

(1991) 01 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No. 6063 of 1985

The Sabarkantha Jilla Ru Utpadakoni Cooperative Spinning Mills Ltd.

APPELLANT

Vs

The General Manager and Others

RESPONDENT

Date of Decision : 25-01-1991

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : AIR 1992 Guj 89 : (1991) 2 GLR 852

Hon'ble Judges : C.K. Thakkar, J

Bench : Single Bench

Advocate : R.D. Pathak, for the Appellant; P.F. Makwana, for the Respondent

Judgement

1. This petition is filed by the petitioner Co-operative Society registered under the Gujarat Co-operative Societies Act, 1961, for an appropriate writ, direction and or order directing the respondent-authorities to pay to the petitioner-society remaining amount of cash subsidy of Rs. 14,37,500, with interest at the rate of 12% with effect from March 2, 1984 till the date of payment of the amount since the petitioner unlawfully and illegally deprived of the said payment by the respondents.

2. It is the case of the petitioner that it is a co-operative society registered under the Gujarat Co-operative Societies Act, 1961. It is doing business in manufacturing cotton yarn. The members of the, petitioner-society are agriculturists growing cotton and co-operative societies of various villages of Sabarkantha District. It is stated in the petition that at the time when the petition was filed, there were about 7000 members of the petitioner society and about 1200 employees were working. It was a large-scale industry established in 1964.

3. According to the petitioner, with a view to encourage industrial development in rural and backward areas to have balanced growth in the State of Gujarat and with a view to decentralize industries in the developed areas and cities like

Ahmedabad, Baroda and Surat the respondent issued a resolution in the form of a Scheme (Annexure A / 1) on December 22, 1977 evolving a suitable package of incentives. According to the petitioner as per Scheme, it was eligible to cash subsidy to the extent of 15%, of its fixed assets installed for the purpose of expansion or Rs. 25 lacs whichever was less. Then it is stated by the petitioner that on the basis of various promises held out in the Scheme and publicity given by the respondent-authorities that the petitioner was tempted to expand its industry and invested very large amount of Rs. 1,76,78,000/- in building, plant and machinery from 1980 to 1983 and thereby expanded its industry within the meaning of Clause 6(iv)(b)(c)(d) of Annexure-A/ 1. Since the petitioner was entitled to cash subsidy of Rs. 25 lacs it made an application on August 24, 1982 to the first respondent furnishing all the details required under the Scheme. After receiving the said application, detailed inquiries were made by the first respondent with a view to verify whether the facts stated by the petitioner in its application were correct and complete. According to the petitioner, even a report was prepared by the first respondent and was placed before the State Level Committee of the second respondent for consideration and decision was taken on September 21, 1983 and cash subsidy of Rs. 25 lacs was sanctioned. The petitioner was intimated about the said decision by a letter dt. October 3, 1983 and pursuant to the said decision and sanctioning of the subsidy a part payment of Rs. 10,62,500/- was also made on March 2, 1984. During the period, the agreement, which was required to be executed by the petitioner, was also executed on October 20, 1983. Now appears that cash subsidy of Rs. 25 lacs was sanctioned on certain terms and conditions, which have been mentioned in the said agreement. In the terms and conditions it was specifically stated that if the Government would be satisfied that the subsidy was obtained by the applicant by making misrepresentation as to an essential fact, or if the applicant goes out of the production within five years after the commencement, the Government would be entitled to claim refund of the subsidy from the applicant after giving an opportunity of being heard.

4. It is the case of the petitioner that it had made an application for the purpose of expansion of the industry. The expression explanation has been defined in the scheme as increase in the value of fixed capital investment of "an industrial unit by not less than 25% for the purpose of expansion of capacity or modernisation or diversification.

5. Therefore, looking to the scheme as well as agreement, it becomes clear that the intention underlying the scheme is to see that there is decentralization and balanced industrial growth from the developed cities and areas to rural and backward areas. Now, it is not disputed by the respondent-authorities that Himayatnagar where the petitioner-society is situated does not fall within the category of developed cities, and, therefore, the petitioner is otherwise eligible to get subsidy. It also cannot be disputed that for the purpose of expansion as defined in the Scheme, that an application was made. Necessary inquiries were also made. A detailed report was prepared. The report was placed before the

committee of the respondent-authorities and after satisfying about the correctness and eligibility of the petitioner that the cash subsidy of Rs. 25 lacs was granted to the petitioner. Not only that but a formal agreement was entered into between the parties and an amount of more than Rs. 10 lacs has been disbursed. According to the petitioner, relying upon the promises held out by the respondent-authorities by way of scheme, an application was made which was sanctioned and in these circumstances, the society acted to its detriment by spending very huge amount of about Rs. 2crores. In spite of that, the remaining amount of about Rs. 15 lacs had not been paid to the petitioner and, therefore, the petitioner was constrained to approach this Court by filing the present petition under Art. 226 of the Constitution of India.

6. The petition came up for admission and the learned single Judge (Coram : N. H. Bhatt, J.) issued rule on November 6, 1985 and hearing was ordered to be expedited. The matter has now been posted for final hearing.

7. Mr. R. D. Pathak, learned counsel for the petitioner submitted that when the petitioner-society is eligible and qualified and falls within the scheme, prepared by the respondent-authorities that it cannot be denied the benefit which it would be otherwise entitled to get. He has further submitted that pursuant to the Scheme prepared by the respondent-authorities that it applied by making necessary application in accordance with law and that the said application was properly scrutinised, the detailed report was submitted and after satisfying about it that cash subsidy of Rs. 25 lacs was sanctioned. A part payment was also made and there was no earthly reason to deprive the petitioner-society from payment of remaining amount and the action of non-payment is arbitrary, unreasonable and unconstitutional. He has also submitted that as per the doctrine of promissory and equitable estoppel also, the respondent-authorities are estoppel from withholding or not paying the remaining amount of cash subsidy and the said action is arbitrary, unreasonable and requires to be condemned. According to Mr. Pathak, therefore, it was not open to the respondent authorities not to pay the remaining cash subsidy. Mr. Pathak submitted that relying upon the representation and promise held out by the respondent-authorities that the petitioner-society acted to its detriment by incurring huge expenses of Rs. 1.75crores. According to him, since the impugned action is not only contrary to law but arbitrary and unreasonable whereby the petitioner-society was deprived of the legal dues in time, that taking into consideration the facts and circumstances of the case, even the interest is ordered to be awarded, on the amount which has not been paid to the petitioner-society by the respondent-authorities. In this connection Mr. Pathak submitted that since the installment of cash subsidy was not paid by the respondent-authorities in time, with a view to continue the business of the petitioner-society that it had to incur expenses by borrowing the amount from open market. According to him, the petitioner society can never be blamed for that. Had the cash subsidy paid in time by the respondent-authorities, the petitioner-society could have saved incurring of expenses by avoiding borrowing the amount and

by paying interest to that extent. Therefore, even on that principle the respondent-authorities should be directed to pay interest on the amount that is due and payable to the petitioner-society by the authorities.

8. When the petition was called out for final hearing earlier on 8th October 1990, Mr. P.F. Makwana, the learned Assistant Government Pleader appeared for the respondent-authorities. Mr. Pathak started arguments in presence of Mr. Makwana. Mr. Pathak was heard and he completed his arguments. Mr. Makwana then sought time for the purpose of filing affidavit-in-reply, which was not filed. Mr. Pathak strongly objected the prayer on the ground that till then affidavit was not filed and also on the ground that when the petition was called out for hearing and till he had completed his arguments, no adjournment was sought by the Assistant Government Pleader, and therefore, such request should not be granted. However, in the interest of justice I granted prayer made on behalf of the respondent authorities and adjourned the matter and thereafter an affidavit-in-reply was filed on October 11, 1990.

9. Affidavit-in-reply is filed by one Mr. Y.C. Bhatt, Assistant Commissioner of Industries respondent No. 3 herein. The facts stated and allegations made by the petitioner in the petition have been denied by the deponent. It is stated that the unit of the petitioner, though eligible for subsidy was subject to viability of the project and in view of the fact that it was not economically viable project, it was not entitled to cash subsidy. On that basis, and on that basis alone, it was repeatedly mentioned in the reply that the action of non-disbursement of the amount of cash subsidy was taken by the respondent authorities and the said decision was legal, valid and in accordance with law. In other words, the authorities have reiterated their stand taken and communicated to the petitioner vide a letter Annexure-A/9 to the petition dt. October 14, 1985.

10. The question which falls for my consideration (i) whether the action of non disbursement of the cash subsidy which was sanctioned by the respondent authorities as early as in 1984 is subject to any condition of economic viability of the unit and (ii) even if it is so, in the facts and circumstances of the case is the Principle of promissory estoppel not attracted. In my opinion the petition requires to be allowed on both the grounds.

11. With regard to the scheme the necessary material is on record and all the facts have been candidly disclosed by the petitioner in the petition. Looking to the scheme Annexure A/1 prepared and published by the State Government on December 22, 1977, Annexure A/ 3 agreement between the parties, dt. October 20, 1983 and other orders and letters, it is explicitly clear that there was no such condition regarding the economic viability of the Unit. Apart from the fact that in writing such a condition was not imposed by the respondent-authorities either in the scheme or in the agreement. Mr. Pathak is right in submitting that there is intrinsic evidence to the contrary. The scheme has been prepared and implemented with two objects, namely, (i) that there must be decentralization of industries from developed Industrial area and cities like Ahmedabad, Baroda and

Surat and (ii) that there must be industrial development in rural & backward areas. In these circumstances, the units which would be commencing their activities or business would normally not be economically viable. Again, looking to the scheme as a whole, it was made applicable to the new industrial units in developing areas indicated in Annexure A/1 to the scheme. Therefore, at that point of time, a unit, even if started may not be economically viable. Moreover, conotation "expansion" is defined and the said definition does not take with it any activity, which has some connection with production. On the contrary, it provides for capital investment. Thus, the object of granting cash subsidy either for the purpose of establishment of new industrial unit or for the purpose of expansion of the units which were already existing was investment rather than production. Mr. Pathak in this connection has rightly submitted that if a unit is economically viable there is no necessity for the unit to ask for any cash subsidy and to change location from developed or city area to rural or backward area. It is only when either the unit is new one or not economically viable or that it wants some expansion that cash subsidy is demanded.

12. Mr. Pathak also invited my attention to the agreement (Annexure A-3). According to him cash subsidy was sanctioned on certain terms and conditions and economic viability of a unit is not one of the conditions which has been mentioned in the said agreement. Undoubtedly the Government has reserved its right to withhold cash subsidy in certain circumstances, but they have nothing to do with either production or economic viability of a unit since the apparent intention behind the implementation of the scheme is to get industrial undertakings established in non-developed or under developed rural or backward areas. Precisely for that reason (apart from condition No.1 which provides for claim of refund of subsidy on the ground of misrepresentation as to essential facts) Clause 1 (b) was added. It provided as under:

"If the Company fails to complete creation of all assets before 31st October, 1983, the subsidy shall be considered as loan and the company shall be liable to pay x interest on it at the rate of interest as may be decided by Government/GIIC from time to time with compound interest with quarterly rest and the company shall have to repay forthwith on or before "10th day of November, 1983 whole amount of subsidy together with said interest".

Thus, by the agreement the petitioner-society and all other similarly situated units who have obtained cash subsidy are directed to complete creation of all assets before October 31, 1983. Now, this date is also material because on the basis of that outer limit that the contention which has been advanced by the respondent-authorities can be tested. As is clear the scheme applies to new undertaking as well as expansion of existing undertakings. Now, if the agreement has been entered into between the parties on October 20, 1983 and a condition is imposed to complete creation of all the assets before 31st October 1983 i.e. within about 11 days, it can never be said that it has some reference or connection with production or economic viability of the unit. The matter, however,

does not end there. Clause 2 of the said agreement is equally material which reads as under:

"(2) Without taking prior approval of the Government, the firm/ company, after receiving the part or whole of the subsidy will not be allowed to change the location of the whole or any part of the industrial unit or effect any contraction or disposal of the substantial part of its total fixed capital investment within a period of five years after its going into production".

Looking to clause (2), it is clear that eventuality was contemplated by the respondent authorities to change even the location either as a whole or part and, therefore, it was stated that if there will be a change in location, subsidy will not be allowed. I am not concerned with the question of change of location, but that question probably may arise only if the unit is not economically viable and there is less production. Moreover, the words after its going into production make it clear that the situation which is contemplated in the scheme is prior to the production and not thereafter since in that case, those words would not have been incorporated in the agreement.

13. Therefore, taking into account all the clauses of the agreement, there is no doubt in my mind that when the agreement was entered between the parties, there was no question of any economic viability of the unit. Thus, looking to both these documents, namely, the scheme as well as the agreement, apart from the fact that there is no specific condition regarding economic viability of the unit, such an inference cannot be drawn from the facts and circumstances. In my opinion, therefore, the contention raised by Mr. Pathak requires to be accepted and the argument put forward by Mr. Makwana, the learned AGP requires to be rejected.

14. Even on the second ground of doctrine of promissory estoppel also, the petition requires to be allowed. As seen above, the Scheme is made applicable to the expansion also. "Expansion" is defined in the scheme and it is not disputed even by the other side that the case of the petitioner-society falls within that connotation. In pursuance of the scheme at Annexure-A/ 1, the petitioner made an application in the prescribed form. That application was forwarded in accordance with law and detailed report was submitted by the officer of the respondent-authorities. The report prepared by the officers was placed before the appropriate authority and cash subsidy of Rs. 25 lacs was sanctioned. It is the case of the petitioner society that relying upon the promises held out in the scheme that the petitioner-society expanded its industry by investing huge amount of Rs. 1.76 crores in building, plant and machinery. A vague denial is undoubtedly found in para 2 of the affidavit-in -reply, wherein it is stated as under:

2. I submit that the petition is misconceived below as well as in the facts I deny the statements made in petition in toto.

1. Para 1 and 2 of the petition is admitted. But the last statement made in this

para No. 2. (The petitioner says that on the basis of various promises contained in Annexure-A/ 1 and the publicity given by the respondent No. 5 in the case the petitioner was tempted to expand its industry and invest a very huge amount of Rs. 1,76,78,000 in building, plant and machinery from 1980 A.D. to 30th June 1983 and thereby expanded its industry within the meaning of clause 6 (iv)(b)(c) (d) of Annexure A/ 1) is denied."

Thus, it is contended by the respondent authorities that it is not admitted that pursuant to the publicity given by the respondent No. 5 that the petitioner had spent huge amount of Rs. 1.76crore as alleged by it. But that apart the fact remains that in 1977 the resolution was issued by the respondent authorities and the scheme was prepared. It is not the case of the respondent-authorities that no publicity was to be given to the resolution or to the scheme or that it was to be kept secret. It is also not disputed that the petitioner had made an application pursuant to the said resolution and the scheme. It is an admitted fact that application submitted by the petitioner was processed. A detailed report was submitted. The report was considered by the appropriate authority and the cash subsidy was sanctioned. It is also an admitted fact that the decision was acted upon and amount of more than Rs. 10lacs had already been paid. In these circumstances, I fail to understand how the doctrine of promissory estoppel cannot be applied in the instant case as contended by Mr. Makwana the learned A.G.P.

15. As observed in the leading case of *M.P. Sugar Mills v. State of U.P.*, reported in AIR 1979 SC p. 621, the doctrine of promissory estoppel is a principle evolved by equity to avoid injustice. In words Bhagwati J. (as he then was); (at p. 631 of AIR). "The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not".

16. In the instant case the said doctrine can be invoked by the petitioner and the respondent-authorities cannot refuse to release cash subsidy, which has been sanctioned earlier.

17. Almost an identical question arose before the Supreme Court in the case of *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, . In that case, there was a "solemn agreement entered into between the petitioner and the respondent by which a loan of Rs. 30 lacs was agreed to be given to the petitioner company on certain terms and conditions for the purpose of construction of 4 Star Hotel which was to be set up at Baroda by the Company

relying on which huge expenses were made by the Company. In some pseudonymous letters purporting to have been written by some person to the Chief Minister of Gujarat, Chairman of the Industrial Development Bank, certain allegations were made against the promoter and action was taken not to disburse loan to the petitioner Company. The said action was challenged by the Company by filing a petition in the High Court of Gujarat under Article 226 of the Constitution of India, which came to be, allowed. A Letters Patent Appeal against that decision was also dismissed and the Corporation approached the Supreme Court. Dismissing the appeal filed by the Corporation and Confirming the view taken by this Court, the Supreme Court held that the principle of promissory estoppel would certainly estoppel the Corporation from backing out of its obligation arising from a solemn promise made by it to the company. Speaking for the Court, D.A. Desai, J. observed (at p. 852 of AIR):

"Now if appellant entered into solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory Corporation cannot be allowed to act arbitrarily so as to cause harm and injury flowing from its unreasonable conduct, to the respondent. In such a situation the Court is not powerless from holding the appellant to "its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. A petition under Article 226 of the Constitution would certainly lie to direct performance of a statutory duty by, other authority" as envisaged by Article 12".

18. In my opinion, the present case squarely falls within the law laid down by the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, and *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, . My attention was also drawn to a number of decisions rendered by the Supreme Court on the principle of promissory estoppel, but it is not necessary to refer all those judgments in view of the fact that in *M. P. Sugar Mills's* case (supra) the Supreme Court has considered all the earlier judgments and also because as far as the facts of the present case are concerned, they are almost similar to that of the *Lotus Hotel's* case (supra).

19. Mr. Pathak, the learned counsel for the petitioner has also argued that it is not permissible to the respondent authorities to contend that the petitioner-society cannot be said to be a unit which is not economically viable in as much as all the facts have been placed on the record by the company and it is not even the case of the respondent authorities that there was suppression of fact by the petitioner and after considering the facts and after application of mind that a detailed report was prepared by the officer. The said report was placed before the appropriate authority that the decision was taken and the loan was sanctioned. It, therefore, does not lie in the mouth of the respondent-authorities that the suit of the petitioner is not economically viable and is not entitled to a cash subsidy.

20. However, in view of the fact that on both points, namely, the absence of condition of economic viability in the scheme as well as in the agreement and the application of the doctrine of promissory estoppel that the respondent authorities

cannot be allowed to take this contention at this stage that I am therefore, of the opinion that the petition requires to be allowed. I am not expressing any final opinion on this argument.

21. In the result the petition filed by the petitioner requires to be allowed and is hereby allowed. The respondent authorities are directed to release the remaining cash subsidy of Rs. 14,37,500/- immediately. At this stage the question of interest on the said amount requires to be considered. When I am upholding the contention of Mr. Pathak, learned advocate for the petitioner and rejecting the argument of Mr. Makwana, Assistant Government Pleader, in my opinion, the petitioner is entitled to payment of interest also. Mr. Pathak in this connection submitted that the petitioner is a co-operative society registered "under the Co-operative Societies Act,"] 96 1, and is not a private individual. Its members are farmers in manufacturing cotton yarn and co-operative societies. The Government is one of the shareholders and a substantial shareholder of about 70% of shares and remaining less than 30% are from the co-operative societies as well as farmers. Looking to the Twenty first Internal report (Page 79 of the petition), it becomes clear (page 82) that during the year 1984-85) the petitioner-society had to pay by way of interest a huge amount of about Rs. 48 lacs. Mr. Pathak further submitted that the law about promissory estoppel was settled apart from the foreign Courts by the Supreme Court of India as early as in the year 1967 in the case of Union of India v. Anglo Afghan Agencies, reported in AIR 1968 SCp. 718 and that decision was followed in a number of cases. There was, therefore,, no earthly reason to withhold or refuse to disburse the cash subsidy which has already been sanctioned in the year 1984. In my opinion the contention appears to be well founded. 1, therefore, order the respondent-authorities to pay an amount of Rs. 14,37,500/- with running interest of 6% from March 2, 1984 till the date of the payment. The respondents are directed to pay the remaining cash subsidy as well as interest on or before June 30, 1991. Rule is made absolute accordingly with costs.

22. Petition allowed.