Therefore, in

effect, the incentive scheme as operating for oil industries was resulting in closure of existing units and substitution of the same by new units-which

was never the intention of the incentive scheme. It was, therefore, decided to withdraw the benefit of the scheme in public interest in respect of oil

industry. The notification of 7.5.1990, therefore, was clearly issued on account of a supervening public interest.â??

In the said case it was noted by the Apex Court as under:-

â??17. Secondly, in the present case the respondents do not seem to have taken steps which can be considered as effective steps for starting a new

unit prior to the notification of

7.5.1990, thereby entitling them to invoke the doctrine of promissory estoppel.â??

6. In a recent judgment reported in (2016) 6 SCC 766, Manuelsons Hotels Private Limited vs. State of Kerala and Ors., while relying upon the

doctrine of promissory estoppel in following judgment passed by the Australian High Court reported in The Commonwealth of Australia v. Verwayen,

170 C.L.R.

394, the Apex Court has held as under:-

â??22. The above statement, based on various earlier English authorities, correctly encapsulates the law of promissory estoppel with one difference-

under our law, as has been seen hereinabove, promissory estoppel can be the basis of an independent cause of action in which detriment does not

need to be proved. It is enough that a party has acted upon the representation made. The importance of the Australian case is only to reiterate two fundamental concepts relating to the doctrine of promissory estoppel-one, that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to.Â The assumption may be of fact or law, present or future.Â And two, that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found.Â And this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party.â??

7. The ground taken by the respondents in their reply therefore cannot be said to be sufficient to deny the petitioner her original claim for subsidy.

Moreso, as she had also set up her food processing plant in view of the clear representation of the State Government, her application cannot be said to be belated all the more as she had applied in 2012-2013 itself but the same was rejected on the ground that the petitioner had not availed the loan. On the second application moved by the petitioner reasons for denial cannot be said to be palatable.Â The law laid down by the Apex Court in the case of State of Rajasthan & Anr. Versus M/s. Mahaveer Oil Industries and Others (supra) also applicable to the issue where the State has withdrawn the benefit prospectively and therefore a mandamus cannot be issued to the State to continue an incentive scheme or a subsidy scheme.

8. However, if the law in the present case is applied, the entrepreneur having set up the food processing unit on the basis of promise, the respondents cannot be allowed to rescind from their promise so as to deny her claim only because the State has not granted the budget for the subsequent year.

The subsidy scheme for the subsequent year may have been closed for future projects but for the year 2012-2013 and 2013-2014 the subsidy scheme prevailed.

As per the minutes of the meeting, it is noted that in two of the units the benefit of subsidy has been released, the reasons given now for rejecting the claim of the petitioner for not submitting the documents is not made out from

the documents and reply. Defect could be always pointed out and could be removed by the petitioner and for the said reason denial of subsidy would be unjustified. The very purpose of encouraging woman to set up industries and become is self dependent, would stand frustrated if the interpretation as suggested by the respondents is accepted and would defeat the very principles enshrined in the Constitution.

9. For the aforesaid reasons, the writ petitions are allowed. The respondents are directed to release the subsidy as per the entitlement of the

petitioners. The same be calculated and released within a period of one month henceforth.

10. A copy of this order be placed in the connected writ petition No.12990/2016.