

(2015) 11 AHC CK 0013

In the Allahabad High Court

Case No : Misc. Bench Nos. 2047, 2044, 6297, 2038 and 2039 of 2015

Vacmet India Ltd. and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-11-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Citation : (2015) 11 ADJ 695

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : Altaf Mansoor, for the Appellant; Gaurav Mehrotra, for the Respondent

Judgement

1. Fiscal holidays by the government in the shape of subsidies to facilitate and attract industries within the State of U.P., once extended and acted upon, cannot be withdrawn so as to violate principles of promissory estoppel, is the crux of the subject matter of these petitions. Facts being almost similar, and the legal propositions almost identical, we have referred to the common grounds hereinafter for a convenient appraisal without mentioning exact details of each petition.

2. The State made a generous commercial offer to attract industry for ensuring economic growth. The promises extended to investors were not fiction but truth. It may have been out of a hope to open opportunities underlined by liberalization and to create a secure atmosphere for investors so that they are assured of stability in business. "A creative economy is the fuel of magnificence" are the words of Ralph Waldo Emerson that may have inspired the state to announce a subsidized scheme for establishing industries to fulfill local needs and advance trade ensuring returns to the public and to the State via revenue. To originate an industry-friendly environment appears to be the object behind the promises made.

3. The petitioners responded to the offer of the State in an equally encouraging

manner, and took the risk in good faith by setting up their industries. It is not the case of the State that the petitioners defaulted to an extent so as to frustrate the offers made. It is for this reason that the petitioners contend that, for the State, to backtrack for no valid reason amounts to pulling the carpet from under their shoes.

4. We had heard arguments on behalf of the petitioners yesterday and had passed the following order:-

"Heard Sri P. Chidambaram, learned Senior Counsel alongwith Sri Raghvendra Kumar Singh, learned Senior Counsel and Sri Jaideep Narain Mathur, learned Senior Counsel assisted by Sri Altaf Mansoor, K.S. Pawar and Sri Dhruv Mathur for the petitioners in respective petitions and for the respondents Smt. Bulbul Godiyal, learned Additional Advocate General assisted by Sri Shobhit Mohan Shukla and Sri Gaurav Mehrotra for PICUP.

Arguments have been advanced and concluded by Sri Chidambaram on behalf of the petitioners.

Learned Addl. Advocate General prays that the matter be taken up tomorrow.

Put up tomorrow for further hearing at 2 p.m.

Interim orders passed in this case and all connected matters shall continue till the delivery of judgement."

5. The matter was therefore adjourned on the request of the learned Additional Advocate General for being heard today to counter the submissions that have been advanced on behalf of the petitioners. Ms. Bulbul Godiyal has accordingly advanced her submissions today.

6. Sri P. Chidambaram, learned Senior Counsel for the petitioners while advancing his submissions yesterday took us through details of the transactions that have led to the filing of the present petition. Six petitioners are before us seeking the continuance of benefits under the Government Order dated 1st June, 2006, namely the Heavy Industries Promotion Policy (HIPP). The said policy broadly indicated that the benefits thereunder would be available to such industries that propose to set up units upon a capital investment of Rs. 100 Crores and above. It was with a view to attract such investments within the State that the aforesaid Government Order was issued on 1st June, 2006. All these industries thereupon proceeded and applied for such benefits with proposals from Financial Institutions to fund their projects.

7. Needless to mention that the financial institutions to back up the fiscal support were the Pradeshik Industrial Corporation of Uttar Pradesh (PICUP) and the banking institutions. The State Government issued a clarificatory government order entailing the modalities for taking decision on such proposals through a High Powered Committee constituted by the State Government and to act on behalf of the State Government for processing and approving such proposals as

is evident from a perusal thereof which has been brought on record.

8. The petitioners allege that for the purpose of receiving financial support, they approached the respective banks whereupon one of the banks, namely Bank of Baroda did insist upon ensuring receipt of subsidy within a reasonable period. The petitioners were still undergoing the process of their installation and commencing commercial production and on account of the consuming time factor they also moved applications for issuance of letters of comfort.

9. In the interregnum period, fresh elections were held and a new Government following the fresh elections was installed in May, 2007.

10. The petitioner in Writ Petition No. 2047 of 2015 has alleged that it commenced trial production in July, 2007 whereupon the State Government issued a fresh Government Order dated 3rd August, 2007 withdrawing the benefits that were extended under the Government Order dated 1st June, 2006. This withdrawal was however with a rider to the effect that, such industries that had already taken steps and had complied with the earlier terms and conditions of the government order, and in whose favour a letter of comfort had been issued by the Financial Institutions resulting in completion of the formalities for the installation of the industry, would, inspite of the withdrawal of the scheme continue to receive the benefits as provided under the Government Order dated 1st June, 2006.

11. The petitioner of Writ Petition No. 2047 of 2015 alleges that commercial production commenced on 3rd August, 2007, immediately thereafter. It is alleged that the Evaluation Committee of the PICUP examined the case of the petitioners and made a recommendation to the High Powered Committee to formally issue the letters of comfort in order to ensure that the petitioners receive the benefits of the earlier Government Order dated 1st June, 2006. The High Powered Committee approved the said recommendations and also took a decision for issuance of the letter of comfort on 1st of October, 2007 as a result of this decision, a letter of comfort was issued on 12th November, 2007. The financial institutions including the banking institutions then raised queries as to whether the petitioners stood qualified for the subsidy to which they were entitled in order to ensure further credit facilities by the banking institutions. A request was made to the Udyog Bandhu for such confirmation in order to ensure the eligibility of such industries aforesaid.

12. It is in this background and during this period that the U.P. VAT Act 2008 on 1st of January, 2008 replacing the earlier Trade Tax Act came into force. The clarification which was sought from the Udyog Bandhu aforesaid was responded to by a letter dated 15th January, 2008 clearly reciting therein that the petitioners would be entitled to such benefits on investments made upto 31st May, 2012. On receipt of the same the petitioners wrote a letter to the PICUP for sanction and disbursement of the interest free loan as envisaged under the government order for the period upto 31st January, 2009. The High Powered

Committee in its meeting held on 26th February, 2009 found that the petitioners were eligible for such interest free loan on payable taxes and an appropriate direction was issued to the PICUP for taking such action.

13. It will not be out of place to mention at this juncture that the High Powered Committee also was not only chaired by the Chief Secretary but was a committee constituted of the other Secretaries of the Government including the Finance Secretary.

14. Since this transaction relating to interest free loan did not go through, and was impeded, the taxing authorities proceeded to issue notices for realization of tax under the U.P. VAT Act alleging nonpayment of dues. In spite of reply by the petitioners the PICUP did not take any action and therefore the Commercial Tax Officer was requested not to enforce any recovery proceedings.

15. It is thereafter that the PICUP for the first time on 22nd May, 2009 acted upon the said promise under the aforesaid government order and extended a capital subsidy of 10.06 crores.

16. It may be mentioned here that broadly four benefits were to be extended to the industries apart from other minor benefits that included capital subsidy, infrastructure subsidy, transportation subsidy and the interest free loan with which the imposition of Tax under the VAT Act 2008 is directly connected with.

17. The only benefit therefore which came to be extended to the petitioners was that which was made on 28th May, 2009 as indicated above.

18. Sri Chidambaram has therefore invited the attention of the Court to contend that this policy of extending benefit in spite of its conditional withdrawal on 3rd August, 2007 was clearly acted upon in favour of the petitioners by the respondents through conscious decisions taken, both by the High Powered Committee set up by the State Government and approved by it as well as by all other institutions. The petitioners had received partial benefits as well.

19. The petitioner then sought information as to when the receipt of the balance of the subsidies would be ensured and made available. The matter was placed before the High Powered Committee and a resolution was passed on 17th June, 2009 that all such eligible units henceforth shall continue to deposit the Central Sales Tax as well as the VAT on a monthly basis which would be refunded as interest free loan by the PICUP on quarterly basis. A further gestation period was given to such units that had not deposited the tax, to deposit it by 31st July, 2009, and thereafter these units were given liberty to move applications before the PICUP to claim the conversion of the interest free loan relating to the payment of VAT.

20. So far as the interest part was concerned, the same was also resolved to be disbursed as interest free loan and no penalty would be imposed.

21. The PICUP called upon the petitioner to file an appropriate application in this

regard and to execute documents in order to ensure the said facilities.

22. The petitioners insisted on the disbursement of the interest free loan for the period 3.8.2007 to 31.5.2009. The Evaluation Committee of the PICUP came to the conclusion through a decision dated 24th August, 2009 that such units were entitled to the incentive subsidies in terms of the Heavy Industries Promotion Policy dated 1st June, 2006. The High Powered Committee raised a query, upon which the Law Ministry of the State gave an opinion on 18th December, 2009 and the petitioners allege that then the Chief Minister gave an approval for extending such benefits and subsidy to the eligible units vide endorsement dated 31st March, 2010.

23. This was followed by a renewed request for disbursement of the subsidies in respect of the investment that had already been made. The same did not receive any response and ultimately the Commercial Tax Department vide letter dated 1st July, 2011 issued penalty notices to the petitioners to which replies were submitted.

24. It is at this stage that the litigation before this Court commenced by the filing of Writ Petition No. 8887 of 2011 challenging the penalty notices issued by the Commercial Tax Department. The writ petition was disposed of vide order dated 8th September, 2011 observing that the State would take a decision in accordance with law and in the meantime no coercive steps for recovery would be taken against the petitioners.

25. The situation took a turn thereafter when the High Powered Committee again met and on 8th November, 2011 took a decision to do away with the entire policy under which the benefits had been extended to the petitioners. This decision dated 8th November, 2011 is on record as Annexure 2 to the writ petition No. 2047 of 2015. This crystallized into the Government Order dated 18th of November, 2011 impugned herein.

26. A perusal of the said decision of the High Powered Committee apart from some reasons given has primarily focused on the reason to deny such benefits on account of the promulgation of the VAT Act with effect from 1st January, 2008. The reasons that have been spelt out have been enumerated in paragraph 16 of the counter affidavit filed on behalf of the respondents and are also part of the record of the writ petition. Pursuant to the said decision taken by the High Powered Committee, the government order was issued on 18th November, 2011 giving effect to the decision of the said High Powered Committee and a consequential order was passed by the Secretary of the Industrial Development Department on 29.11.2011.

27. The petitioners then came up in a second round of litigation before this court being Writ Petition No. 1105 of 2012 challenging the Government Order dated 18th November, 2011 on several grounds including the grounds of promissory estoppel.

28. It so transpired that in between for a second time a new Government came to be installed in March, 2012 after fresh elections were held.

29. The petitioner again wrote to the PICUP for renewal of the request for grant of subsidy on the investment upto 31st May, 2012 in view of what had happened earlier, whereafter a new industrial policy was announced in 2012. The New Industrial Policy also made recommendations in relation to such industries that had made a capital investment of Rs. 100 crores or more. A government order was issued on 30th November, 2012 promulgating the new industrial policy allowing such benefits of interest free loan against payment of VAT/Central Sales Tax, which government order has been filed as Annexure RA-1 to the Rejoinder Affidavit in Writ Petition No. 2047 of 2015.

30. In the meantime the request which had been renewed by the petitioners, after the government order dated 18.11.2011 had been issued, came to be attended by a three member committee comprising of three ministers of the State which undertook the said exercise of revisiting the aforesaid request of the petitioners. Consequently, in view of this development, Writ Petition No. 1468 of 2012, which had been filed by the petitioners questioning the recovery pursuant to the government order dated 18.11.2011 came to be disposed of with a direction not to make any recovery pursuant to the government order dated 18.11.2011 till the sub-committee takes a decision.

31. It is undisputed that against the aforesaid judgment of the High Court a special leave petition was filed by the State being S.L.P. No. 26701 of 2014 and the same is stated to be pending adjudication, but at the same time it has been pointed out by the learned counsel for the petitioners that two of the matters were disposed of to their best knowledge by the Apex Court being Civil Appeal No. 2023 of 2015, State of U.P. And others Vs. Sukhbir Agro Energy Ltd. And another and Civil Appeal No. 2024 of 2015, by the following order:-

"IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2023 OF 2015

(Arising out of S.L.P. (C) No. 5300 of 2015)

WITH

CIVIL APPEAL No. 2024 OF 2015

(Arising out of S.L.P. (C) No. 5301 of 2015)

Heard Ms. Reena Singh, learned Additional Advocate General for the State of U.P., Mr. Adish Aggarwal, learned senior counsel for the respondent No. 1 and Mr. Dhruv Agarwal, learned senior counsel for the respondent No. 2.

Leave granted.

On a perusal of the impugned order, we find that the High Court after noting the submissions, has passed the following order:

"In view of above, it shall be appropriate that the government should be given liberty to proceed in accordance with law and take a fresh decision through the duly constituted Cabinet Committee. It shall further be appropriate that the judgment of this Court in the case of Jai Prakash Associate (supra) and other judgments relied upon by the petitioners" counsel along with the pleading on record in this bench of writ petition as well as the new industrial policy of 2012 of the State Govt. be communicated by the learned Addl. Advocate General and place before the Sub Committee of the government which may look into the matter while taking final decision with regard to present controversy.

Accordingly, we dispose of the writ petitions finally directing the respondents not to make any recovery in pursuance to the impugned Government Order dated 18.11.2011 till the controversy is adjudicated by the Sub Committee of the Ministers of the State. Keeping in view the decision taken by the Sub Committee, government shall pass a fresh order in accordance with law, expeditiously and shall communicate the same to the petitioners and other alike persons. Till a decision is taken by the Committee (supra) and consequential order is passed and communicated, the order passed by the respondents in pursuance to the impugned order shall be kept under suspension and no recovery shall be made from the petitioners and no action shall be taken in pursuance to the impugned order."

In our considered opinion, the High Court has really left it to the State Government to take a decision through a Committee. Needless to emphasize, the Committee can take a decision in accordance with law. If the respondents are aggrieved by the decision of the Committee, they can challenge the said decision before the appropriate forum, as advised in law.

With the aforesaid clarifications, the appeals are disposed of.

..... J.

(Dipak Misra)

..... J.

(Adarsh Kumar Goel)

New Delhi;

February 17, 2015."

32. Thereafter the communication between the petitioners and Udyog Bandhu as well as PICUP was undertaken and the said authorities were duly informed about the offer made by the petitioners for availing benefits under the latest government order promulgating the New Mega Investment Policy 2012. It is during the processing of such documents that it transpired that foreign investors

showed their grave concern about making investments with the petitioners on account of the delay of disbursement of such promised incentives as per past experience.

33. At this juncture the PICUP discharged its pious obligation by sending a letter on 21st October, 2014 stating therein that as per the records the contents as reflected by the petitioners in their letter dated 10.10.2014 were correct and this virtually supported the claim of the petitioners for release of benefits and incentives which is subject matter of the present dispute.

34. In spite of these facts on record now the impugned government order has been issued on 11th February, 2015 whereby all such subsidies have been altogether denied and has given rise to the present petition which also claims the relief of quashing of the demand notices issued by the Commercial Tax Department including penalty as well as other dues for the entire period as indicated in the said notice. Aggrieved the present petition came to be filed and a division bench of this Court after hearing the learned counsel at the interim stage passed an interim order to the following effect:-

"Hon"ble Rajiv Sharma, J.

Hon"ble Rakesh Srivastava, J.

In Writ Petition Nos.- 2038 & 2039 of 2015 notice on behalf of opposite party Nos. 1, 2, 4, 5, 6, 7 & 8 has been accepted by the Chief Standing Counsel. On behalf of opposite party No. 3 appearance has been put in by Shri Gaurav Mehrotra, Advocate. In Writ Petition No. - 2044 of 2015, notice on behalf of respondents except respondent No. 4 has been accepted by the learned Chief Standing Counsel, whereas on behalf of opposite party No. 4 has been accepted by Shri Gaurav Mehrotra Advocate. In writ petition No. - 2047 of 2015 notice on behalf of opposite parties No. 1, 3 & 4 has been accepted by the learned Chief Standing Counsel, whereas on behalf of opposite party No. 2 Shri Gaurav Mehrotra has put in appearance.

Heard Shri Shanti Bhushan along with Shri Jaideep Mathur, learned Senior Advocates assisted by Shri Altaf Mansoor on behalf of one of the petitioners. Counsel appearing in connected petitions have adopted the arguments advanced by Shri Shanti Bhushan, learned Senior Advocate. On behalf of the State authorities, Mrs. Bulbul Godiyal has put in appearance and advanced her submissions.

Since in all the aforesaid captioned writ petitions, the controversy involved is identical in nature and as such, all the writ petitions have been clubbed together and a common order is being passed.

Petitioners have assailed the Government Order No. 1674 dated 18.11.2011 as amended/modified vide G.O. dated 11.2.2015, which withdraws with retrospective effect the "Industrial Investment Promotion Scheme, 2006 notified by the Government of U.P. to provide financial incentives to industrial investors

to set up their projects in the State of Uttar Pradesh. Petitioners have also questioned the validity and correctness of the recovery notices.

It has been contended that the impugned G.O. dated 18.11.2011 and amended order dated 11.2.2015 is in total breach of the directions given by this Court in its order dated 12.8.2013 passed in Writ Petition No. 1105 (MB) of 2012 in as much as the impugned order is a non-speaking and unreasoned order and the authorities have totally ignored the judicial verdict/orders passed by the Apex Court and this Court. It has also been argued that the retrospective withdrawal of the Scheme also violates the legitimate expectation of the petitioners and the investors under the Scheme that the long term financial incentives offered to them to set up industrial projects in the State of Uttar Pradesh will not be withdrawn in an arbitrary manner. According to petitioners, by investing huge amounts, they have altered their position.

Elaborating the arguments, it has been argued that Doctrine of Promissory Estoppel would apply in the present case in view of the fact that based on the promises of the State Government, petitioners have acted to its own detriment substantially altering its financial position to the tune of thousand of crores. It has also been pointed out that the State Government does not dispute the eligibility of the petitioners and their entitlement to receive incentives promised under the Scheme. Lastly, it has been submitted that the amount sought to be recovered from the petitioners is neither due nor payable as on date.

Having heard learned Counsel for the parties and perused the various orders passed by this Court and the Apex Court, in our opinion, a prima facie case for interim relief is made out.

Admit.

Issue notice. Notice need not be issued as appearance has been put in on behalf of the respondents.

As prayed by Mrs. Bulbul Godiyal, Additional Advocate General appearing for the State, two weeks" time is allowed for filing counter affidavit. Petitioners may file rejoinder affidavit in two weeks" thereafter. List immediately after expiry of the aforesaid period.

Till the next date of listing operation and implementation of the impugned Government Orders No. 1674 dated 18.11.2011 and 25.2.2015 shall remain stayed. It is further provided that recovery proceedings initiated against the petitioners shall also remain in abeyance till the next date of listing.

Date:- 20.3.2015"

35. Affidavits have been exchanged and in between a fresh Government Order on 9th June, 2015 came to be issued indicating the entitlement of incentive benefits under the New Mega Project Investment Policy 2012 referred to hereinabove.

36. In the above background and the facts which are on record the contention on behalf of the petitioners is that the entire action of the respondents is clearly hit by the principles of promissory estoppel in matters of government policy relating to extending of benefits under such schemes for setting up of commercial units. The decision to withdraw the benefits therefore being unfair and unreasonable to the disadvantage of the petitioners without there being any public interest having been shown or any plausible reason existing to label the continuance of benefits as unequitable, is a clear mala fide exercise of power, and is an act which cannot be sustained on any legal principles. Not only this the State Government has come up with fresh measures under the New Industrial Policy to extend similar benefits which clearly indicates that the rescinding of the earlier policy is not bona fide and is bereft of such considerations that ought to have been undertaken and which stands now established with similar benefits being extended under the new policy.

37. The contention in short therefore is that all such benefits to which the petitioners were entitled have been unlawfully and unequivocally withdrawn to the utter disadvantage of the petitioners without there being any corresponding advantage of public interest. The contention is therefore to strike down the impugned orders and recovery of taxes and to restore all such benefits to which the petitioners were entitled, moreso when such decisions came to be taken at intervals with a clear promise that at least the benefits would be extended till 31st May, 2012. It is therefore urged that this position be restored and for which reliance has been placed on eight decisions by the learned counsel for the petitioners entailed as follows:-

- (1) Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ;
- (2) State of Punjab Vs. Nestle India Ltd. and Another, ;
- (3) Mahabir Vegetable Oils Pvt. Ltd. and Another Vs. State of Haryana and Others, ;
- (4) MRF Ltd., Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax and Others, ;
- (5) A.P. Steel Re-Rolling Mill Ltd. Vs. State of Kerala and Others, ;
- (6) Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others, ;
- (7) Pepsico India Holdings P. Ltd. Vs. State of Kerala and Others, ;
- (8) State of Bihar and Others Vs. Kalyanpur Cements Ltd., .

38. The submission is that as a matter of fact the decision to deny benefits is not founded on any intelligible criteria nor does the decision have any rational nexus to achieve any such object of public interest and as such the action is violative of Article 14 and Article 19 of the Constitution of India.

39. The aforesaid contentions have been countered by the learned Additional Advocate General contending that there are two primary grounds taken in the government orders dated 18.11.2011 and 11.2.2015 for denying such benefits and discontinue the same which according to the learned Additional Advocate General are compelling circumstances in public interest. It is urged that in the first government order dated 18.11.2011 the introduction of the VAT Act 2008 and the consequences that ensued have been made the basis for discontinuance of the subsidies to the petitioners and in the second government order dated 11.2.2015 it has been additionally provided that on account of the Central Government having extended a package to the State of Uttaranchal in such commercial ventures the same had a direct impact on the growth of industries in the State of U.P., and in such circumstances these adverse facts led to the taking of the decision for withdrawal of the benefits. It is therefore urged that there are rational and bona fide grounds available for such withdrawal of benefits which cannot be attributed as either inequitable or even mala fide.

40. Sri Gaurav Mehrotra, learned counsel for the PICUP has also adopted the same arguments as the learned Additional Advocate General and has also urged that while presenting facts the PICUP has only stated such facts that were existing on record as per the documents that were sent to it either by the petitioners or by the High Powered Committee or any other authority.

41. In effect his contention is that as a matter of fact the decision of the State Government in a matter of policy was not within the realm of the PICUP and the decision was taken by the State Government that is binding both on the PICUP as well as the petitioners.

42. Three judgments have been cited by the learned Additional Advocate General in support of the contention that the Government was well within its authority to resume and rescind the policy by which such fiscal benefits had been extended to the petitioners. The said decisions are in the case of M.P. Mathur and Others Vs. D.T.C and Others, ; State of Haryana and Others Vs. Mahabir Vegetable Oils Pvt. Ltd., and A.P. Dairy Development Corporation Federation Vs. B. Narasimha Reddy and Others, . On the strength of such decisions, it is urged that a bona fide decision of the State Government normally taken in circumstances prevailing for which there is a valid explanation amounts to a supervening public equity as against this equitable principle being pressed by the petitioners. In such circumstances, the petitioners do not have a vested right so as to claim the continuance of such subsidies.

43. We have heard the rival submissions at the bar and have also considered the aforesaid submissions as well as the judgments that have been cited by the learned counsel on either side.

44. The Apex Court while dealing with a matter relating to promissory estoppel in such governmental action in the case of State of Bihar and Others Vs. Kalyanpur Cements Ltd., has clearly proceeded on the assumption that it is settled that

promissory estoppel gives a cause of action and also preserves a right. It is therefore correct on the part of the learned Additional Advocate General to suggest that it is not a matter of vested right but where a party has acted upon and has altered its position as per a policy decision that stood in force, then in our opinion also, the principles of promissory estoppel as propounded by the Apex Court are clearly attracted. What has to be seen are the principles on which the State can claim withdrawal of such promises. This situation has also been taken care of explicitly by the aforesaid decision of the Apex Court in Paragraph 35 as follows:-

35. In our opinion, the aforesaid statement of law covers the submissions of Dr. Dhavan and Mr. Dwivedi that in order to invoke the aforesaid doctrine, it must be established that:

- (a) a party must make an unequivocal promise or representation by word or conduct to the other party;
- (b) the representation was intended to create legal relations or affect the legal relationship, to arise in the future;
- (c) a clear foundation has to be laid in the petition, with supporting documents;
- (d) it has to be shown that the party invoking the doctrine has altered its position relying on the promise;
- (e) it is possible for the Government to resile from its promise when public interest would be prejudiced if the Government were required to carry out the promise;
- (f) the Court will not apply the doctrine in abstract.

However, since the judgments have been cited, we may notice the law laid down therein."

45. The aforesaid principles therefore have to be read alongwith the ratio of the decisions that have been relied upon by the learned Additional Advocate General.

46. Consequently, if the law as laid down by the Supreme Court has to be considered then it would be appropriate again to refer to Paragraph 78 of the said decision where the Apex Court has approved of the principles as laid down in the case of Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others, . The principles succinctly have been recited therein that while the decision to change the policy in exercise of executive power when not primarily by statute or rule is void, what is imperative and implicit in terms of Article 14 is that a change in policy must be made firm and should not give an impression that it was so done arbitrarily or by any ulterior criteria.

47. The argument of the learned Additional Advocate General in the light of the decisions cited at the bar also enunciate the principle that there cannot be any estoppel against statute. It is also evident from the decisions particularly the

decision in the case of Motilal Padampat Sugar Mills (supra) that the principle of promissory estoppel is essentially a principle of equity and not of exact estoppel. The test is to find out as to whether a supervening public equity should allow the Government to withdraw from the representation made by it in public interest. The aforesaid decision of the Apex Court however further went on to hold that this overriding public interest and its component would be a burden upon the Government to show that the public interest lies in the Government acting otherwise and it is so overwhelming that it would be inequitable to bind the Government by the promise made. For this the court would insist on a highly rigorous standard of proof in the discharge of this burden by the State. Apart from this, even if such is the situation, then the balance of equity in public interest should also be taken into account to find out that the result would be inequitable. It has also to be kept in mind that while applying the said principles the subsequent loss or profit to be suffered by the beneficiaries may not be a reason of public interest for such withdrawal.

48. It is in this background we come to the first government order by which the petitioners are really aggrieved, namely the Government Order dated 18.11.2011. The decision was taken to terminate the scheme by cancelling the benefits to such units that had been continued under the Government Order dated 3rd of August, 2007 read with the first Government Order dated 1st of June, 2006. It has further been resolved that no consideration will be entertained in respect of any claim of capital subsidy or infrastructure subsidy in any situation. The third ground taken there is that since the VAT Act has been implemented in place of the Trade Tax Act, therefore, the interest free loan conversion benefit policy would stand terminated. The said Government Order dated 18.11.2011 nowhere discloses any reason plausible or otherwise as to what had prompted the government to terminate the scheme in public interest and as to what public interest was involved if the VAT Act had substituted the Trade Tax Act. The government order only records conclusions and no reasons. Even the recommendation of the High Powered Committee dated 8.11.2011 that resulted in the issuance of the Government Order dated 18.11.2011 also does not state the reason for elimination of such facilities. A vague indication was given in the recommendations that the State Government was having views that the policy could not attract investment as it was required to focus on basic infrastructure and law and order. In such a situation, exemption based industries that were not self independent were likely to phase out after the exemptions are discontinued. Even this is not the reason in the Government Order dated 18.11.2011 nor can such an apprehension or fictional situation for which there is no basis, be made the foundation of a valid reason.

49. As indicated above writ petitions were filed in the year 2012 challenging the said decision and the High Court disposed off the matter keeping in view the fact that a duly constituted cabinet committee was still looking into the matter for revisiting the same. It is also indicated above that a challenge was raised to the direction of the High Court in a special leave petition that was disposed off

without interfering with the High Court order leaving it open to the Committee to take a decision therein. The aforesaid judgment dated 17.2.2015 is already on record. Thus the direction of the High Court not to make any recovery pursuant to the Government Order dated 18.11.2011 remained in force with liberty to the Committee to take a decision.

50. The fresh decision was taken on 11th of February, 2015 which government order is also assailed in the present writ petition. This decision records that since the subsidy in the shape of interest free loan vis-a-vis applicability of VAT has not yet been extended and therefore no further interest free loan would be available to any of the Units. The same reason that since such benefit of Transport subsidy has not been given to any of the Units the same shall not be extended. The Government Order dated 18.11.2011 was reiterated and reference was also made to the decision taken in the High Powered Committee on 8.11.2011.

51. Needless to mention that the said committee in its deliberations on the issue of applicability of the new VAT Act observed that since under the VAT Act the input tax credit is available to the Unit then the Unit does not have to pay tax on the purchase of raw material. This difference between the Trade Tax Act and the VAT Act is a new component that has come into existence and therefore the committee observed that it was not feasible to extend the benefit of interest free loan conversion as against the tax payable.

52. Sri Chidambaram, in our opinion, has rightly questioned this decision as being without foundation, inasmuch as, it is only to the extent of tax which is payable that the interest free loan conversion facility would be available and not beyond the same. The High Powered Committee failed to consider as to how this would cause loss or adversely affect the subsidy scheme or would be a loss of tax in public interest. Thus, both the government orders nowhere reflect as to what inequitable situation had arisen in supervening public interest so as to do away with the policy altogether. The overriding public interest factor for discontinuing the policy is clearly absent. The burden was on the State Government, as held in Motilal Padampat's case on rigorous standards, that was not discharged. The objectivity behind the discontinuance of the scheme and its benefit to the petitioners is not decipherable. The counter affidavit of the respondents does not improve the situation either. No material or reason except reiterating the impugned decisions has been demonstrated to discharge the burden of any existing real plausible reason for withdrawing the benefits.

53. To reiterate again, the unclarity of any objective reason for discontinuing the scheme does not make out any ground to deny at least the capital subsidy, the infrastructure subsidy and the transportation subsidy when it is established on record that the petitioners had clearly acted upon the representation made by the Government on its promise to extend such facilities, and not only this a certain amount towards such facilities had also been disbursed admittedly by the State Government when the scheme came to be withdrawn.

54. It is further to be remembered that the petitioners were always given the impression particularly with the enforcement of the Government Order dated 3rd of August, 2007 that even if the scheme was being discontinued the petitioners would not be affected at all. It is not the case of the State Government or the respondents that the petitioners had not fulfilled the terms and conditions or there was any deficit in their performance on their part as per the terms of the Government Order dated 3rd of August, 2007.

55. To our mind, it is only the interest free loan part which can be correlated to the introduction of the VAT Act. So far as the other subsidies are concerned, they were entirely not affected by the introduction of the VAT Act. Consequently, we do not find any plausible or reasonable explanation as to how the said subsidies deserved to be withdrawn from the petitioners and on what adverse public interest.

56. We are conscious of the argument advanced on behalf of the State that there cannot be any estoppel against statute particularly in relation to taxation, but at the same time the argument of the respondents also cannot be lost sight off that whatever protection of subsidy was extended under the scheme when the Trade Tax Act was in force, the exemptions therein and any benefits arising therefrom were continued under the VAT Act. The Taxation Act did not deny any benefits under the policy. To the converse, it is the respondent State which is withdrawing the benefit earlier granted under the scheme. Thus, in our opinion, the introduction of the VAT Act perse as a substitute for the Trade Tax Act does not alter the situation unless the State Government comes up with any objective consideration so as to point out a supervening public interest like any substantial loss of revenue. As indicated above the impugned decisions do not contain any such objective considerations or reasons.

57. So far as the subsidies other than the interest free loan as against VAT are concerned, the same do not appear to have been withdrawn on any plausible reason. The petitioners had altered their position considerably making huge investments. Consequently, we do not find any rational basis at least for the other subsidies including the three subsidies referred to hereinabove for being withdrawn.

58. So far as the issue of interest free loan against VAT is concerned, as observed hereinabove the consideration thereof and its non objective indication in the impugned government order dated 11th February, 2015 is concerned, the same renders the decision taken by the High Powered Committee and the consequential issuance of the government orders to be invalid.

59. Consequently for all the reasons aforesaid we do not find any justification in the Government Orders dated 18.11.2011 and 11.2.2015 to deny any benefits to the petitioners. The consequential recovery of the taxes from the petitioners without there being a valid bona fide or reasonable decision as held hereinabove also therefore cannot be enforced. We therefore strike down the government

order dated 11th February, 2015 as also the government order dated 18.11.2011 further restrain the respondents from recovering taxes under the impugned notices.

60. The State Government shall take a fresh decision within three months in the light of the observations made hereinabove only in relation to the benefit of interest free loan as against payment of VAT for the period in question. Any decision on this count which will be on a consideration of the scheme that would bind the Commercial Tax Department. The impugned recovery of taxes shall remain on hold till a fresh decision is taken. The disbursement of the three subsidies in relation to Capital Subsidy, Infrastructure Subsidy and Transportation Subsidy and other subsidies if any except as above shall be released forthwith to the petitioners in terms of the Government Order dated 1.6.2006 read with the Government Order dated 3.8.2007.

61. All the writ petitions are accordingly allowed on the same terms.