

Before K. Kannan, J.

**M/S FATEH COLD STORAGE (P) LTD. DISTT.
LUDHIANA,—Appellant**

versus

STATE OF PUNJAB AND ANOTHER,—Respondents

CWP No. 17995 of 2002

8th December, 2011

*Constitution of India - Art. 226 - Electricity Supply Act, 1948
- Promissory estoppel - State Government announced 30% incentive
on capital investment for people enjoying in setting up cold storage
industries - Petitioner's case recommended for release of subsidy -
Unit started production on 26.3.2000 - State Government refused to
release subsidy on the ground that policy had been modified -
Petitioner filed writ petition - Petition allowed holding that
promissory estoppel would apply against state - Policy decision
upheld but would operate prospectively only.*

Held, That as a matter of principle in the grant of subsidies, there could be no vested right, for, if there is a decision taken to withdraw a subsidy, no person could complain of the same. An exception could be only in situation where on the pronouncement of a policy, a person acts on such a promise and alters his status so that if he has suffered a detriment by further assessment on the expectation of an investment incentive or a subsidy, the State could be barred by the principle of promissory estoppel.

(Para 4)

Further held, That on the same line of reasoning, I would hold that the decision of the State that the amount of subsidy obtained by the industrial unit under any other scheme of the Government shall be deducted and which was sought to be applied through a communication dated 11.12.2002 could be applied only prospectively.

(Para 7)

Sanjeev Sharma, Senior Advocate, with Mr. Vikram Vir Sharda,
Advocate, *for the petitioner.*

Navdeep Sukhna, DAG, Punjab.

K. KANNAN, J.

(1) The petitioner seeks for quashing of the order issued by the 2nd respondent on 05.03.2001 and 13.09.2001 slicing the entitlement of the petitioner (an industrial unit), as being entitled only to one scheme of investment incentive through the impugned orders. It was contended that since the petitioner had already availed of the subsidy from NABARD to the tune of Rs.36,17,500/-, he was entitled to the balance of amount of Rs.13,82,500/-.

(2) The petitioner's grievance is that in a slew of measures announced by the State Government for engaging the people to set up industries in cold storage, the State had offered 30% incentive on the capital investment and there had been even a recommendation for release of the subsidy made by the Deputy Director (Incentive) after a personal inspection and assessment of the investments made in the unit. It had been assessed that the unit had gone into production on 26.03.2000 and on submission of a claim on 19.07.2000, the petitioner was entitled to 30% investment which worked out to Rs.49,48,500/-. It was not however fully released to the petitioner on a specious ground that the Government modified its scheme on 11.12.2002, in terms of which it was decided as follows:-

- “(i) While sanctioning Investment Incentive (Capital Subsidy), the amount of subsidy obtained by the unit under any other scheme of the Government (Except for the cases covered under Prime Minister Rozgar Yojna Scheme which provide for additional Capital Subsidy under the State Incentive Scheme to such unit) shall be deducted/adjusted by the sanctioning authority.
- (ii) In case of expansion under rule 2.5, the incentive shall be granted if the expansion has been undertaken as prescribed under rule 5.1 and fixed capital investment has been certified by the concerned financial institutions. However, there will be no restriction on the number of times unit can avail/claim the incentive on expansion.

50% increase in the Fixed Capital Investment is to be seen over and above fixed capital investment immediately proceeding the expansion.”

(3) The learned senior counsel appearing on behalf of the petitioner would contend that the petitioner had made the investment only at the initial promise made by the respondents that the petitioner would be entitled to 30% subsidy on the investment made and even at that time they ought to have known that NABARD had also assured incentive for cold storage plans. It was not as if the writ petitioner was making any suppression of the fact and what had been secured from NABARD was an independent incentive which had no bearing to what the State was holding out. In any event, if there was a change in the policy which had been made, it could be applied only for the units which had been set up subsequent to the changed policy and it cannot be denied to the petitioner, who on the date when the recommendation was made for the entitlement of subsidy of 30% of the capital, there had been no decision for deducting any subsidy realized from any other Government agency.

(4) As a matter of principle in the grant of subsidies, there could be no vested right, for, if there is a decision taken to withdraw a subsidy, no person could complain of the same. An exception could be only in situation where on the pronouncement of a policy, a person acts on such a promise and alters his status so that if he has suffered a detriment by further assessment on the expectation of an investment incentive or a subsidy, the State could be barred by the principle of promissory estoppel. In this case, there is no denying the fact even at the time when the petitioner was making his application for grant of State subsidy, there was already a policy of NABARD for subsidy and if under the terms of the policy, a person was entitled to the 30% incentive of the capital investment, any decision to make deductions for subsidies obtained from the Central Government or through any other agency could be operative only from the date when the amended policy came into force. The petitioner could not have been denied what he was already promised.

(5) This view obtains its legitimacy through the judgment of the Hon'ble Supreme Court in **Kusumam Hotels (P) Ltd. versus Kerala State Electricity Board (1)**, where the Hon'ble Supreme Court was dealing with case of a new policy of concession announced by a State under which tourism was treated as an industry and concessions had been extended

(1) 2008 (0)AIJEL-SC-41528

to tourism industry that included investment subsidy and also some concession in electricity charges upto 10% and other incentives. A policy statement also was that the State Electricity Board would grant tariff concessions to classified hotels and motels consequent on the declaration of the State. The appellant in that case had set up and upgraded the hotels and motels. Subsequently the industrial tariffs granted to the hotels were cancelled and the concession which was declared already stood suspended. Dealing with the contention that the State was entitled to change or alter its economic policies, the Hon'ble Supreme Court held that the doctrine of promissory estoppel would apply against a State and when any policy decision was taken withdrawing any concessions, it would normally operate prospectively only. In order to give retrospective effect, it has to be so stated specifically and it should be in exercise of a statutory power of issuing such directions. Dealing with the provisions of the Electricity Supply Act of 1948, the Court held that the Act does not authorize the State to issue any direction with retrospective effect. It held that the G.O. on the basis of which some concessional tariffs were withdrawn, would be operative only subsequent to the date of the coming into force of the G.O.

(6) In **MRF Ltd. versus CST (2)**, the Hon'ble Supreme Court held that a tax concession offered by the State on the basis of which large investments had been made could not be allowed to be withdrawn on the principle of promissory estoppel and it would apply also to statutory notifications.

(7) On the same line of reasoning, I would hold that the decision of the State that the amount of subsidy obtained by the industrial unit under any other scheme of the Government shall be deducted and which was sought to be applied through a communication dated 11.12.2002 could be applied only prospectively. In other words, it could not be applied to cases where an industry was claiming the privilege of subsidy prior to that date of the existing policy. I would, therefore, uphold the contention of the petitioner and direct the respondents to release the balance of amount as already promised within a period of 8 weeks with interest at 6%.

(8) The writ petition is allowed on the above terms.

J.S. Mehndiratta

(2) (2006) 8 SCC 702