

(2001) 01 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition No's. 2961 of 1987 and 240 of 1989

Wipro Limited

APPELLANT

Vs

S.M. Tripathi and Others

RESPONDENT

Date of Decision : 15-01-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Evidence Act, 1872 — Section 115

Citation : (2001) 4 ALLMR 813 : (2001) 2 BomCR 799

Hon'ble Judges : V.K. Barde, J;D.S. Zoting, J

Bench : Division Bench

Advocate : R. Ravindran, for P.M. Shah and A.M. Kanade, for the Appellant; R.G. Deo, S.C. for respondent Nos. 1 and 3 and S.P. Deshmukh, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Barde, J.—The petitioner is a company registered under the Indian Companies Act, 1956, and it is engaged in manufacture of Vanaspati, Soaps, etc. The factory of the petitioner is situated at Amalner (District : Jalgaon).

2. The petitioner has contended that the Vanaspati means the vegetable oil subjected to the process of hydrogenation in any form. Vanaspati is manufacture out of several raw oils, such as, Soya bean Oil, Palm Oil, Rapeseed Oil, Cotton Seed Oil, etc. Vanaspati being an edible product, it is deemed to be essential commodity within the meaning of section 2(a)(v) of the Essential Commodities Act, 1955 and, therefore its production, supply and distribution is being controlled under the said Act. The Central Government prescribed limits of usage of imported oil in the manufacture of Vanaspati. Originally the imported oil was used at a minimum of 10 per cent. However, said percentage was increased from time to time. The respondent No. 2 State Trading Corporation of India Ltd. (For short, hereinafter referred to as "S.T.C.") is the agency to channelize the import of vegetable oils for the purpose of manufacture of Vanaspati and all manufacturers of Vanaspati are required to purchase their requirements of

imported vegetable oil only from the respondent No. 2.

3. The respondent No. 2 was importing oil at port towns, namely, Bombay, Kandla, Calcutta, Madras and Vishakhapatnam. Besides that, there were eight depots in northern India and the manufacturers were required to take supply of imported oils from the port towns or from the depots, as the case may be. The respondent No. 1 had fixed the issue price of imported oils and that was being revised from time to time. So, all manufacturers were getting the imported vegetable oil at the same price fixed by the respondent No. 1.

4. From 1st November, 1977, the respondent No. 2 - S.T.C. started to recover freight equalization charges from every manufacturer at the rate of Rs. 260/- Per Metric Ton. Many manufacturers like the petitioner had to take delivery of oil from the port like Bombay and had to incur transport cost for taking the oil from the port to the factory besides paying the freight equalization charges. Prior to May 1977, the respondent No. 2 - S.T.C. was reimbursing manufacturers like the petitioner, the actual amount of freight charges incurred for transporting the oil from the port to the factory.

5. The respondent appointed M/s. A.F. Ferguson & Company, Chartered Accountants, to prepare and submit the report suggesting formula for freight reimbursement to the manufacturers who incurred expenses on account of freight. The suggestion made by M/s. A.F. Ferguson & Company for reimbursement of freight charges were put into effect from 1st November, 1977 and this caused a serious prejudice to the petitioner and many other manufacturers. Because the reimbursement made according to Ferguson formula fall short of the actual expenditure incurred by the petitioner and some other manufactures. This created an imbalance and defeated the objective of supplying the imported oil at a uniform cost to all manufacturers in India.

6. The scheme of reimbursement suggested by M/s. A.F. Ferguson and Company was not circulated to the members of Vanaspati Manufacturers' Association of India. Here main grievance of the petitioner is that there were certain manufacturers of Vanaspati who were not required to spend any amount for transporting Vanaspati oil from depot to the factory because the depots were situated within the factory premises itself. This facility was available at eight places in northern India. Such manufacturers were paying the freight equalization charges at the rate of Rs. 260/- Per Metric Ton like other manufacturers. However, the other manufacturers had to incur excess amount than Rs. 260/Per Metric Ton to transport the oil from depot of the S.T.C. respondent No. 2 to the factory. According to the petitioner, this has caused injustice because the petitioner and such manufacturers were not getting full reimbursement of freight charges under the Ferguson formula.

7. Being confronted with this situation, the petitioner filed Writ Petition No. 843/1980 in this High Court and sought a writ of mandamus compelling the S.T.C. to withdraw or cancel the scheme pertaining to equalization of freight and

to refund the petitioner all the amount recovered from the petitioner by way of freight equalization, or in the alternative, to reimburse the petitioner the actual amount so expended by them for transporting the oils to Amalner (less the amounts actually paid to the petitioner). The said petitioner was admitted and an interim stay was granted regarding the recovery of freight equalization charge of Rs. 260/- Per Metric Ton. This order, however, was vacated on undertaking given by the S.T.C. that it would refund amounts collected by way of inland equalization charges within three months from the date of final orders of the High Court to the extent to which they were held to be illegal by further abiding by such directions as the High Court might fix.

8. The petitioner has further contended that subsequently the said petition was amended by the petitioners claiming that it was incumbent upon the respondent to reimburse the petitioner sale tax, octroi, etc. paid by the petitioner in respect of said supply of vegetable oil by the respondent No. 2. It was contended that unless the said amounts of sale tax, octroi and other levies were reimbursed to the petitioners, serious imbalance was created with respect to the manufacturers who had to pay sale tax, octroi and other levies and those manufacturers who had to pay no sale tax, octroi and other levies or who had to pay lower sale tax, octroi and other levies. The petitioners claimed that the said sale tax, octroi and other charges paid by them during the period November 1977 onwards in respect of imported oils supplied by the respondent No. 2 ought to be refunded to them and accordingly the refund was claimed.

9. Number of such Writ Petitions were filed in various High Courts by different Vanaspati manufacturers and also in the Supreme Court. All the petitions filed in various High Courts were transferred to the Supreme Court and the petitions were heard in Supreme Court in January 1982. During the said hearing, the Attorney General stated that the Government was willing to decide the grievances raised by the petitioners but it could not do so because of the pendency of the petitions filed by the various petitioners. In view of the said submission, the petitioners in the various petitions expressed their desire to withdraw the petition provided Government and the S.T.C. were willing to decide the matter fairly and objectively. In these circumstances, the said petitions were allowed to be withdrawn. The copy of the order passed by the Supreme Court on 8th February, 1982 is filed along with the petition.

10. In pursuance of the orders passed by the Supreme Court, the petitioner on 4th March, 1982 filed a representation before the respondents and copy of that representation is also produced along with the petition.

11. On 24th May, 1982, the Central Government constituted a committee known as Parmeshwaran Committee to go into the said representation filed by the petitioner and other manufacturers of Vanaspati and the said committee submitted its report sometime in December 1982. The copy of the report is also annexed with the petition. The said report was made available to the public in late December 1983. Till then, the petitioners were not aware about the

recommendations made by Parmeshwaran Committee.

12. The petitioners have not raised any grievance in this petition with respect to the recommendations made by Parmeshwaran Committee so far as reimbursement of freight, sales tax, octroi, etc. which are made applicable by the Central Government with effect from 8th August, 1983. However, the petitioners have contended that the recommendations made by Parmeshwaran Committee ought to have been made applicable from 1-11-1977. In this respect, the Committee has observed in para 6.4, as under :--

" Past Liabilities : The Associations and the individual representation had made submission in regard to the payment of past arrears. However, the Committee observed that this question was not expressly within the Terms of Reference as embodied in Government Order No. 12.10/80-C&P (Vol. I) dated 17th April, 1982. Accordingly, the Committee did not consider this matter."

13. It is the contention of the petitioner that, in fact the issue was referred to the Parmeshwaran Committee with respect to past arrears. But the Parmeshwaran Committee has failed to decide that issue. It is also contended that in view of the order passed by the Supreme Court, and the representations made by the petitioners on 4th March 1982, the issue regarding past arrears was well within the terms of reference.

14. The petitioner has contended that on 22nd December, 1983, the respondent No. 2 sent a letter to the petitioner making reference to the report of the Parmeshwaran Committee and stated that as advised by the Committee, the S.T.C. will have to enter with the contractual agreement with the petitioner. The copy of the agreement was enclosed and the petitioner was directed to return it after duly signing it. The copy of the letter and the copy of the agreement are annexed with the petition. So, according to the petitioner, only by the letter dated 22nd December, 1983, the petitioner became aware about the decision taken by the Government with respect to the reimbursement of freight charges and payment towards sale tax, octroi and other charges. The petitioner has contended that he got report of the Parmeshwaran Committee by the end of December 1983 and on reading the said report, the petitioner became aware of the fact that the Parmeshwaran Committee had not considered the question relating to the refund of the excess amount paid by the petitioner during the past.

15. The petitioner has contended that the petitioner withdrew the previous petition because the order of the Supreme Court dated 8th February, 1982 made it clear that the Central Government and the S.T.C. were prepared to consider the representation which the petitioner propose to make. The question relating to the refund of excess freight charges as well as sale tax, octroi and other levies relating to the past period were subject matter of the earlier petition filed by the petitioner and the other Vanaspati manufacturers. It was clear that all the questions which were subject matter of the said petitions would be the subject matter of the representation to be made and the said question had to be

considered by the Parmeshwaran Committee and by the respondents.

16. The petitioner has contended that the failure of the Parmeshwaran Committee and the respondents to consider the question of refund of past arrears amounted to non-exercise of jurisdiction which they ought to have exercised, also amounted to violation of the orders of the Supreme Court and was contrary to the whole basis on which the petitioner and other Vanaspati manufacturers withdrew the said petitions in the Supreme Court.

17. The petitioner has further contended that the Parmeshwaran Committee in principle had accepted the validity of the claim of the petitioner with respect to reimbursement of freight charges as well as sale tax and octroi because such reimbursements are recommended by the Parmeshwaran Committee and, in such circumstances, the reimbursement ought to have been given not only from 6th August, 1983 but from 1st November, 1977.

18. The petitioner has also contended that the respondents have selected the date 6th August, 1983 for implementation of recommendations of Parmeshwaran Committee, arbitrarily. There is no rational nexus to the objective sought to be achieved in fixing the date. The selection of the said date is violative of the provisions of Article 14 of the Constitution of India. It was incumbent on the respondent to act in fair and in reasonable manner and not to act in arbitrary manner. The recommendations of the Parmeshwaran Committee ought to have been made applicable to the period prior to 6th August, 1983, and from this point also, the decision of the Government is challenged by the petitioner.

19. The petitioner, therefore, has claimed refund of freight charges amounting to Rs. 1,08,16,704/- being the difference between actual freight paid by the petitioner and reimbursement made as per Ferguson formula. The petitioner has also claimed amount of Rs. 4,61,13,296/- being the amount of sale tax and octroi paid by the petitioner in respect of imported oils supplied by the S.T.C. to the petitioner during the period from 1st November, 1977 to 5th August, 1983. The petitioner has also claimed interest at the rate of 18 per cent per annum on these amounts. The petitioner has prayed that the writ of mandamus be issued against the respondent directing them to make applicable the Parmeshwaran Committee Report with effect from 1st November, 1977 and to refund the amounts towards freight charges, sale tax, octroi, etc.

20. The respondent by their affidavits in reply have disputed the stand taken by the petitioner. It is the contention of the respondent Nos. 1 and 3, that the objective behind allocation of imported edible oils to the Vanaspati manufacturers under statutory voluntary price control under the provisions of the Vegetable Oil Produces (Control) Order was to ensure regular availability of Vanaspati an essential commodity at uniform affordable prices to the consumers. Prior to 1-11-1977, the prices of imported oils allotted to Vanaspati units were fixed on a zonal basis and the selling prices of Vanaspati were also fixed on zonal basis. However, with effect from 1-11-1977, a new policy of pricing was introduced by

the Central Government. As per this policy, the imported oils were to be delivered at the uniform price including freight equalization charge of Rs. 260/- per ton. The Vanaspati units were allowed to arrange for transportation of imported oils by road and were granted reimbursement of freight charges on the basis of recommendation of M/s. Ferguson & Company with effect from 1-11-1977.

21. The respondent have further contended that because of the persistent requests from Vanaspati manufacturers to equalize the impact of sales tax and freight on supply of imported oils by the S.T.C. and because sale tax and freight charges varied from State to State and units to units, a fresh study was entrusted to M/s. Price Waterhouse & Company to evolve a method by which a uniform delivered price inclusive of sale tax and freight charges for issue of imported oils by the S.T.C. all over India to Vanaspati units could be arrived at. M/s. Price Waterhouse & Company submitted their comprehensive report to respondent No. 2 on freight and sale tax reimbursement in June 1979.

22. The respondent have further contended that besides the report of M/s. Price Waterhouse & Company, Ministry of Commerce also entrusted a fresh study to Bureau of Industrial Cost & Prices in May 1979 to enquire into the entire cost structure of Vanaspati industry. Among the terms of reference Bureau of Industrial Cost and Prices was also requested to give their considered view on the desirability as well as the feasibility of uniform tax paid prices of imported oils to all the units throughout the country and rationalization of road and rail freight reimbursement for the transportation of oils from various S.T.C. depots to the units.

23. It is further contended by the respondent Nos. 1 and 3 that between the period from November 1977 to October, 1986, there was no control on Vanaspati prices in the country. During this period, the Vanaspati units (including the petitioner) practiced voluntary price restraint and fixed their own prices according to brand preferences of the consumers and short term demand and supply factors. Whereas the imported oil was supplied to the industries at a concessional rate fixed by the Central Government.

24. The respondent have further contended that after the decision of the Supreme Court on 8-2-1982, the representations of the Vanaspati manufacturers including that of the petitioner were received and were considered by the Parmeshwaran Committee which was constituted in pursuance of the order dated 8-2-1982 passed by the Supreme Court. The Parmeshwaran Committee held detailed discussion not only with Apex bodies of Vanaspati industry, namely, Vanaspati Manufacturers' Association of India and Indian Vanaspati Producers' Association but also with the individual Vanaspati manufacturers who submitted their representation to the Committee. Discussion were also held with the S.T.C. as well as with M/s. Price Waterhouse & Company

25. The respondent have further contended that after detailed deliberation, the

Parmeshwaran Committee recommended the reimbursement of freight sale tax and other statutory local levies, such as, Octroi as per the scheme devised by M/s. Price Waterhouse & Company so as to achieve the desired objective of uniform delivered cost of imported oils. These recommendations of the Committee were implemented by the Government with effect from 6-8-1983 and accordingly the period commencing from 6-8-1983 to 1-12-1988, the respondent No. 2 reimbursed the amount of sale tax freight and octroi, etc. as per the recommendations of the Committee and updated by M/s. Price Waterhouse & Company. However, the Parmeshwaran Committee observed that, as regards past arrears, the question was not expressly within the terms of reference made to it and it did not consider that matter.

26. The respondent Nos. 1 and 3 have denied that the report of the Parmeshwaran Committee showed that the grievances made by the petitioner in Writ Petition No. 843/1980 were fully justified. The Parmeshwaran Committee has categorically recommended that the scheme in respect of reimbursement of road freight may continue and for that the formula suggested by Price Waterhouse & Company may be accepted after updating the rates. So, there was no recommendations of quashing the freight equalization scheme.

27. The respondent Nos. 1 and 3 have also contended that the petitioners has claimed the relief of reimbursement of past arrears but has not stated in the petition that it has not recovered the amount claimed in the Writ Petition from the parties to whom it has sold the Vanaspati. The petitioner would have passed on the extra cost to the consumers. In such circumstances, granting the relief for the past period would amount to unjust enrichment of the petitioner and it will not reach to the consumers.

28. The respondent have contended that they have not violated the orders of the Supreme Court. They also denied that any action on their part was contrary to the whole basis on which the petitioners and other Vanaspati manufacturers withdrew their said petitions. The respondents and the Parmeshwaran Committee had considered all representations which were received from various parties including that of the petitioner and hence had, in fact, done what was required from them to be done vis-a-vis the said representation.

29. The respondent Nos. 1 and 3 have denied that there was total non-application of mind while fixing the date 6-8-1983 for implementation of the Parmeshwaran Committee Report. The Report was placed before the Government authorities, namely, (a) Controller of Accounts, Financial Adviser and Joint Secretary (Food & Civil Supplies); (2) The Secretary (Civil Supplies); (3) The Chief Economic Adviser and the Secretary, Government of India in the Ministry of Food and Civil Supplies. The Report was considered at various levels of the concerned Ministries of the Central Government and it was ultimately decided to accept the same from 6-8-1983.

30. The respondent Nos. 1 and 3 have further contended that the Joint Secretary

in the Ministry of Food and Civil Supplies in his note dated 2-7-1983 observed :

"It is also suggested that the revised arrangement may be given effect to prospectively as recommended by STC (76/C) as not only the earlier surpluses have been credited to the Government but the Vanaspati unit have also passed on the extra cost to the consumers and any retrospective benefit cannot be passed on the consumers."

6th August, 1983 is the date on which the recommendations of the Committee were accepted by the Government. As the petitioner was not put to any loss, there is no question of violation of provisions of Article 14 of the Constitution of India.

31. The respondent Nos. 1 and 3 have contended that the petitioner has taken the benefit of Government decision dated 6-8-1983 and the Writ Petition is filed in the month of December 1986, after a period of three years, and therefore, the Writ Petitions suffers from delay and laches. The respondents have also relied upon the judgment of the Andhra Pradesh High Court delivered on 6-10-1988 in Writ Petition No. 13078/1984 between M/s. Tungabhadra Industry Ltd. v. Union of India and others, and copy of that judgment is enclosed.

32. The main thrust of the argument of the learned Counsel for the petitioner is that a promise was given by the respondent before the Supreme Court and that promise is not fulfilled by the respondents. The petitioner has withdrawn the previous petition because of the promise given by the respondents. So, the petitioner has altered his position relying on the promise given by the petitioner and when the respondents have not fulfilled the promise, the doctrine of promissory estoppel has to be made applicable and the petitioner, therefore, is entitled to a writ of mandamus directing the respondent to reimburse the freight charges, sale tax and octroi paid by the petitioner on purchase of imported oil from the respondent S.T.C.

33. In support of this contention, the learned Counsel for the petitioner has relied upon the ruling of the Supreme Court in the matter between Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . He has argued that the Supreme Court in this matter has specifically held that the doctrine of promissory estoppel is applicable against the State also. In this ruling, the entire law regarding doctrine of promissory estoppel is fully discussed and this ruling is further relied upon in the matter between Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., . He has also relied upon the ruling of the Supreme Court in the matter between Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, .

34. The learned Standing Counsel for the respondent Nos. 1 and 3 has argued that it is necessary to see what assurance was given before the Supreme Court when the order dated 8-2-1982 was passed. It is the contention of the learned Standing Counsel for the respondent Nos. 1 and 3 that whatever assurance was given before the Supreme Court, was only with respect to consideration of the

representations made by the petitioner and other manufacturers of Vanaspati carefully and objectively from all relevant points of view including the question which are covered by the undertaking given by the petitioners which had lapsed. There was no assurance that the respondents would reimburse the freight charges, sale tax and octroi and that from a particular date. The only assurance was given that the matter would be reconsidered carefully and objectively and that assurance is complied with. Only because the result of such consideration is not as per expectation of the petitioner, it cannot be said that the promise given was not fulfilled.

35. The learned Standing Counsel for the respondent Nos. 1 and 3 has relied upon the ruling of the Supreme Court in the matter between Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), , and has argued that the representation made must be clear and unambiguous and not tentative and uncertain. Here there was no representation that the respondents will reimburse the freight charges, sale tax and octroi. So, the petitioner cannot contend that the doctrine of promissory estoppel has to be made applicable in this case to hold that the respondents have failed to comply with the representation made before the Supreme Court and, therefore, the respondents are liable to make the reimbursement.

36. Here it has to be noted that there was no written assurance or promise given before the Supreme Court by either party. Whatever transpired before the Supreme Court is mentioned in the order passed by the Supreme Court on 8-2-1982. So, that order only can spell out what representation was made before the Supreme Court by the respondents and in consequences what the petitioner had agreed to do. The order reads as follows :---

"In these writ petitions, Counsel for the petitioners have expressed a desire to withdraw the petitions provided that the Central Government and the State Trading Corporation are prepared to consider the representations which they propose to make. The learned Attorney General agrees that representations which the petitioners and other manufacturers of Vanaspati may make will be considered carefully and objectively from all relevant points of view including the questions which are covered by the undertakings given to the petitioners which have now lapsed. We allow the petitioners to withdraw the writ petitions. We hope that the Central Government and the State Trading Corporation will take a fair and final decision on the representations of the petitioners and other manufacturers of Vanaspati as expeditiously as possible, preferably before September 1, 1982. The petitioners agree that they will make their representations within one month from today. If the Central Government decides to appoint a committee to go into the various questions which arise in these petitions the committee, we are sure, will give a proper hearing to the manufacturers of Vanaspati individually, if necessary. The amounts payable towards inland freight equalization charges" which the petitioners or some of them did not pay as a result of the stay orders passed by various High Courts

became payable when the stay orders were vacated. Those amounts shall be paid subject to such convenience as the State Trading Corporation may grant. We recommend that such of the petitioners who are liable to pay the amounts as aforesaid, may be granted the facility of paying the same in four equal monthly installments with interest at 12% per annum from the due date of payment with monthly rests. There will be no order as to costs."

37. The first para of the order mentions the statements made by the learned Attorney General and which clearly indicates that the only assurance given was that any representation which the petitioners and other manufacturers of Vanaspati may make will be considered carefully and objectively. There was no assurance that the respondents will reimburse the amounts of freight charges, sale tax and octroi. Even the Supreme Court has not issued any directions to that effect and only a hope is expressed that the Central Government and the S.T.C. will take a fair and final decision on the representations of the petitioners and other manufacturers of Vanaspati as expeditiously as possible.

38. So, it will be very clear that the only assurance was given that the matter will be considered from all angles carefully and objectively and for that purpose Parmeshwaran Committee was appointed by the Central Government to make recommendations with respect to dispute regarding reimbursement. The Parmeshwaran Committee made the recommendations and the same were accepted by the Central Government and the Central Government decided to implement them with effect from 6-8-1983. In such circumstances, the main dispute remains with respect to the period from 1-11-1977 to 5-8-1983 and the petitioner has contended that the recommendations made by the Parmeshwaran Committee ought to have been made applicable with effect from 1-11-1977.

39. The report of the Parmeshwaran Committee with respect to the past arrears is silent because the Committee took the stand that that issue was not specifically referred to the Committee for making recommendations. Whether this view taken by the Parmeshwaran Committee is correct or not is not a question to be considered in this petition because the Parmeshwaran Committee was appointed by the Central Government to make recommendations. It was not a Committee to adjudicate the issue between the respondents and the petitioner. After receiving the recommendations of the Committee the Central Government had to take independent decision with respect to the recommendations made and other circumstances.

40. So far as accepting the recommendations, the Central Government took the decision that those be made applicable with effect from 6-8-1983 and so far as past arrears, the Central Government has again taken the decision even though there was no recommendation on this aspect of the case from the Parmeshwaran Committee that the past arrears should not and need not be paid. So, here again though there was no recommendation from Parmeshwaran Committee, the matter is considered by the Central Government and then a decision is taken. It cannot be said that the matter was not considered as assured before the

Supreme Court.

41. The respondent Nos. 1 and 3 have filed on record copy of the notings of the various authorities on considering the report of the Parmeshwaran Committee along with the affidavit of the Deputy Director, Directorate of Vanaspati, Vegetable Oil and Ministry of Civil Supplies, Consumer Affairs and Public Distribution, Government of India. The statements made by the respondent Nos. 1 and 3 in their affidavit in reply that the matter was fully considered by the various officers and Secretaries before arriving at a conclusion that the past arrears need not be paid is fully supported this copy of notes. The extract from the File No. 4/1/83-EOP is from page 305 to 317.

42. It is noticed that the whole question was considered at various levels by the Government Officers, by the Chief Economic Advisor of the Union of India and even by the officers of the S.T.C. The Chief Economic Advisor has specifically observed that freight is not a very large component of the cost of Vanaspati. With respect to reimbursement towards sale tax, octroi and freight charges, it is observed that the revised arrangements may be given effect to prospectively, as recommended by S.T.C. (76/C), as not only the earlier surpluses have been credited to the Government but the Vanaspati units would have also passed on the extra cost to the consumers and any retrospective benefit cannot be passed on to the consumers.

43. So, on going through this document it will be seen that the report was considered at various levels by different officers and Secretaries and then on certain reasons, it was decided that the past arrears should not be reimbursed. Whether the reasons given are correct, sufficient and proper, or not, is not the question now. The question is whether the matter was considered carefully and objectively as assured before the Supreme Court and it does appear that the matter was considered carefully and objectively.

44. So, for the purpose of the issue regarding application of doctrine of promissory estoppel, the petitioner has failed to prove that promise given by the respondent before the Supreme Court was not fulfilled. It may be that because of the promise given, the petitioner withdrew its previous Writ Petition No. 843/1980 and altered his position relying on the promise given. But merely on that ground, the petitioner cannot contend that the petitioner is entitled for reimbursement of the freight charges which he had claimed in the previous Writ Petition and which he could not receive because of the withdrawal of the previous Writ Petition. It was understood between the parties that the petitioner would withdraw the petition and the respondent would consider the matter carefully and objectively from all points. But there was no further assurance that there would be reimbursement of freight charges, etc.

45. So, we find substance in the argument of the learned Counsel for the respondent that whatever assurance was given before the Supreme Court, as noted in the order dated 8-2-1982, was fulfilled by the respondents and no case

of application of doctrine of promissory estoppel is made out by the petitioner.

46. In the present petition, the petitioner has claimed reimbursement of freight charges contending that the petitioner had incurred actual freight charges more than what reimbursement was given to the petitioner as per the Ferguson formula. So, the difference between the actual freight charges incurred by the petitioner and the amount reimbursed by the respondents is being claimed and the second claim is with respect to payment of sale tax and octroi by the petitioner on the raw imported oil purchased by the petitioner from the S.T.C.

47. It is averred in the Writ Petition that in the previous Writ Petition No. 843/1980, an amendment was carried out and the reimbursement towards sale tax and octroi was also demanded. These averments are in para No. 14 of the Writ Petition. However, the petitioner was called upon to file on record copy of Writ Petition No. 843/1980. The petitioner has filed on record that copy on page No. 241 to page No. 281 and it is noticed that no such amendment was carried out in the previous Writ Petition and the claim with respect of reimbursement of sale tax and octroi was not made.

48. The petitioner has filed on record a statement on pages 282 and 283 wherein the cause of action in Writ Petition No. 843/1980 and the cause of action in the present petition and the relief claimed in the previous writ petition and in the present writ petition are mentioned in the tabular form and there also it does not appear that any amendment was carried out in the previous writ petition to make the claim regarding reimbursement of sale tax and octroi. The learned Counsel for the petitioner has fairly conceded that the statements made in para 14 of the petition are not correct. There was no claim for reimbursement of sale tax and octroi in the previous writ petition and that claim is being made for the first time in the present writ petition. This aspect of the case has different facets and those will be considered at a later stage.

49. It is the contention of the petitioner that the petitioner was having his factory at Amalner, a place about 370 kms. away from Mumbai. The petitioner had to lift the supply of imported edible oil made available by the S.T.C. from Mumbai and had to transport it from Mumbai to Amalner by road. The Ferguson formula which was made applicable from 1-11-1977 by the respondent was not sufficient to reimburse the entire freight charges. So, the petitioner had to incur extra costs on freight for transporting the oil from Mumbai to Amalner. Not only that the petitioner had to pay Rs. 260/- Per Metric Ton by way of freight equalization charges to the S.T.C. As against this, there were certain manufacturers who were not required to spend anything for transporting the oil from the depot of the S.T.C. to their factory because the depots were situated just near the factories of such manufacturers. These manufacturers were only paying the freight equalization charges at the rate of Rs. 260/- Per Metric Ton. In such circumstances, the cost of acquiring raw material i.e. the imported edible oil was not the same for the petitioner and some other manufactures who were having the factories away from the port or depot as the cost incurred by the other

manufacturers having their factories near the depot. At the same time, the prices of Vanaspati were fixed at same level for all the manufacturers. So, ultimately the petitioner and other manufacturers like him were not given equal treatment and they were made to suffer losses by incurring the freight charges.

50. In the same way, it is contended by the petitioner that the petitioner and some of the manufacturers in different States had to pay sale tax and octroi on the oil purchased from the S.T.C. The rates of sale tax and octroi were not same in all States. In some States, there was no sale tax and in some States, the sale tax was at lower rate. As the prices of Vanaspati were fixed without considering this aspect of the case regarding payment of extra sale tax and octroi, the petitioner and other manufacturers like him were again suffering losses and there was no equal treatment to all the manufactures and, therefore, the petitioner is entitled to reimburse all actual freight charges, sale tax and octroi paid by him.

51. To counter this argument of the petitioner, it is contended by the respondent that the amount of Rs. 260 Per Metric Ton which was being collected from all manufacturers towards freight equalization charges was being included in the price of imported oil supplied by the S.T.C. and, therefore, it was the component of the cost which was taken into consideration at the time of fixing final Vanaspati price. The learned Counsel for the respondent has argued that whatever extra charges the petitioner had incurred than the amount of Rs. 260/- Per Metric Ton were negligible, as observed by the Chief Economic Advisor in his notes. It was not possible to make 100 per cent reimbursement. However, to overcome the grievance of the petitioner and other manufacturers, ultimately the Parmeshwaran Committee formula is adopted and this grievance is settled.

52. It is also argued by the learned Counsel for the respondent Nos. 1 and 3 that the price of the Vanaspati was not being fixed by the Central Government. But the price of the Vanaspati was being fixed by the manufacturers themselves because they had adopted the scheme of voluntary price restriction as contemplated under the order issued under the Essential Commodities Act. The petitioner himself has stated in para 11 of the petition that during July 1977 to March 1979, the manufacturers of Vanaspati observed all India voluntary price control system. From April 1979 to December 1980, there was no price control and again from January 1981 there was in existence the voluntary price control and this continued till October 1986. From November 1986, there is no price control on the prices of Vanaspati. So, if this situation is taken into consideration, the petitioner cannot contend that the price was controlled by the Central Government and, therefore, there was inequality. There was voluntary price control by the manufacturers of the Vanaspati. While fixing the prices, they must have taken into consideration all the components of costs incurred by the manufacturers for the manufacture of Vanaspati.

53. The other aspect argued by the learned Counsel for the respondents with respect to this matter is that if the price of Vanaspati included the cost of sale

tax, octroi and freight charges, then reimbursement of these to the manufacturer would amount to unjust enrichment because that benefit now cannot be passed on to the consumers who are scattered all over nation. Here it is worth noting that when this point was taken by the respondent in the affidavit in reply and again in additional affidavit filed by the respondent, in the counter affidavit filed by the petitioner, there is no reference to the inclusion or not of sale tax and octroi in the final price fixed by the manufactures for Vanaspati. In the rejoinder filed led by the petitioners on page 318, there is only reference to freight charges. There is no reference to sale tax and octroi.

54. When the price was being fixed by the manufactures under the voluntary price restriction scheme, then it was the duty of the petitioner to produce on record the relevant data to show that in the price so fixed the incident of sale tax and octroi was not taken into consideration. The petitioner had failed to do so and, therefore, the stand taken by the respondent that if any reimbursement is directed towards payment of sale tax and octroi, it would amount to unjust enrichment of the petitioner, has to be accepted.

55. Merely because the petitioner states that he has spent so much amount on the payment of sale tax and octroi and that there was no scheme for refund of sale tax and octroi prior to 6-8-1983, it cannot be said that the petitioner is entitled to claim the reimbursement. It was necessary for the petitioner to show that actually this component of cost i.e. sale tax and octroi paid by the petitioner on the imported oil purchased from the S.T.C., was not included in the final price of the Vanaspati sold by the petitioner. Then only he can claim the reimbursement. So, the claim of reimbursement of sale tax and octroi fails on this ground.

56. So far as claim of reimbursement of freight charges, one point is already mentioned above that the component of freight charges in total cost of edible oil is very small especially when the part of the freight charges are already reimbursed to the petitioner by applying the Ferguson formula. The claim, therefore, has been rightly rejected by the respondents while making applicable the Parmeshwaran Committee Report.

57. Not only that, it also has to be noted that the petitioner had claimed the reimbursement of freight charges in the previous Writ Petition No. 843/1980. The relief sought in the previous petition were as under:---

"(i) to withdraw and/or cancel the scheme pertaining to recovery of equalization of freight from the Purchasers of the imported oils;

(ii) to refund to the petitioners all the amounts recovered from them by way of freight equalization or in the alternative to reimburse to the petitioners the actual amount so expended by them from transporting the oils to Amalner (less the amounts already paid to the Purchasers) as per particulars hereto annexed and marked Exhibit "D" . "In the present petition, the relief sought are:

"(i) Apply the recommendations of the Parmeshwaran Committee in respect of freight charges, refund of sales tax and octroi to the period commencing from November 1, 1977 to August 5, 1983.

(ii) Refund to the petitioners the sum of Rs. 1,08,16,704/- payable as freight charges which were due to be refunded to the petitioners (details of the said amount of Rs. 1,08,16,704/- are in the Exhibit "E" hereto) with interest thereon at the rate of 18% per annum from the date of the petition till the date of payment."

The next relief is with respect refund of sale tax and octroi.

58. So, in the previous petition, the petitioner had claimed the refund of the freight charges actually incurred by him and in the present petition also, the same relief is claimed. In the previous petition, the amount was less only because the period covered in the previous petition was shorter than the period covered in the present petition. So with respect to freight charges, the stand taken by the petitioner in the present petition and the previous petition is the same. The subject matter of both the petitions is the same and, in such circumstances, the petitioner has withdrawn the previous petition unconditionally and that aspect has to be considered to find out whether now the petitioner can claim the reimbursement of freight charges.

59. The learned Counsel for the petitioner has argued that the cause of action and subject matter of the present petition is not same as the cause of action and subject matter of the previous petition and, therefore, mere withdrawal of the previous petition will not be a ground to reject the claim now being made by the petitioner. In this respect, he has relied upon ruling of the Supreme Court in the matter between Vallabh Das Vs. Madan Lal and Others, . While considering the scope of Order XXIII, Rule 1 of the Code of Civil Procedure, 1908, and especially the term "subject matter", Their Lordships of the Supreme Court have observed:---

"The expression "subject matter" is not defined in the Civil Procedure Code. It does not mean property. That expression has a reference to a right in the property which the plaintiff seeks to enforce. That expression includes the cause of action and the relief claimed. Unless the cause of action and the relief claimed in the second suit are the same as in the first suit, it cannot be said that the subject-matter of the second suit is the same as that in the previous suit."

60. We have already pointed out that the relief sought in both Writ Petitions are the same with respect to reimbursement of freight charges. In the previous petition, there was challenge to the freight equalization charges and then there was claim regarding reimbursement of freight charges. In the present matter also, the petitioner has raised grievance with respect to freight equalization charges contending that the petitioner had to pay the freight equalization charges and also had to incur excess freight charges and, therefore, the petitioner is entitled to claim the reimbursement of freight charges. So, the

cause of action and relief in both petitions so far as claim of reimbursement of freight charges is the same and, therefore, subject matter in both the petitions is the same.

61. The argument of the learned Counsel for the petitioner, that here the subject matter is different so far as reimbursement of freight charges is concerned, cannot be accepted. The reimbursement of freight charges is claimed in both the petitions on the same line of pleading. Only the intervening circumstance is that there is the report of Parmeshwaran Committee. But that has nothing to do with the claim regarding reimbursement of freight charges for the period from 1-11-1977 to 5-8-1983. The reasoning given by the petitioner in both the petitions for the refund of freight charges is the same and, therefore, the subject matter in both the petitions is the same.

62. In such circumstances, when the petitioner has sought the withdrawal of the previous petition, then he cannot file fresh petition on the basis of same subject matter. In support of this contention, the learned Counsel for the respondent has relied upon the ruling of the Division Bench of Andhra Pradesh High Court in Writ Petition No. 13078/1984 decided on 6th October 1988. Copy of the judgment is produced on record from page Nos. 172 to 203. It is worth noting that in the said petition before the Andhra Pradesh High Court, the petitioner has raised the same issues which are raised in the present petition because that petition was also by manufacturer of Vanaspati for claim of reimbursement of freight charges and sale tax based on the same facts.

63. The learned Counsel for the respondent has also relied upon the ruling of the Supreme Court in the matter between Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, . The Apex Court in this ruling has observed in para 9, as under:---

"We are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above."

It is, thus, clear that if a writ petition is to be withdrawn, then the petitioner must seek leave of the Court to file fresh writ petition on the same cause of action or on the same subject matter. Unless that leave is obtained, a fresh petition would not be maintainable. In the light of this decision of the Supreme Court, the views expressed by the Division Bench of Andhra Pradesh High Court in Writ Petition No. 13078/1984 are aptly applicable to the present writ petition also and this writ petition is not maintainable because the previous writ petition was withdrawn without seeking leave of the Court to file fresh writ petition on the same cause of action. The petitioner, therefore, cannot claim reimbursement of freight charges in the present petition.

64. Here one more circumstance has to be taken into consideration. The petitioner has specifically pleaded in the petition again and again that the

petitioner came to know about the recommendations made by the Parmeshwaran Committee in December 1983. The petitioner was fully aware that the Parmeshwaran Committee had not recommended reimbursement of past arrears and had held that the issue was not referred to the Parmeshwaran Committee. Not only that the petitioner was also aware that the Central Government had decided to make applicable the recommendations of the Parmeshwaran Committee with effect from 6-8-1983 and had decided not to make reimbursement of the freight charges of the period prior to 6-8-1983.

65. So, it was well within the knowledge of the petitioner that the claim regarding refund of freight charges was rejected by the Central Government and the petitioner got this knowledge, as per his own contention, in December 1983. However, the petitioner withdrew the Writ Petition No. 843/1980 on 17-1-1984, that means, after getting full knowledge that the claim of reimbursement of freight charges was rejected by the Central Government. This fact is borne out from the statement which the petitioner has filed on record at page 282 to which reference is made earlier. In this statement, the cause of action for filing the present Writ Petition No. 240/1989 (i.e. Old No. 2960/1987 of Bombay Bench) is shown at Serial No. 2, as under:---

"Withdrawal of Petition No. 843/80 by the petitioners on 17-1-1984 before Bombay High Court, pursuant to order of the Supreme Court."

66. So, when the petitioner withdrew, the previous Writ Petition No. 843/1980, he was knowing that the claim regarding refund of freight charges was rejected by the Central Government. Even then the petitioner did not seek any leave from the Court for filing fresh petition on the same cause of action while withdrawing that petition on 17-1-1984. It may be that the petitioner had to withdraw the petition because of the statement made before the Supreme Court on 8-2-1982. But when the actual moment of withdrawal came, the petitioner was fully aware that the claim for refund of freight charges was rejected by the Central Government and even then without taking any precautionary measures the petitioner withdrew Writ Petition No. 843/1980 on 17-1-1984. The withdrawal of that petition cannot be cause of action for filing of fresh petition. But withdrawal of that petition definitely comes in the way of the petitioner for filing a fresh petition on the same subject matter and, therefore, the petitioner is not entitled to claim reimbursement of freight charges.

67. The learned Counsel for the respondents has also argued that the present petition is not maintainable because of delay and laches. He has argued that the petitioner, as per his own contention, came to know in December 1983 that the respondent-Central Government was not allowing the reimbursement of freight charges, sale tax and octroi of the period from 1-11-1977 till 5-8-1983 and even then the petition is filed on 11-12-1986, more than three years after the petitioner got the knowledge, and the petitioner has nowhere explained this delay.

68. The learned Counsel for the respondents has also argued that the previous petition was filed in July 1980 and in that petition no relief for reimbursement of sale tax and octroi was claimed for the period from 1-11-1977 till the date of filing of the writ petition. This relief is for the first time claimed in the present petition in December 1986 and the petitioner has not explained anywhere as to why such a delay was caused in making the claim with respect to reimbursement of sale tax and octroi. This delay definitely defeats the claim of the petitioner.

69. The learned Counsel for the petitioner has argued that the petitioner came to know about the report of the Parmeshwaran Committee in December 1983 and then the petition is filed in December 1986. This cannot be called undue delay. However, such an argument cannot be accepted. It is already pointed out that the previous Writ Petition No. 843/1980 was pending in the Court till 17-1-1984. On that day, it was withdrawn by the petitioner. Then he was fully aware regarding rejection of claim of reimbursement of freight charge. If that petition had to be withdrawn because of the statement made before the Supreme Court, the petitioner could have filed immediately a fresh petition for the claim of reimbursement of freight charges because the same was rejected and the rejection came to the knowledge of the petitioner in December 1983. There was no reason for the petitioner to wait for three years to file fresh petition. The delay in claiming the refund of freight charges is definitely unreasonable and undue.

70. So far as the claim regarding refund of sale tax and octroi, there is absolutely no explanation from the petitioner. If the amounts were paid in each year from 1977 onwards, then definitely there is inordinate delay in claiming that amount in 1986 especially when the petitioner was receiving the reimbursement of octroi and sale tax from 6-8-1983 onwards because of the recommendations made by the Parmeshwaran Committee. There is at all no explanation from the petitioner regarding the delay caused in filing the writ petition. It is well settled law that inordinate and undue delay will defeat the claim even in writ petition under Article 226 of the Constitution of India. Here there are no circumstances for us to take any other view especially when the claim is mere money claim and otherwise it is barred under the law of limitation for petitioner to seek any relief in Civil Court. Thus, from this point of view also, the petition is not maintainable.

71. In the result, the petition fails and the same is dismissed. Rule is discharged. The petitioner to pay cost of the respondents.