(2019) 10 CHH CK 0023

Chhattisgarh High Court

Case No: Writ Petition (T) No. 92 Of 2012, 36 Of 2013

MSP Sponge Iron Limited And Ors		APPELLANT
	Vs	
State Of Chhattisgarh And Ors		RESPONDENT

Date of Decision: Oct. 4, 2019

Acts Referred:

- Customs Act, 1962 - Section 25

Hon'ble Judges: P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench: Division Bench

Advocate: Neelabh Dubey, Smiti Sharma, S.C. Verma, Vikram Sharma

Final Decision: Allowed

Judgement

P. R. Ramachandra Menon, CJ

1. Following are the important questions to be considered and answered in these writ petitions :

(a) Can the State turn its back on the entrepreneurs (who set up the industries based on the promise as to the concessions to be extended in terms the

Industrial Policy for the year 2004-2009) withdrawing the benefits after the expiry of the Policy period and after giving shape to and commencement

of a new Industrial Policy for the period 2009-2014; unilaterally re-writing the terms of the expired Policy and the relevant Rules, to deny/curtail the

benefits under the former Policy and retract from the promise already made ?

(b) Can the exercise pursued by the State be accepted as 'rectification of mistake', as sought to be projected by them ?

(c) Can such a deviation / correction as to the change in Policy be upheld in respect of the past transactions ?

(d) Is it not hit by the principles of 'Legitimate Expectation' and 'Promissory Estoppel' ?

2. Apart from the question of law, it may be necessary to advert to the sequence of events as well, at least to a limited extent, so as to make a proper

analysis and appreciation on the issues involved. This is more so, since the Petitioners have raised the plea of 'legitimate expectation' and 'promissory

estoppel' in these cases; thus, necessitating scrutiny as to whether the pre-conditions to have the said principles attracted stand established ?

3. The State of Chhattisgarh was formed in the year 2000, in terms of the Madhya Pradesh Re-Organization Act, 2000. Being one among the rich

States in the country in terms of mineral and forest resources, with a large extent of untapped potential for industrialisation, the Government felt the

immediate necessity to initiate the process of rapid economic and social growth. It was accordingly that an Industrial Policy '2001-2006' was

formulated for 'five years' period with intent :

â€¢ To attract large investments in core sector and downstream industries;

â€¢ To become the power hub in India - by promoting low cost pithead thermal power plants; and â€¢ To build on locational advantages to develop

the State into a regional logistics and transshipment hub.

4. Four broad strategies were identified by the State for its industrial development as :

(i) Cluster based industrial development;

(ii) Good governance and excellent infrastructure;

(iii) Improving the competitiveness of small scale industries;

(iv) Directed incentives.

Under strategy No.(i) 'Cluster based industrial development', with reference to the competitive advantages of the State, the Government identified

'five' such areas that would be focussed, welcoming investments in any other areas as well, by entrepreneurs.

5. Mineral based industries (Iron and Steel) were one among the 'five' identified areas for investment. Based on the extent of investment, the

industries were classified and various concessions / incentives were provided. In the cases of 'Mega Projects' (where investment in the fixed assets is

in excess of Rs.100 crores) the concession / assistance provided was to the extent of 25% of the infrastructure cost, subject to a maximum of 5 years'

sales tax payment. In addition to that, various other concessions, like Electricity duty exemption, exemption from Entry tax, exemption from payment

of Stamp duty and such other benefits were also provided to attract the investors.

6. In consideration of the said offer/promise, the Petitioner-Company in WPT No.36/2013 engaged in the manufacturing / processing of minerals to

produce sponge iron, steel billets / blooms, ferro alloys and captive generation of power etc. set up a manufacturing unit at a rural village Borjhara

Industrial State, Urla and Guma, Raipur. Though the said Industrial Policy was for a period of 5 years, the State, for some reasons, terminated it

prematurely and brought out a new Industrial Policy for the period '2004-2009', to be effective from 01.11.2004. According to the Petitioner, there was

no much difference between the two policies in terms of concessions and an option was given to the entrepreneurs who set up the units based on the

Policy '2001-2006' and started commercial production after 01.11.2004, either to continue under the said policy or to have the benefits flowing from

'2004-2009' Policy. Since the new Policy (2004-2009) also extended exactly similar benefits, the Petitioner- Company in WPT No. 36/2013 opted to

have the new Policy, to govern the benefits payable.

7. It is the case of the Petitioner in WPT No. 36/2013 that they had invested huge amounts and set up the unit, in terms of the above Policy. As per

Phase-I, the investment was to the tune of 155 crores and for Phase-II, it was to be 400 crores. Copies of both the above policies are placed for

perusal of this Court. It is pointed out that the said Petitioner started commercial production, after completing the 1st Phase, on 28.05.2005.

8. The main objective of the Industrial Policy '2004-2009', as provided under the Head 'Preface', in Clause 1.3 is as follows :

..... 1.3. The main objective of the new Industrial Policy is to add maximum value to State's abundant natural resources within the state itself, and

create maximum employment opportunities by setting up industries in all its districts across the state. To attract industrial investment in the state, the

Policy attempts at providing necessary infrastructure for investment, reducing the cost of production for the investor and ensuring an investor friendly

administration. Towards this end, special importance has been given to private sector participation ....

9. This is further highlighted under 'Clause 2' as given below :

2. Objectives :

2.1 To create additional employment opportunities by accelerating the process of industrialisation in the state.

2.2 To create enabling environment for ensuring maximum value addition to the abundant, locally available mineral and forest based resources.

2.3 To ensure balanced regional development by attracting industries in the economically backward areas of the state.

2.4 To ensure participation of scheduled castes, scheduled tribes and other weaker sections in the development process.

2.5 To make industrial investments in the state competitive vis-a-vis other states in the country.

2.6 To promote private sector participation for creation of industrial infrastructure in the state.

2.7 To create an enabling environment for increasing industrial production, productivity and quality upgradation to face the challenge of competition

emerging from economic liberalisation.

On the basis of the extent of investment, the industries were also classified into 'four' different categories, as provided under Clause 4.4.4 in the

following manner.

(i) Small scale industries - As defined by the Government of India from time to time;

(ii) Medium-Large industries - Industries with total capital investment up to Rs. 100 crore except the small scale industries;

(iii) Mega projects - Large industries with total capital investment between Rs. 100 crore and Rs. 1000 crore; and

(iv) Very large industries with total capital investment of over Rs. 1000 crores.

10. Based on the Industrial Policy as above, the State Government issued a notification dated 18.08.2005, whereby the Chhattisgarh State

Infrastructure Cost Fixed Capital Investment Subsidy Rules, 2004 (for short, 'the Rules, 2004') (Annexure-P/2) were framed and published with

retrospective effect from 01.11.2004. As per the above Investment Subsidy Notification / Rules, the Petitioner-Company was entitled for a subsidy

adjustment / reimbursement of 25% of the infrastructure cost for establishing industry outside industrial area, upto a maximum amount equivalent to

the amount of commercial tax / central sales tax paid in the State for 5 years. It is also the case of the Petitioner that, by virtue of the attractive

incentives under the Industrial Policy / Rules, the Petitioner expanded and diversified the industry, commissioning production in the Steel Melting;

making an additional investment of Rs.100 crores, against the proposed investment of Rs.400 crores in the 2 nd Phase; thus taking the total investment

to Rs. 255 crores.

11. As revealed from the facts and figures, Annexure-P/4 certificate of commercial production was issued by the competent authority on 13.04.2006

and the Petitioner-Company was given registration by the Directorate of Industries as per Annexure-P/5 certificate on 14.06.2007, as to the

investment of Rs.155 crores. The Petitioner pointed out that the registration was only in respect of '1 st Phase' and that the Petitioner had proposed to

invest a further sum of Rs.400 crores in the '2 nd Phase', with the total investment of Rs.555 crores. Hence the Petitioner requested, as per

Annexure-P/6 application, that appropriate correction was to be made in the registration certificate. It is however conceded that the 2 nd Phase was

dropped and the Petitioner is continuing with the '1st Phase' alone.

12. As per Annexure-P/7 certificate dated 23.02.2010, the competent authority has issued an eligibility certificate to the Petitioner, whereby it was

entitled to avail subsidy under the 'Fixed Capital Investment Subsidy Scheme', which was valid for the period from 05.04.2005 to 04.02.2010.

However, the Respondents took a 'U-turn' and issued Annexure-P/9 Notification dated 10.08.2011, virtually curtailing the benefit of concession

payable under the Investment Subsidy Scheme, whereby the maximum limit (which was originally fixed as 25% of the investment subject to a

maximum of 5 years' sales tax paid) was restricted as 'Rs.3 crores'. The position was intimated to the Petitioner as per Annexure-P/8 letter dated

06.09.2011, which made the Petitioner to raise strong objection vide Annexure-P/10 dated 11.10.2011. Thereafter, the Respondents/State amended

the Investment Subsidy Rules, which were brought into force w.e.f. 18.08.2005, as per Annexure-P/11 Notification dated 20.03.2012; which made the

Petitioner to submit another detailed representation (Annexure-P/12) seeking to extend the benefit as originally promised. This however did not give

any positive results and hence the writ petition, seeking to set aside Annexure-P/9 and Annexure- P/11, besides seeking for a direction to the

Respondents to grant subsidy as per the Industrial Policy of 2004-2009, the Fixed Capital Investment Subsidy Scheme and the Rules, 2004, i.e., to an

extent of 25% of the total investment of the infrastructure investment made by the Petitioner, subject to a maximum of the Sales Tax paid in the State

for 5 years.

13. Coming to WPT No. 92/2012, the Petitioner-Company is engaged in the manufacturing/processing of minerals and selling Ferro Alloys products.

Based on the Industrial Policy as aforesaid (2004-2009), the Petitioner- Company got attracted to the offer and accordingly, a manufacturing unit was

set up at rural village Manuwapali in District of Raigarh (Chhattisgarh). The investment was below 100 crores and hence the unit of the Petitioner-

Company came within the classification of 'Medium- Large Scale' industries. As per the Industrial Policy 2004-2009 and the relevant Rules notified by

the Government, the Petitioner is entitled for a subsidy adjustment / reimbursement of 25% of the infrastructure cost for establishing the industry

outside industrial area, upto a maximum amount equivalent to the amount of commercial tax / central sales tax paid in the State for 5 years. The

Petitioner-Company had also set up a Captive Power Generating Unit within the premises and the investment made as on 10.10.2007 was to the tune

of Rs.50.5189 crores. Commercial production was started in one of the two furnaces of the Petitioner- Company on 01.07.2006 and the other one,

along with Captive Power Plant of 12MW was put on such use on 10.10.2007, as revealed from Annexure-P/4 certificates issued by the General

Manager, District Trade & Industries Centre, Raigarh. After commencement of commercial production, the Petitioner-Company was granted

registration for getting the benefit of investment subsidy, by the competent authority, on 28.01.2009 (which is produced along with Annexure-P/6

application dated 22.06.2007) for granting the benefits. The application preferred by the Petitioner-Company for granting industrial subsidy was

approved by the State Level Committee of the Government in the 15 th meeting held on 14.05.2010, to tune of Rs. 6,08,39,669/- and it was

communicated to the Petitioner as per Annexure-P/7 letter dated 24.06.2010 so as to facilitate disbursement of the investment subsidy. As per the

relevant provisions in the Rules, an agreement had to be executed; which accordingly was done on 12.08.2010 as borne by Annexure-P/8, wherein the

extent of benefit payable to an extent of 25% of the infrastructure cost, subject to maximum of Rs.6,08,39,669/- being the equivalent amount of

Commercial Tax / Central Sales Tax paid in the State in first 5 years, was specifically mentioned.

14. Despite completion of the procedural formalities to get disbursement of the investment subsidy, no steps were pursued by the Respondents to

effect the payment. The Petitioner-Company preferred several representations as borne by Annexure-P/9. On 10.08.2011, Annexure- P/1 Notification

was issued by the Government and it was published in the Gazette dated 23.09.2011, whereby sub-clauses B and C of Clause 2 in Annexure 4 of the

Industrial Policy 2004-2009 were amended by fixing an 'additional cap/ceiling' to the amount of subsidy payable under the Policy to various categories

of industries, with retrospective effect from 01.11.2004. By virtue of the said modification, the maximum subsidy payable in the case of 'Medium -

Large Scale' industries (as of the Petitioner) was capped at Rs. 90 lakhs, mentioning in the Notification, that it was ""inadvertently not inserted earlier"".

This was sought to be objected by the Petitioner-Company who attended the 18 th State Level Committee Meeting of the Government of Chhattisgarh

held on 01.02.2012 and pointed out the arbitrariness in the change brought about after expiry of the Policy period 2004-2009; simultaneously insisting

for payment of subsidy/benefit as assured under the original scheme. Annexure-P/10 representation was also submitted on 08.02.2012 in this regard,

but, without any application of mind, the Respondents issued two letters dated 11.05.2012 (Annexure-P/11), intimating the Petitioner that, in view of

Annexure-P/1 Notification dated 10.08.2011, the Infrastructure Subsidy claim of Rs. 6,08,39,669/- of the Petitioner-Company approved in the 15th

State Level Committee meeting held on 14.05.2010 was rejected and that the Petitioner Company's claim for benefit was revised and limited to

Rs.85,46,301/-. According to the Petitioner, it was wrongly mentioned in the said letters (Annexure-P/11) that the Company's representative had

'consented' to such revision in the 18 th SLC meeting held on 01.02.2012, as there was no need, necessity or requirement for the Petitioner to have

expressed any such 'consent', sacrificing the vested / accrued rights of the Petitioner. The position was made clear by the Petitioner as per Annexure-

P/12 dated 24.05.2012, addressed to the Commissioner (Industries) Government of Chhattisgarh. In terms of Annexure-P/1, the Respondent-State has

also amended the Infrastructure Subsidy Rules as per Annexure-P/13 Notification dated 20.03.2012, intending to give a legal colour to the capping of

benefits with effect from retrospective date. It is pointed out that the Petitioner has already satisfied a total sum of Rs. 7,48,94,544/- towards the

Value Added Tax (VAT) and Central Sales Tax (CST) for the years 2006-2007 to 2010-2011 and has contributed much to the economic growth of

the State; besides providing employment to a large extent. By virtue of the Policy which governed the field during the years 2004-2009 the Petitioner-

Company is entitled to get the subsidy of Rs.6,08,39,669/- for the period of 5 years, out of the total sum of Rs.7,48,94,544/- already satisfied towards

the tax. It is in the said background, that the Petitioner- Company has moved this Court, challenging the impugned proceedings i.e. Annexures-P/1,

P/11 and P/13 and seeking a direction to the Respondents to grant subsidy / adjustment certificate for infrastructure subsidy of Rs.6,08,39,669/- in

respect of the investments made by the Petitioner in the project.

15. The Respondent-State has filed a return seeking to sustain their action and pointing out that, even in the case of the 'Small Scale Industries',

capping of the benefits for infrastructure subsidy was there; which however was omitted to be incorporated in the Industrial Policy 2004- 2009, in

respect of the 'Medium-Large' and 'Mega Industries'. This mistake was noted only later and immediately, the matter was placed for consideration in

the Cabinet, who granted the approval to make necessary corrections and it was accordingly, that the mistake was rectified. It is pointed out that the

rectification of mistake has been effected in 'public interest' and to protect the revenue of the State, which inadvertently was to be passed on to the

hands of the entrepreneurs.

16. Shri Neelabh Dubey and Mrs. Smiti Sharma, learned counsel, who addressed the Court on behalf of the Petitioners made submission with

reference to the facts and figures brought on record and the relevant provisions of law. They also placed reliance on the principles of 'Legitimate

Expectation' and Promissory Estoppel'. Reliance was sought to be placed on various rulings of the Apex Court in this regard, as reported in(2016) 6

SCC 766 (Manuelsons Hostels Private Limited vs. State of Kerala and Others;)[2006] 148 STC 225 (SC) (MRF Ltd. vs. Assistant Commissioner

(Assessment), Sales Tax and Others); (2004) 1 SCC 139; (State of Orissa and Others vs. Mangalam Timer Products Ltd.;) (2008) 13 SCC 213

(Kusumam Hostels Pvt. Ltd. vs. Kerala State Electricity Board and Others)and that of the Division Bench Judgment of this Court reported in (2014)

53 TLD 215 (State of Chhattisgarh and Another vs. V.M. Extrusions Pvt. Ltd. and Anr.).

17. Shri Satish Chandra Verma, the learned Advocate General, appearing on behalf of the Respondents/State, sought to justify the course of action

pursued by the Respondents, adding that, by virtue of the specific condition incorporated under 'Clause 16' of the Agreement, it is open for the

Governor to impose 'condition' to safeguard the interest of the Government. The non-mentioning of a clause fixing ceiling with regard to the

investment subsidy payable in respect of Medium-Large scale and 'Mega Industries, as incorporated in the case of Small Scale Industries, was noted

only later and it was in the said circumstances, that the mistake was caused to be rectified by placing the matter in the Cabinet, who approved the

same; in turn leading to the Notification / Rules under challenge. The learned Advocate General submits that, loss to the exchequer involves 'public

interest' and as such, the course of action pursued is within the four walls of law and is not assailable in the light of the ruling rendered by the Apex

Court as noted below :

18. Reliance is sought to be placed by the learned Advocate General on the verdict passed by Apex Court in D.C.M. Ltd. and Another vs. Union of

India and Another, (1996) 5 SCC 468, paragraphs 6 and 7 of which are relevant, and hence extracted below :

6. We have considered the rival submissions. It is well settled that the doctrine of promissory estoppel represents a principle evolved by equity to

avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this

doctrine is the inter- position of equity which has always, proved to its form, stepped in to mitigate the rigour of strict law. It is equally true that the

doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. This doctrine is applicable

against the Government in the exercise of its governmental public or executive functions and the doctrine of executive necessity or freedom of future

executive action, cannot be invoked to defeat the applicability of this doctrine. It is further well established that the doctrine of promissory estoppel

must yield when the equity so require. If it can be shown by the Government or public authority that having regard to the facts as they have transpired,

it would be unequitable to hold the Government or public authority to the promise or representation made by it, the court would not raise an equity in

favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public

authority. The doctrine of promissory estoppel would be displaced in such a case because on the facts, equity would not require that the Government

or public authority should be held bound by the promise or representation made by it (vide Union of India v. Godfrey Philips India Ltd., 1985 4 SCC

369).

7. In this case we have found that the Government before refusing the incentive scheme of the year 1975 have taken into account various factors

including the decontrol of sale of sugar for the period from 16-8-1978 to 17-12-1979. Further if the prayer of the appellants were to be allowed,

several lakhs of quintals of sugar will have to be released as incentive levy-free sugar which otherwise meant for public distribution system. We agree

with the learned Judges of the High Court when they observed that 'the petitioners who availed of the resulting benefit due to decontrol cannot in all

fairness lay claim to be restored the benefit of the incentives in full now over again though the basic premise became non-existent. The benefit under

the subsequent scheme in force from 15-11-1980 has already been accorded to them in full measure'.

19. In D.C.M. Ltd. (supra), the appellants were owners of Sugar Factories.

The Central Government had promulgated the Sugar (Control) Order on 10.06.1966, by which the sale of sugar by producers was controlled. In order

to mitigate the hardship caused to the sugar industry in establishing new sugar factories and for effecting substantial expansions of the existing units,

certain incentives were declared by the Government. But later, there was a major change in the Sugar Policy, by virtue of which the Control was

lifted w.e.f. 16.08.1978. However, a modified Sugar Policy was brought about w.e.f. 17.12.1979, providing for partial Control, by virtue of which, the

extent / quota of 'levy-free sugar' allocable as part of the concession under the 'modified Policy' happened to be lesser than the earlier Policy. Hence

the revised Policy was challenged placing reliance on the principles of 'Promissory Estoppel' and sought to continue to grant the concession as it was

being granted earlier.

20. In P.T.R. Exports (Madras) pvt. Ltd. and Others vs. Union of India and Others, (1996) 5 SCC 268 p,aragraphs 3 & 5 are stated as relevant,

which are reproduced below :

3. In the light of the above policy question emerges whether the Government is bound by the previous policy or whether it can revise its policy in view

of the changed potential foreign markets and the need for earning foreign exchange? It is true that in a given set of facts, the Government may in the

appropriate case be bound by the doctrine of promissory estoppel evolved in Union of India Vs. Indo-Afghan Agencies [(1968) 2 SCR 366].

But the question revolves upon the validity of the withdrawal of the previous policy and introduction of the new policy. The doctrine of legitimate

expectations again requires to be angulated thus: whether it was revised by a policy in the public interest or the decision is based upon any abuse of

the power? The power to lay policy by executive decision or by legislation includes power to withdraw the same unless in the former case, it is by

malafide exercise of power or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role when the

appropriate authority is empowered to take a decision by an executive policy or under law. The Court leaves the authority to decide its full range of

choice within the executive or legislative power. In matters of economic policy, it is a settled law that the Court gives the large leeway to the

executive and the legislature. Granting licences for import or export is by executive or legislative policy. Government would take diverse factors for

formulating the policy for import or export of the goods granting relatively greater priorities to various items in the overall larger interest of the

economy of the country. It is, therefore, by exercise of the power given to the executive or as the case may be, the legislature is at liberty to evolve

such policies.

5. It would, therefore, be clear that grant of licence depends upon the policy prevailing as on the date of the grant of the licence. The Court, therefore,

would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior decision would not bind the

Government for all times to come. When the Government are satisfied that change in the policy was necessary in the public interest, it would be

entitled to revise the policy and lay down new policy. The Court, therefore, would prefer to allow free play to the Government to evolve fiscal policy in

the public interest and to act upon the same. Equally, the Government is left free to determine priorities in the matters of allocations or allotments or

utilisation of its finances in the public interest. It is equally entitled, therefore, to issue or withdraw or modify the export or import policy in accordance

with the scheme evolved. We, therefore, hold that the petitioners have no vested or accrued right for the issuance of permits on the MEE or NQE, nor

the Government is bound by its previous policy. It would be open to the Government to evolve the new schemes and the petitioners would get their

legitimate expectations accomplished in accordance with either of the two schemes subject to their satisfying the conditions required in the scheme.

The High Court, therefore, was right in its conclusion that the Government are not barred by the promises or legitimate expectations from evolving

new policy in the impugned notification.

21. With regard to judgment of the Apex Court cited from the part of the State in P.T.R. Exports (Madras) Pvt. Ltd. (supra) the dispute was with

regard to the change in the 'Export Policy' brought about by the Government, which was questioned by the Ready-made Garment Exporters, who

sought for the benefit as per the previous policy; raising the plea of 'Legitimate Expectation'. The Apex Court held that the Court cannot bind the

Government to stick to the previous Policy by invoking the doctrine of 'Legitimate Expectation', unless the change in Policy is vitiated by mala fides or

abuse of power, which was to be specifically pleaded and proved to the satisfaction of the Court. It was also held that the doctrine of 'Promissory

Estoppel' would not apply in the given set of facts and circumstances.

22. In Col. A.S. Sangwan vs. Union of India and Others, 1980 (Supp) SCC 559, paragraph para 4 is mentioned as relevant, which is extracted below :

4. The policy statement of 1964 was, as we have earlier stated, not issued under any rules or regulations or statute. The executive power of the

Union of India, when it is not trammelled by any statute or rule, is wide and pursuant to its power it can make executive policy. Indeed, in the strategic

and sensitive area of Defence, courts should be cautious although courts are not powerless. The Union of India having framed a policy relieved itself

of the charge of acting capriciously or arbitrarily or in response to any ulterior considerations so long as it pursued a consistent policy. Probably, the

principle of equality which interdicts arbitrariness prompted the Central Government to formulate its policy in 1964. A policy once formulated is not

good for ever; it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions

of circumstances and the imperatives of national considerations. We cannot, as court, give directives as to how the Defence Minister should function

except to state that the obligation not to act arbitrarily and to treat employees equally is binding on the Union of India because it functions under the

Constitution and not over it. In this view, we agree with the submission of the Union of India that there is no bar to its changing the policy formulated

in 1964 if there are good and weighty reasons for doing so. We are far from suggesting that a new policy should be made merely because of the lapse

of time, nor are we inclined to suggest the manner in which such a policy should be shaped. It is entirely within the reasonable discretion of the Union

of India. It may stick to the earlier policy or give it up. But one imperative of the Constitution implicit in Article 14 is that impression that it is acting by

any ulterior criteria or arbitrarily. This object is achieved if the new policy, assuming government want to frame a new policy, is made in the same way

in which the 1964 policy was made and not only made but made known. After all, what is done in secret is often suspected of being capricious or mala

fide. So, whatever policy is made should be done fairly and made known to those concerned. So, we make it clear that while the Central Government

is beyond the forbiddance of the court from making or changing its policy in regard to the Directorate of Military Farms or in the choice or promotion

of Brigadiers, it has to act fairly as every administrative act must be done.

23. The decision rendered by the Apex Court in Col. A.S. Sangwan (supra) was a 'service matter' involving seniority among the officers concerned, in

connection with promotion as Brigadiers in the Directorate of Military Farms. Referring to the factual aspects discussed therein, the Apex Court held

that in the absence of any statutory rules, 'Policy decisions' can be changed by the Government at any time and a new 'Policy' can be laid, provided it

is not arbitrary or capricious. Though the above decision is not applicable to the case in hand, it is adequate enough to hold that interference is possible

even in policy matters, if it is arbitrary or capricious.

24. In Kasinka Trading and Another vs. Union of India and Another, (1995) 1 SCC 274, paragraph 23 is projected as relevant, which is reproduced

below :

23. The appellants appear to be under the impression that even if, in the altered market conditions the continuance of the exemption may not have

been justified, yet, Government was bound to continue it to give extra profit to them. That certainly was not the object with which the notification had

been issued. The withdrawal of exemption ""in public interest"" is a matter of policy and the courts would not bind the Government to its policy decisions

for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the ""public interest"". The courts,

do not interfere with the fiscal policy where the Government acts in ""public interest"" and neither any fraud or lack of bona fides is alleged much less

established. The Government has to be left free to determine the priorities in the matter of utilisation of finances and to act in the public interest while

issuing or modifying or withdrawing an exemption notification under Section 25(1) of the Act.

In the light of the above declarations, the learned Advocate General asserts that the Petitioner cannot have any vested right with reference to the plea

of 'Promissory Estoppel' or 'Legitimate Expectation' and that the Policy can be changed any time, adding further that, change of Policy in public

interest is to be upheld.

25. The doctrine of promissory estoppel was explained further by the Apex Court in Kasinka Trading (supra). It was a case where the Appellants,

who were manufacturers of certain products (requiring 'PVC resin' as one of the raw materials) were importing PVC resin from abroad, enjoying the

benefit of exemption from import duty under a Notification issued by the Government on 15.03.1979, which was to be in force till 31.03.1981. But

before expiry of the said period, the Government issued another Notification on 16.10.1980 under the same provision i.e. under Section 25 of the

Customs Act, withdrawing the exemption in 'public interest', which was under challenge referring to the doctrine of 'Promissory Estoppel'. It was

explained from the part of the Government that the exemption notification was issued with a view to equalise the sale prices of the indigenous and the

imported materials and to make the commodity available to the consumer at a uniform price, keeping in view the trends in supply of the material.

Later, when it was found that the international price of the product had fallen down, resulting in the import prices to be lower than the ex-factory

prices of the indigenous material, the matter was re-examined by the Government and it was decided to withdraw the Exemption Notification in 'public

interest'. It was in the said context, that the element of public interest was held as weighed more, in turn, upholding the action of the Government by

the Apex Court. No such situation is brought to our notice in the instant case, in respect of the Notification under challenge, issued (in the year 2011)

after expiry of the 'Policy 2004-2009'; virtually re-writing the terms of benefits offered under the earlier Policy, which had served its purpose and

come to an end.

26. The learned Advocate General submits that modification of the Industrial Policy 2004-2009, effected in the year 2012, was a bona-fide exercise

and no plea of mala-fides has been raised by the Petitioners in this regard. It is contended that 'public interest; is supreme and when there is a conflict

between the private interest and the public interest, the former shall yield to the latter.

27. In response to this, the learned counsel for the Petitioners submit that the 'so-called public interest' is not specifically pleaded or established and

further that the reliance sought to be placed on 'Clause 16' of the Annexure-P/8 Agreement is wrong and misconceived. The said clause is having no

application to the case in hand, which has to be read and understood in the light of 'Clause 8' of the very same agreement. The learned counsel also

points out that the extent of benefit payable has been clearly mentioned as Rs.6,08,39,669/- in the said Agreement and the Agreement is binding

between the parties, which cannot be unilaterally sought to be resiled by the Government. The learned counsel also submits that the decisions of the

Apex Court sought to be relied on by the State to deny the benefit of 'Legitimate Expectation' / 'Promissory Estoppel' do not support the State action

as clear from paragraph 27 of Kusumam Hostels Private Limited (supra) which clearly holds that the only exception is, when it is in public interest and

also in a situation where the legal position is something else. Both the circumstances are not existing in the instant cases and hence the course of

action pursued by State is to be deprecated and the benefits flowing from the 2004-2009 Policy / Rules as it existed earlier should be restored and

released in the cases of the Petitioners.

28. With regard to the submission made by the learned Advocate General seeking to place reliance on 'Clause 16' of Annexure-P/8 Agreement, to

sustain the course of action pursued by them in resetting the clock, it will be worthwhile to have a look at the said provision, which is extracted below :

16. The Governor may during the continuous of aid impose such condition as may in its opinion be necessary or expedient to safeguard the interest of

the Government.

At the very outset, it is to be noted that the said provision only enables the Governor to impose 'such condition as may be necessary or expedient to

safeguard the interest of the Government' ""during the continuance of aid"". This presupposes of courses the extension / continuance of aid i.e. the

granting of concession as mentioned in the Agreement. The Agreement clearly says under 'Clause 8', that the aggregate extent of benefit is to the

tune is Rs.6,08,39,669/-. The said clause reads as follows :

8. In consideration of the Government agreeing to give to the entrepreneur under the aggregate amount of (Six Crores eight lakhs thirty nine thousand

six hundred and sixty nine rupees only) as and by way of the Infrastructure Development Capital Investment subsidy on the entrepreneurs creating the

fixed assets of Rs.243358677/- (Rupees Twenty four Crores thirty three Lacs fifty eight Thousand six hundred and seventy seven rupees only) for the

purpose of the said unit at village - Manuwapali, Post - Jamgaon, Raigarh (C.G.). The entrepreneurs do and each of them both there by Government

with the Governor as under :-

1-Â Â xxx xxxÂ Â Â Â Â xxx

2.Â Â xxxÂ Â xxxÂ Â Â xxx

3.Â Â xxxÂ Â xxxÂ Â Â xxx

4.Â Â xxxÂ Â xxxÂ Â Â xxx

5.Â Â xxxÂ Â xxxÂ Â Â xxx

6.Â Â xxxÂ Â Â xxxÂ Â xxx

7- The said sum of Rs.60839669/-(Six crores eight lakhs thirty nine thousand six hundred and sixty-nine rupees only) or such part there of as may

have been till then paid by the Government to the entrepreneurs shall became forthwith repayable by the entrepreneurs to the Government in each and

every of the following events namely:-

a- If any information furnished by the entrepreneurs in their applications for the subsidy or otherwise however particularly regarding the location fixed

capital investment and production capacity of the said unit prior to sanctioning of the said sum of Rs. 60839669/-(Sixty crores eight lakhs thirty nine

thousand six hundred and sixty- nine rupees only) as the subsidy in the incorrect or false.

b- xxxÂ Â Â Â xxxÂ Â xxx

c- xxxÂ Â Â Â xxxÂ Â xxx

d- xxxÂ Â Â Â xxxÂ Â xxx

e- xxxÂ Â Â Â xxxÂ Â xxx

f-Â Â xxxÂ Â xxxÂ Â xxx

g- xxxÂ Â Â Â xxxÂ Â xxx

The said extent of benefit is segregated to be paid under 'five' different years, to the extent as mentioned in the table given in the Annexure-P/3

Notification issued on 18.08.2005. To make it more clear, when the payment of aid is being continued, if the Governor is of the opinion that it is

necessary or expedient to safeguard the interest of the Government in continuing the said aid, it is possible for imposing 'such condition as may be

necessary' to continue the aid. This does not mean that the Government is at liberty to re-write the terms of the contract or totally vary / withdraw /

curtail the benefits already agreed to be paid, as now sought to be effected.

29. From the above discussion, it is clear that there is no dispute with regard to the sequence of events. It was based on the specific need felt of the

newly formed State that the 'Industrial Policy (2001-2006', later substituted by 2004-2009) was formulated and notified inviting entrepreneurs to set up

industries in the State to achieve rapid economic growth offering to make use of the advantages available in the State and the concessions assured.

This offer was acted upon by the Petitioners to set up the industries, making huge investments under the firm belief that they were entitled to have the

benefit of investment subsidy to an extent of 25% of the infrastructure cost, subject to maximum of the Sales Tax / CST paid in the State during the

first 'five' years. The open invitation in this regard having been accepted on the strength of the consideration offered (in the nature of concessions) it

became a concluded contract, which got crystallised by virtue of specific terms incorporated in the Agreement executed in this regard. No tenable

ground, sustainable in the eye of the law, is pointed out from the part of the State to make the said Agreement void or voidable in any manner.

Obviously, there is a cap / ceiling fixed already with regard to the extent of benefit payable as per the Industrial Policy notified at the first instance, as

incorporated in the Rules notified subsequently, to the effect that it would be 25% of the infrastructure cost made by the entrepreneurs subject to

maximum of the Sales Tax / CST paid in the State for the first 'five' years.

30. As illustrated in the case of the Petitioner-Company in WPT No. 92/2012, they had already effected payment of a total tax of Rs.7,48,94,544/-

during the first 'five' years from 2006-2007 to 2010-2011; but by virtue of the cap as contained in Industrial Policy of 2004-2009 / Investment Subsidy

Rules as originally notified, they are entitled to have a maximum benefit of only Rs.6,08,39,669/- as accepted by the State Level Committee in the 15th

meeting held on 14.05.2010 as discernible from Annexure-P/7, which in turn has been incorporated specifically at different places in Annexure-P/8

Agreement executed between the Petitioner-Company and the Government. This crystallised benefit becomes an 'accrued right' which cannot be

taken away on a later date; that too years after expiry of the tenure of the 'Industrial Policy 2004- 2009', simply stating that it was only a 'mistake'

which was to be rectified.

31. The issue can be approached from a different angle as well. There is no dispute to the fact that 'Policy' can always change and need not be static.

Change of Policy in 'public interest' has necessarily to be upheld, by virture of the rulings rendered by the Apex Court in Col. A.S. Sangwan (supra)

(paragraphs 4) and Kasinka Trading (supra) (paragraphs 23). There also cannot be any dispute with regard to the circumstances as to the applicability

of the principle of 'Promissory Estoppel' as made clear by the Apex Court in D.C.M. Ltd. (supra) and as to the extent of 'Legitimate Expectation'

discussed in P.T.R. Exports (Madras) pvt. Ltd. (supra). But, the question is something else. The very word 'Policy' contemplates something which

either deals with the 'present' or the 'future'. There cannot be any Policy in respect of a transaction which had already occurred in the past, as the

change sought to be made in the Policy cannot convert the event already occurred. In other words, a Policy evolved later, after expiry of the 'Policy

period', can't guide or navigate a course of action already implemented based on the terms of the 'Policy' existed at that time. The benefit provided

under the Policy '2004-2009', as it existed earlier and as covered by the Rules notified in this regard were sought to be altered by the State only after

expiry of the said Policy period, by issuing a Notification in the year '2011'. No 'Notification' or 'instruction' could have amended the 'Rules' framed

and notified in this regard and in fact, amendment of the Rules came only in the year '2012'. By the time the amended Policy / Rules was issued, the

Petitioners had already acted upon the promise/concessions offered by the Respondent- State and had pumped in necessary investments and set up

the Industry in the State by virtue of which, they had acquired the right to get the investment subsidy in terms of the subsisting Policy / Rules which

governed the field during the Policy period. After expiry of the Policy period, a new Policy for the year '2009-2014' was notified by the Government

w.e.f. 17.01.2015. It was after notification of the 'new Policy', that the Government thought of introducing a 'further cap' to the already expired Policy

(2004-2009), simply stating that it was an omission or mistake to be rectified. In other words, the attempt of the Government was to re-write the terms

of the Policy / Rules which were formulated and notified (specifically incorporated in the Agreement), making the industrialists like the Petitioners to

have acted upon it. After having acquired the desired results in the State, it was never open for the State to have turned its back on such

entrepreneurs, curtailing their benefits as flowing from the Offer / Policy / Rules / Agreement, as originally provided.

32. Yet another important aspect to be noted is that the extent of benefit available to the Petitioners were clearly laid down and it was with reference

to the said extent of benefit in mind, that the investment was made by the Petitioners. By virtue of the said investment, the benefit obtainable to them

(in terms of money /subsidy) was quite certain and this would have naturally weighed much with the Petitioners in having fixed the 'market price' of

their products. In other words, the cost of raw materials, cost of labour, quantum of statutory payments, cost of transportation, cost of electricity and

such other heads etc. matter much in the fixation of 'sale price', also providing a reasonable extent of profit. The commodity thus manufactured fixing

the 'sale price' (based on the above factors, also reckoning the element of 'investment subsidy' surely to get as offered / assured as per the notified

Industrial Policy / Rules) has already been marketed and as such, if the amount payable towards the Investment Subsidy as per the original terms of

the Policy / Rules is sought to be denied after expiry of the Policy period, it will simply result in rupturing the financial base of the Petitioners, as the

unconscionable financial burden cannot be recovered by them 'by resetting the sale price' of the commodity which they had already sold out. To put it

more clear, the clock cannot be reset to have a level playing field. The belated wisdom or the eagerness to have more profit for the State by fixing an

additional cap"" in respect of the quantum of Investment Subsidy is not liable to be considered as mistake to be rectified in public interest, but for re-

writing the terms of contract. The State, in its attempt to generate revenue, can tap any source, but care has to be taken, to see that the source itself is

not let to be dried up.

33. We are of the view that the Petitioners have made out a case that they were having 'Legitimate Expectation' to have had the benefits flowing

from the Industrial Policy for year 2004-2009 and incorporated as part of the Rules notified and existed throughout the Policy period. This is more so

since, similar terms of benefit were offered in the Industrial Policy originally notified for the period 2001-2006, in respect of which, no plea is raised

from the part of the State as to any mistake having occurred therein. Admittedly, the said Policy was prematurely terminated and a new Policy was

introduced for the period 2004-2009; when also the need to fix any ""additional capping of benefit"" was never felt by the Government. As such, the

explanation now offered from the part of the Government, that it was only a mistake, which required to be rectified in 'public interest' does not hold

any water at all.

34. In the above facts and circumstances, we are of the firm view that the course of action pursued by the Respondent-State in the case of the

Petitioners herein, curtailing the benefit of Investment Subsidy, which ought to have been extended to them on the strength of the original Industrial

Policy 2004-2009 and declared in the Investment Subsidy Rules, 2005 (as originally notified in the Gazette) is not correct or proper. It is declared that

the Petitioners are entitled to have the benefit of Investment Subsidy to an extent of 25% of the infrastructure cost , subject to a ceiling of the Sales

Tax / VAT / CST paid in the State for the first 'five' years. In the said circumstances, all the orders / proceedings passed in the case of the

Petitioners, insofar as they stand against said declaration are set aside. The Respondents are directed to compute the benefits based on the

investments made as per the terms of the Industrial Policy 2004-2009 and the relevant Rules as originally notified and given effect to as per the terms

of the Agreement executed in between. This shall be done, issuing necessary Certificate so as to enable the Petitioners to avail the benefit as above

as expeditiously as possible; at any rate, without 'two months' from today.

35. Considering the persuasive submission made by the learned Advocate General, that the State might be permitted to set off the subsidy amount to

be disbursed to the Petitioners against subsequent / remaining the tax liability to be cleared by the Petitioners, considering the totality of the facts and

circumstances involved, we permit the Respondents-State to set off / adjust the investment subsidy payable to the Petitioners, against the tax liability to

be cleared by the Petitioners in respect of any past, present or future transactions.

The writ petitions are allowed. No costs.