(2007) 12 GAU CK 0033

Gauhati High Court

Case No: None

Dadhi Das and Others		APPELLANT
	Vs	
State of Assam and Others		RESPONDENT

Date of Decision: Dec. 4, 2007

Citation: (2008) 3 GLT 576

Hon'ble Judges: Amitava Roy, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Amitava Roy, J.

The petitioners, erstwhile employees of the Assam Agro Industries Development Corporation Limited (hereafter referred to as the ''AAIDC or the Corporation), hereby seek to activate the writ jurisdiction of this Court for their absorption in State Government Departments more particularly the Agriculture Department following the closure of the Corporation. They perceive the State''s denial to accommodate them in its departments to be in imperious breach of its unqualified promise and/or representation to the said effect.

2. I have heard Mr. I. Choudhury, learned Counsel for the petitioners and Mr. H. Rahman, learned State Counsel, for the official respondents. None has entered appearance on behalf of the Corporation impleaded as respondent No. 7.

3. To comprehend appropriately the rival stands of the parties, it is unavoidably necessary to traverse their pleadings. With the development of agriculture in the progressive lines in the State of Assam, demand for seeds, fertilizers, pesticides and other infrastructural inputs increased which necessitated the installation of a suitable procurement and distribution system with a network percolating to the grass root level so as to facilitate availability thereof to the farmers in time.

The AAIDC being conceived of to cater to these exigencies was incorporated and registered as a Government Company on 27.01.1967, under the Companies Act, 1956. At the time of its incorporation, there were two shareholders of AAIDC, namely, the Director of Agriculture, Assam and the Governor of Assam represented by the Secretary to the Government of Assam, Department of Agriculture. The Government of India having decided to come to the fold, the President of India acquired 50% share in the Corporation. Resultantly, the paid up capital of the Corporation was Rs. 2.20 crores held in equal shares by the Union and the State Governments. The Management of the AAIDC was vested in the Board of Directors appointed by the Government of Assam. Out of 12 such Directors including the Managing Director, six were State Government officials, three were Central Government nominees and the remaining three were non-official Directors nominated from amongst the public.

Over the years, the Corporation developed a good infrastructure with efficient officers and trained employees in almost all the districts of the State of Assam for catering to the needs of agricultural development. The Department of Agriculture, Government of Assam, by its Memo No. AGA. 31/67/Pt./35-A, dated 07.03.1977, made it mandatory for the Agriculture Department to procure all kinds of agricultural inputs required by it for implementation of various Governmental schemes through the Corporation. The AAIDC was made the sole procurement agency for all kinds of agricultural implements required by the Agriculture Department of the State. On being approved by the Finance Department of Assam, the Government also allowed the Corporation to charge a fixed margin on such inputs supplied to it for meeting its administrative expenses. It was clarified thereby that the Director of Agriculture or its nominee would venture to make purchases of the required articles through the Development Purchase Board only.

The Director General, Bureau of Public Enterprises and Additional Secretary to the Government of India by the Office Memorandum dated 15.10.1980 issued certain directives with regard to purchase and/or price preference for products of Public Enterprises in competition with Private Sector Undertakings in the matter of purchase by Government Departments etc. The said office memorandum provided in particular that the State Government Departments and Public Sector Undertakings should invariably purchase their requirements from Public Enterprises wherever such undertaking were able to meet the demands. It also disclosed that subject to negotiation for an agreement on price, price preference of not exceeding 10% would be admissible to the Public Sector Undertakings.

4. The Secretary to the Government of Assam, Department of Agriculture, prepared a Cabinet Memorandum on 05.02.1985 with regard to purchase and/or price preference for products manufactured or dealt in by the Corporation wherein while referring to the main objects of AAIDC, the said authority certified its competence and credibility in supplying and servicing articles like fertilizers, insecticides, tractors,

power tillers, fencing materials, tyres and tubes etc. It was emphasized that as the Corporation''s limited pursuits were not profitable enough, it was essential to make it viable by utilizing the facilities created to the fullest extent. One of the measures suggested was to ensure procurement of the requirements of the Government Departments and the Public Undertakings from AAIDC. Aproposal to grant price preference of 10% to the Corporation in conformity with the Office Memorandum dated 15.10.1980, was also mooted. The Finance Department as well as the Department of Public Enterprise also accorded their approval to the said proposal.

Subsequent thereto, a Cabinet decision was taken on the issue of purchase and/or price preference for products manufactured and/or dealt with by the Corporation in competition with Private Sector Enterprise, Organizations etc. in pursuance whereof, the Commissioner and Secretary to the Government of Assam, Department of Public Enterprise by office memorandum being Memo No. PE.24/77/204, dated 16.05.1985 issued certain guidelines which were required to be strictly adhered to by all Government Departments, their subordinate authorities, Government Organizations and Public Sector Undertakings for making their purchases of materials/products dealt in or manufactured by AAIDC. The said authorities were directed to make their purchases of such items invariably from the Corporation and a list of materials/products dealt in by AAIDC was also appended to the Memorandum. Price preference not exceeding 10% was also made admissible to the Corporation on all items/materials/products dealt with/supplied or manufactured by it. In harmony with the aforesaid guidelines, the Director of Panchayat and Rural Development Department, Assam, by his communication under Memo No. DRD-3/109/97/4A, dated 25.04.1997, instructed all Panchayat Directors, DRDA, to procure the agricultural accessories through the Corporation.

5. The petitioner''s have asseverated that inspite of such an overwhelming consensus at different levels mandating purchase of agricultural inputs by all Government Departments, Organizations and Public Sector Undertakings exclusively through the AAIDC, for inexplicable reasons in particular the Department of Agriculture and the Directorate of Panchayat and Rural Development resorted to purchases from various private parties disregarding the Corporation. Though, the AAIDC was a pioneer Organization not only in the State but also in the country to have introduced power tillers in the State in the long past, contract for supply of some major agricultural devices such as power tillers were allotted to private parties bypassing the Corporation. Interestingly, however, after the issuance of the work orders, tripartite agreements were entered into between the Director, Panchayat and Rural Development Department, the AAIDC Ltd. and the respective private parties favoured with the work orders for various post purchase/supply measures to be adopted with the assistance and backup of the Corporation. Through these agreements, the resources and infrastructure of the Corporation were sought to be utilized by the beneficiaries of the said work orders. This clearly demonstrated that though the private parties lacked in infrastructure and manpower to provide the

after sales services, warehouse facilities and custody of power tillers supplied, they had been favoured with the contract on collateral considerations leading to dissipation of Government revenue to the detriment of public interest.

6. The petitioner''s have in addition to the above, narrated several other instances of such purchases by the Department of Panchayat and Rural Development Department, Directorate of Panchayat and Rural Development Department and Department of Agriculture awarding work orders in the year 1999 in favour of private parties by spitefully overlooking the Corporation on extraneous considerations. The petitioners have alleged that these misadventures resulted in large scale corruption leading to misappropriation and misutilization of public funds so much so that a probe into some of such cases had to 110 be handed over to the CBI. The episode generated serious allegations against some of the officers of the Department of Agriculture as well as other public functionaries.

7. During 27.10.1999 to 30.10.1999, the Commissioner, Public Enterprise Department convened several review meetings with Administrative Departments and State Level Public Enterprises under Agriculture and Cooperative Departments, highlighting that the Corporation was loosing continuously and that the accumulated loss had piled over Rs. 11.00 crores. The deliberations disclosed that the Corporation was facing crisis on its working capital and that as on 31.03.1999, out of Rs. 10.00 crores receivable by it, the Agriculture Department was in default of Rs. 8.00 crores against the bills for supply of the inputs by AAIDC. It was emphasized that the Agriculture Department should revalidate the price preference protection granted earlier to the Corporation and take necessary steps for guaranteeing business to it from the Government. According to the petitioners, to be precise, an amount of Rs. 8,56,16,603/- was lying outstanding against the Agriculture Department and inspite of repeated written reminders by the Corporation, the arrears were not paid. The petitioners have maintained that due to the demonstrable antipathy of the Government Departments, Organizations and Public Sector Corporations wholly dissentient to the decision on principle to make the purchases of the Agriculture inputs through it the loss graph of the Corporation marked a steady increase over the years, which stood at Rs. 2,03,74,850/-, during 1997-98. Juxtaposed to this figure was Rs. 19,83,16,086.99 receivable from the sundry debtors in the year 1998. Nonpayment of such a staggering amount therefore surely and steadily drove the AAIDC to a grave crisis.

8. Sensing the imminent jeopardy, two distinct personalities of the State Shri Sarat Chandra Singha and Shri Golap Borbora, Ex-Chief Ministers of the State instituted a Public Interest Litigation being PIL No. 18/2000, before this Court which was disposed of on 07.04.2000, with an observation that the State Government should immediately look into the matter before it was too late for remedial step to redeem the Corporation. This Court expressed the hope and expectation that the State Government would take up the matter expeditiously.

9. In deference to the said decision, the Additional Chief Secretary and Commissioner to the Government of Assam by notification No. AGA 157/2001/40, dated 07.05.2002 directed (1) All Administrative Departments (2) All Heads of Departments and (3) All Deputy Commissioners/Sub-Divisional Officers and (4) All Public Sector Undertakings/Government Corporations to comply with the Cabinet decision and the guidelines issued by Department of Public Enterprise, Government of Assam, enjoining purchase of the items specified invariably through the Corporation.

10. In the year 2001, a Committee for fiscal reforms was constituted to conduct an indepth study on the subject, which in its report emphasized that AAIDC is one of the Companies/Corporations which deserved and needed the Government''s immediate patronage and attention. It was underlined that these units were incurring loss and could be revitalized, inter alia if the Government dues were cleared and the purchases were compulsorily routed through them. The Task Force that was thereafter constituted by the Government notification being No. AGA. 75/2002/16, dated 20.03.2002 to work out an appropriate action plan to operationalise and reinvigorate the Corporation also in its meeting held on 11.06.2002, underscored the in-dispensability of guaranteeing purchase of the agricultural inputs by the Government Departments, singularly through the AAIDC. The Department of Public Enterprises, Government of Assam, in its meeting on the State Level Public Enterprises, held on 20.08.2002, also recommended the said step.

The petitioner''s have contended that inspite of all hereinabove, the Department of Public Enterprises invited tenders from private parties for supply of various agricultural appliances in the month of February, 2003. This move was assailed by the Assam Krishi Udyog Karrnachari Santha and Ors. in WP(C) 2346/2003, where after by order dated 28.03.2003, this Court stayed the process. Subsequent thereto in a meeting attended by the Deputy Commissioners, top functionaries in the Government of Assam in the Agriculture Department, Director of Agriculture, Assam, the Managing Director of the AAIDC and the Office Bearers of the Employees Union, an unambiguous assurance was extended for purchase of equipments, machinaries, fertilizers, pesticide, micro nutrients etc. under various schemes through AAIDC apart from prompt liquidation of outstanding amounts. Acting on the minutes of the said meeting, the writ petition was closed on 08.04.2003.

11. As the stalemate lingered, resulting amongst others, in non-payment of arrear salaries due to the employees and workers of the Corporation beyond their endurance, they along with the employees of other Public Sector Undertakings constituted a body nomenclatured Committee for Struggle to Revive Public Sector Undertakings which approached this Court with PIL 41/2003, inter alia for obligating the Government to take steps with regard to the sick public sector undertakings by formulating a time bound scheme and also to release the long pending arrear salaries due to their employees and workers. This Court by order dated 14.09.2004,

directed the State respondents to submit an interim report highlighting the steps taken in this regard and the progress made. It also recorded the commitments made by the Chief Secretary to the Government of Assam and the Commissioner and Secretary to the Government of Assam, Public Enterprise Department with regard to the initiatives proposed to be taken for redressal on the grievances of petitioners. Confirmed assurances were also offered that all possible measures and steps were being taken by the Government to identify the Public Sector Undertakings for closure/disengagement/revival as the case may be. In the meeting that followed on 23.08.2004, participated by all Heads of Departments as well as the Managing Directors of the respective Public Sector Undertakings, a chart was drawn up to indicate the public sector undertakings identified for revival with the Corporation topping the list.

12. The petitioners have alleged that slighting the above commitment, the Chief Engineer, Agriculture Department, on 11.02.2005 issued a supply order in favour of a private party for purchase of 80 VST Shakti Power Tillers @ Rs. 1,18,500/- and that too without inviting tenders. According to the petitioners, in this transaction an amount Rs. 15,49,776/- was paid in excess of the manufacturers price casting an avoidable burden on the State exchequer.

Being thoroughly exasperated by the persistent fanciful departures from the professed policy of the Government in utter disregard to the directions issued by this Court, the Assam Krishi Udyog Karmachari Santha Instituted WP(C) 2011/2005 which was disposed of on 04.05.2005 by this Court obligating the concerned departments to rout their indents through the AAIDC.

13. The petitioners have contended that the Government of Assam in the Agricultural Department, instead in flagrant dishonour of the policy, the commitments and assurances, in a surreptitious manner initiated a move for the closure of the Corporation by keeping its employees in dark. Consequently, the Joint Secretary to the Government of Assam, Agriculture Department by his letter No. AGA. 204/2003/222 dated 30.07.2005, intimated the Managing Director of AAIDC about the decision to close down the Corporation. The letter, however, clarified that the employees would be entitled to their dues and compensation in addition to redeployment and reemployment for future livelihood. In the meantime the Government of Assam in the Department of Public Enterprise had formulated a policy regarding voluntary retirement schemes and other retirement scheme of Public Sector Undertakings facing imminent closure. In terms thereof, the petitioners asserted that the employees thereof opting for voluntary retirement were entitled to all retirement benefits. As for others alternative employment, commensurate with their qualification and experience was guaranteed.

14. In the parleys that followed between the Government of Assam and the Employees Association of the Corporation, it was represented that the decision of closure or otherwise was a matter of policy and that in no case the closure would be

imposed at the cost of the employees. The petitioners have averred that they were throughout given to understand that the employees would be left with an option either to opt for voluntary retirement or for absorption in other State Government Departments particularly the Agriculture Department or for appropriate absorption. In the prevailing circumstances, being placed in an obviously disadvantageous bargaining position, the employees of the Corporation were thus left with no other alternative but to accept the closure of the Corporation as proposed. The decision for closure of AAIDC eventually received the approval of the Cabinet on 22.08.2006 and consequently the Government of Assam in the Agriculture Department vide No. AGA. 8/2000/Pt./86, dated 26.09.2006, declared the Corporation to be closed w.e.f. 31.08.2006. The notification, however, required the Managing Director of AAIDC to collect and furnish a list of employees who had not opted for VRS indicating their designation, education qualification, dates of birth, superannuation and entry into the service and the scale of pay in the curriculum vitae. Options were thereafter invited by the Managing Director, out of which 209 opted for VRS and the remaining including the petitioners submitted their bio-data as sought for. By then the employees had not received their salary for periods ranging from 24 to 48 months.

15. The Managing Director of the Corporation in turn by his letter B (485) Pt/06-07, dated 20.11.2006, furnished a list of employees of AAIDC as well as that of others including the petitioners favouring re-employment/absorption. The petitioners have categorically asserted that the respondents had handed out a clear and unequivocal promise for absorption of the employees as an alternative to voluntary retirement wherefrom it is impermissible for them to resile. The petitioners have claimed that there are vacant posts at various Grades, Cadres and Rank lying vacant in different departments three times the number of the non optee employees of the Corporation and that they being possessed of the necessary qualification and experience, can therefore be readily accommodated against the same. They have cited the instance of the employees of the Assam State Minor Irrigation Department Corporation who vide Notification No. IGN (E) 64/96/Pt-1/220, dated 13.05.2005 have been absorbed in comparable vacant posts in the Irrigation Department of the State. The petitioners have impeached the obdurate disposition of the State respondents to deny them identical succour as subversive of the constitutional guarantee of equality in public employment besides being derisive of the rule of promissory estoppel.

16. The respondent Nos. 2 and 6, in their affidavit, while admitting that the corporation had been sustaining loss continuously for a long period for which it lacked in financial capacity to pay the salary of its employees regularly, pleaded that though, it was a Government company under the Companies Act, 1956, it was its responsibility to earn revenue through its own resources to manage its affairs, rather than depend on the Government for its sustenance. According to them, the State Government pursuant to the orders of this Court constituted a Committee on State Public Sector Enterprises vide Notification No. PE. 30/2002/03, dated

17.04.2002, to examine the feasibility of reviving the State Public Sector Enterprises under the management of the employees without casting any burden on the State Government. Subsequent to the order dated 03.02.2005, of this Court, passed in PIL No. 41/2003, the State Government included two members to the Committee vide Notification No. PE. 30/2002/Pt./VV/26, dated 17.03.2005. The Committee studied the state of affairs of 34 Public Sector Undertakings including the Assam Agro Industries Development Corporation Ltd. (hereafter for short referred to as the ''AAIDC'') and submitted its report to the Government in July, 2005. The Committee recommended that the Corporation be closed down to prevent further drainage on the State exchequer as the prevalent financial health of the Corporation could neither attract the institutional funds nor banks finance. It was noted that the Corporation was running on an average annual loss of Rs. 3 crores during the period 1999-2004, which had escalated to Rs. 27 crores, as per the provisional account of 2002-2004. The Committee further recommended that the employees of the Corporation would receive their usual compensation under Social Safety Net (SSN), as mooted by the Asian Development Bank (ADV), for redeployment/reemployment for their future livelihood. The Government having decided to act on the recommendations of the Committee, the Department of Agriculture, submitted a formal proposal to the Department of Public Enterprise for closure of AAIDC, vide letter No. AGA/H/2000/Pt./31, dated 28.12.2005. The Cabinet having approved the proposal in its meeting held on 22.08.2006, the Government issued the Notification No. AGA/H/2000/Pt./86, dated 26.09.2006.

17. The answering respondents contended that the Government at the time of decision of closure agreed to release the outstanding liabilities of the Corporation to the tune of Rs. 31.73 crores to meet the closure liabilities as on 31.03.2006. The Government also sanctioned and released an amount of Rs. 350.03 lacs in the month of June, 2007, towards the outstanding C.P.C dues of the retired/expired/existing employees including interest thereon. According to the respondents, the State Government sanctioned a further amount of Rs. 1341.97 lacs on 01.08.2007, for discharging the closure liabilities of existing 205 employees and for meeting the pending entitlements of the retired/expired employees as well as for updating account, arrear house rent, electricity Bills etc.

18. The respondents have averred that subsequent to the closure notification, the Board of Directors of the Corporation, in its meeting held on 17.10.2006, decided to release its employees with effect from 31.10.2006 and also requested the Managing Director to seek option of the regular employees of the Corporation for the existing Voluntary Retirement Scheme (for short hereafter referred to as the ''VRS'')- It has been stated that out of 205 employees of the Corporation, 91 applied for VRS, embodied in the notification No. PE. 4/2000/28, dated 15.02.2006, issued by the Public Enterprises Department, where under all employees opting therefor, were assured of their dues as per their entitlements. All the employees of the Corporation as a consequence, were released from this service with effect from 31.10.2006.

19. The respondents have therefore, asserted that the Government had cleared all its liabilities vis-a-vis 205 employees of the corporation including those, who had opted for VRS and denied their charge of Government inaction to meet the grievances of the employees. They in unambiguous terms, have maintained that the Government in Agriculture Department had not taken any policy decision for absorption of the employees of the Corporation in the State service, but had decided to clear all outstanding liabilities. It has, however, been contended that out of 14 employees, who had earlier opted for VRS, have now joined others in the writ petition by withholding the said fact.

20. The respondent No. 5, by his counter filed through Under Secretary, Finance Department with reference to the Cabinet Memorandum for closure of AAIDC and approved by the Cabinet on 22.03.2006, affirmed that the State Government acting on the recommendations of P.K. Choudhury Committee on SPSE closed down the Corporation. Thereafter, the Agriculture Department moved the Finance Department for release of closure liabilities during 2006-2007. According to this respondent, the Government has released an amount of Rs. 380.03, lacs to the AAIDC in June, 2007, for payment against the outstanding CPF dues. In compliance of this Court''s order, further, an amount of Rs. 1,341.7 lacs has also been released as first instalment towards the closure liabilities and that the balance amount would be released after receipt of the Asian Development Bank''s fund from the Government of India under sub-programme II and following finalization of the account of AAIDC. The respondent has asserted that as the State Government has already taken steps for release of the VRS dues to the employees, the question of their absorption does not arise.

21. Mr. Choudhury, referring to the salient facts in the chain of events culminating in the closure of the Corporation, has urged that the State respondents having systematically and consciously choked the Corporation to extinction, they cannot absolve themselves of their responsibility to act on their promise to absorb the non VRS optees in the State service. As the concerned State authorities from time to time in response to the representations made by the employees of the Corporation, had extended verbal assurances that the closure of AAIDC, would not be thrust at their cost and that in such eventuality, their interest would be adequately protected, they cannot be permitted to resile from their promise, he urged. The learned Counsel maintained that the petitioners having been dissuaded from challenging the proposed closure of the Corporation by the unqualified and unambiguous representation of the State authorities assuring the non VRS optees of their absorption in Government service, the respondents are estopped from pleading to the contrary, the petitioners having prejudicially altered their position acting on such representation. Referring in particular, to the communications dated 30.07.2005 (Annexure-T), Notification dated 26.09.2006 (Annexure-V) and the letter dated 20.11.2006 (Annexure-X), along with the notification dated 15.02.2006, engrafting the VRS for the employees of the State Level Public Enterprises of Assam,

Choudhury, has argued that a promise in explicit terms to absorb the non VRS optees of the Corporation is discernible therefrom and on the touchstone of rule of promissory estoppel, the respondents ought not to be permitted to retrace their path. The learned Counsel while indicating against any possibility of revival of the Corporation, has contended that sufficient number of vacant posts in the Agriculture Department of the State to accommodate the petitioners being presently available, the ineluctable stand of the respondents against their absorption is illegal, arbitrary, highhanded as well. Mr. Choudhury, contended that the respondents'' resistance to the petitioners'' plea for accommodation in the State service, is also discriminatory inasmuch, as 262 employees of the Assam Minor Irrigation Development Corporation similarly situated like them had in the meantime, been absorbed without any demur. The learned Counsel has argued that the petitioners and their families are on the verge of starvation and by the measure of the constitutional imperatives as well, the State respondents are bound in law to absorb them in posts in Government service, commensurate to their qualifications and experience. Following decisions were pressed into service:

(i) Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others, Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,

(ii) Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,

(iii) Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,

(iv) Surya Narain Yadav and Others Vs. Bihar State Electricity Board and Others,

(v) Narendra Kumar Maheshwari Vs. Union of India (UOI) and Others,

(vi) (2006) 3 GLR 586 : 2006(4) GLT 1 : Union of India and Ors. v. Shree Ganapati Rolling Mills (P) Ltd. and Ors.

22. Per contra, Mr. Rahman, reiterated that there being no policy decision at any point of time to absorb any employee of the Corporation, axiomatically no such promise was ever held out, as asserted. He repudiated the communications between the Agriculture Department and the Managing Director of the Corporation as inconsequential official exchanges without in any way binding the State Government. Mr. Rahman, however, submitted on instructions that the offer under VRS, was still open for the petitioners. The learned State counsel produced the official records to reinforce his arguments.

23. The contesting pleadings and the emulous arguments have been duly appraised. Though, principally, the issue relates to the absorption of the petitioners in the State service, the sequence of events leading to the closure of the Corporation, cannot be disregarded. The AAIDC, being admittedly a Government company, wherein amongst others, the State Government held 50% shares thereof, the Corporation, was conceptualized to be a Government organization/public sector enterprise to cater to the growing demand of making available to the farmers in time, agricultural

inputs with an eye on the development of agriculture on progressive lines in the State of Assam. The Government, therefore, in view of the key objective of the Corporation and its inextricable association therewith, had a major responsibility of funding the same appropriately and ensuring that it thrived in its activities without being confronted with unwarranted impediments and interdictions. With that end view, the Directorate of Agriculture, Assam and other subordinate authorities of the Department of Agriculture, in particular, were required to purchase the agricultural prerequisites through the AAIDC, for effective implementation of agricultural schemes, operations and projects undertaken by the Agriculture Department to effectuate the decision. The Agriculture Department and its subordinate authorities were required to place indents for all agricultural inputs with the AAIDC and the Assam Seeds Corporation Ltd., so much so that the Directorate of Agriculture or its nominees could opt for purchasing the required articles through the departmental purchase, only in the event of the Corporation expressing its inability to supply the same within the time stipulated. The Corporation amongst others, by way of incentive, was permitted to charge an additional amount not exceeding 10% of the landed cost of the goods. The above sanctions contained in the letter dated 07.03.1977 of the Deputy Secretary to the Government of Assam, Agriculture Department addressed to the Director of Agriculture, Assam, found reiteration more comprehensively in the office memorandum dated 15.10.1980ofthe Government of India, Ministry of Finance, Bureau of Public Enterprises based on the policy of according preference for products of public enterprises in competition with private sector undertakings in the matter of purchase by Government departments. It emphasized that public enterprises have to be made viable and the capacity created, should be utilized to the fullest extent and, therefore, the State Government Departments and Public Sector Undertakings, would invariably purchase their requirements from public enterprises wherever such undertakings were able to meet the demands. This assumes importance in view of the fact that the Government of India held 50% of the shares in the Corporation. Following a Cabinet decision on the same topic, the Government of Assam, Department of Public Enterprises vide its Office Memorandum dated 16.05.1985 stipulated that the State Government Departments, their subordinate authorities, Government Organizations and Public Sector Undertakings, would unmistakably make purchases of all the requirements of agricultural inputs from the AAIDC, dealing in or manufacturing the same subject to negotiations on price preference not exceeding 10%, which was made admissible to the AAIDC on all items, materials and products dealt in, supplied or manufactured by it.

24. A conscious decision was thus taken by both the Governments to ensure procurement of agricultural essentials needed by the Government departments and organizations as well as the Public Sector undertakings from the Corporation, vis-a-vis items dealt in or manufactured by it. Inspite thereof, procurements of various agricultural inputs were from private parties at times, even without

resorting to any tender process, in breach of the Cabinet decision of the State Government, the policy pertaining to such purchases and the persistent guidelines to the contrary. Alarmed by such deviations and the consequential departmental impact on the Corporation and its prospects, a public interest litigation came to be instituted before this Court being PIL No. 18/2000, highlighting such random and unmindful violations adversely affecting the interest of the State in general and that of the Corporation in particular. This Court by judgment and order dated 07.04.2000, disposed of the proceeding with the following observations:

The public money of the State Government and the Central Government is invested in the Corporation. There is a definite purpose for bringing it into existence and to achieve that object, guidelines meant to be strictly adhered to had been issued by the authorities. Where the action of the authorities which may prove to be injurious to the interest of such public corporation or may ultimately prove fatal, the Government would definitely like to check such authorities. We do not consider it necessary to detain this petition in this Court unnecessarily, rather we would like to observe that at this stage it will be better if the State Government itself pays adequate attention and looks into the matter before things assume some serious dimensions endangering the existence of the Corporation itself. We have only highlighted some of the grievances and malpractices said to be resorted to by the authorities of the Government so that the Government may itself look into it and deal with the situation in case it is found that whatever has been indicated in the petition is correct.

5. In view of the discussions held above, we finally dispose of this petition in expectation that the State Government shall immediately look into the matter before it gets too late to take remedial steps to redeem the Corporation. In case huge dues are there to be paid by Government to the Corporation, it may consider above liquidation of such dues. In the end we express the hope and expectation that the State Government would take up the matter expeditiously.

25. The additional Chief Secretary and Agricultural Production Commissioner to the Government of Assam, by his letter dated 07.05.2000, addressed to all the Administrative Departments, Heads of Departments, Deputy commissioners/Sub-Divisional Officers and Public Sector Undertakings/Government Corporations, reiterated with reference to the aforementioned Cabinet decision as well as the office memorandum dated 16.05.1985 that purchase of items mentioned specifically in the said office memorandum, should invariably be made through the AAIDC. The breach, however continued unabated steadily and surely debilitating the Corporation''s existence. Time and again challenges were made before this Court against the individual process evidencing procurement of agricultural prerequisites in utter disregard of the Cabinet decision and the guidelines aforementioned, but no serious or earnest effort as the available materials on record reveal, was made, to stem the on going transgression. The Corporation evidently, was at the receiving

end.

26. As several Public Sector Undertakings for different reasons demonstrated signs of non-viability, resulting amongst others to the non payment of the salary of their employees, a Committee consisting of employees of 49 such Public Sector Undertakings, baptized as the Committee for Struggle To Revive Public Sector Undertakings approached this Court with PIL No. 41/2003, insisting for appropriate directions to the State of Assam for taking necessary steps to revive the said organizations by formulating a time bound scheme and also for releasing the arrear salary to their employees/workers. This Court following some interactions with the then Chief Secretary to the Government of Assam and the Commissioner and Secretary to the Government of Assam, Public Enterprises Department, vide its order dated 03.02.2005, required the State respondents to file a status report with regard to the progress achieved by the Committee, already constituted to examine the different facts pertaining to revival and closure of different Public Sector Undertakings. The State respondents were left at liberty to remodel the Committee, if need be and prescribed a outer limit of six months for the submission of the report before this Court. The Additional Chief Secretary, Government of Assam, who then was in charge of the office of the Chief Secretary of the State, was required to apprise the Court of the quantum of interim relief that can be afforded to the employees of the Public Sector Undertakings as means of subsistence during the period of the exercise. It was further clarified that pendency of the proceedings before this Court, would not act as a bar for the appropriate Government to finalize any scheme either for revival or closure of the Public Sector Undertakings, as the case may be.

27. In the meantime, faced with the persistent demand of the Corporation for clearing its outstanding dues to the tune of Rs. 9,70,24,922/-, payable by the Agriculture Department, a cell was constituted to examine the relevant records. In the interim report, submitted, the body opined that it was not possible on its part to reconcile the period from 1979-80 on wards till 28.02.2002 as the records were very old. It however, on reconciliation of the records pertaining to 1989-90 to 1999-2000, sustained the Corporations claim for Rs. 3,64,18,713/- and confirmed that the said amount had not been paid by the Directorate of Agriculture to the AAIDC as on 28.02.2002. The Cell recorded that the remaining claim of the corporation was under verification and that a report to the said effect, would be submitted shortly. The Government of Assam in the Agriculture Department, thereafter by notification dated 23.03.2002, constituted a Task Force to make a complete review of function of the Corporation and to work out an appropriate action plan for its commercial operation and revitalization. In its meeting held on 11.06.2002, the Task Force recommended the following measures for reviving the activities of the Corporation:

1. The Director of Agriculture be asked to release all the amounts drawn under different schemes. The Corporation shall, in turn, invest the amount only towards

procurement of items specified and no amount shall be diverted for any other purpose. Necessary undertaking in this respect shall be furnished by the Managing Director. All the orders placed with AAIDC Ltd. Must be supported by 90% advance as already intimated by the department of Agriculture vide No. AGA. 31/67/Pt/35, dated 07.03.1977.

2. Planning and Development Department be approached to include the scheme of VRS in Xth Five year Plan which is already in process in the Planning & Development Department.

3. The Govt. be approached to provide Rs. 1.00 Crore as Grants-in-aid/Managerial Subsidy annually till VRS is implemented.

4. To initiate proposal for providing revolving fund by the State Govt. to activate the manufacture in Central workshop.

5. Chairman asked the member Secretary to initiate action to include Rs. 3.64 Crores out of Rs. 8.62 Crores already reconciled for placing supplementary demand for payment to the Corporation against outstanding dues as these amount is accumulated due to Plan cut in previous years.

6. To pursue the matter of routing the orders by different Govt. Departments already initiated by Additional Chief Secretary, Agriculture and Agri Production Commissioner, Assam.

This was followed by a meeting on the State level Public Enterprises held on 20.08.2002, attended amongst others by the Cabinet Ministers and Minister of the State and Member Secretaries, Commissioners and Secretaries of the Administrative Departments of State level Public Enterprises and high functionaries of the State administration. In the discussion that was held, it transpired that vis-a-vis, the AAIDC, there was a consensus that its financial position could be improved. If the Government dues were cleared and the Government Departments, Organizations as well as other Public Sector Undertakings honoured the Cabinet decision in procuring their requirements of agricultural inputs from it.

28. The above views, in essence, were reaffirmed in a meeting convened by the Minister of State Agriculture, attended by the top brass of the State administration as well as the Managing Director of the Corporation, following which, W.P. (C) No. 2346/2003, preferred by the Assam Krishi Karmachari Santha, impugning a tender process for procurement of agricultural implements by side-tracking the Corporation was closed.

29. Following the disposal of PIL No. 18/2000, by this Court on 07.04.2000, inter alia requiring the State Government to take necessary remedial steps to redeem the Corporation, a Committee for Fiscal Reforms (for short also referred to as the "COFR") was constituted to examine the functioning of the existing 49 Public Sector Undertakings and suggest suitable measures to resurrect and resuscitate the viable

Companies/Corporations though suffering losses. The Committee identified a group of such Companies/Corporations which, according to it, deserved immediate support and attention of the Government observing that these could be revitalized if their outstanding dues were cleared, Government purchases were compulsorily routed through them, tax incentives were accorded and provisional management provided. The Corporation was one of such organizations.

30. In the meeting convened by the Department of Public Enterprise under the Chairmanship of the Chief Secretary of the State on 23.12.2004, in which the Additional Chief Secretary, Principal Secretaries, Commissioners and Secretaries of the Administrative Departments of State Public Sector Undertakings, Principal Secretary, Planning and Development Department (P & D) Department, Financial Commissioner and Chief Executives of the Enterprises had participated, it was decided amongst others, that all Administrative Departments of the State Public Sector Undertakings would identify and Undertakings to be closed or revived in the State Public Sector and make endeavours for revival of the potential State Public Sector Undertakings on priority basis. In the list of such undertakings, the AAIDC was recommended for revival. Ironically however procurement of agricultural inputs, were still being made sporadically by deliberately overlooking the Corporation.

It was in this emerging background that the Committee on State Public Sector Enterprises on 14.07.2005 submitted a report suggesting the closure amongst others of the Corporation. According to the Committee, the revival cost of AAIDC was estimated to be around Rs. 41 Crores. It observed that since the Asian Development Bank (hereafter for short also referred as ''ADB''), funds was available for closure such a course was advisable. The Committee noticed that due to the current intense and aggressive competition from the private sector, the Corporation with its heavy load of establishment cost, high accumulation of market due, accumulated wages with heavy receivables was not being able to serve the purpose of its establishment. It was of the opinion that the continuing precarious financial health could neither attract institutional funds nor bank finance. There was no budget provision for the Corporation and that the Administrative Department was unable to pay its dues for paucity of funds. It also recorded the version of the Secretary, Agriculture Department pleading the Government''s inability to fund its revival. Taking all these factors into considerations, the Committee, therefore, recommended that:

1. The Agro Industries Development Corporation Ltd. be closed down to save further drainage on the State exchequer.

2. The employees of the Corporation will get their dues and compensation and their future will be covered under Social Safety Net (SSN) as mooted by the Asian Development Bank (ADB) for redeployment/reemployment for their future livelihood.

31. On a survey of the developments nologically, it would thus overwhelmingly appear that the AAIDC constituted with the avowed objective of organizing agricultural inputs and implements for the grass root levels of the agricultural fraternity was consciously allowed to drift towards its obliteration due to lack of honest and sincere remedial steps of the State Government and its concerned authorities at different levels. Not only the contraventions of the Cabinet decision and the guidelines continually insisting on the procurement of the agricultural inputs through the Corporation were permitted with impunity, the Government on the plea of paucity of funds dithered to liquidate its dues running into Crores. Though, in purported streaks of responses immediate on the directives of this Court, stray orders were issued mandating adherence of the Cabinet decision and the guidelines for purchase of the agricultural implements through the AAIDC, the Government soft peddled the issue conceding a free hand to the unscrupulous elements to make purchases thereof from time to time from private agencies even at the cost of additional burden on State exchequer. The State Government lacked in concern for the sustenance of a Public Sector Undertaking and adopted a detached and incautious disposition unwary of the future of the employees engaged therein. As a Welfare State, it was its constitutional obligation to be informed of the prejudicial consequence but it casually permitted the situation to stray beyond redemption.

32. Be that as it may, acting on the report of the Committee on State Public Sector Enterprises, the joint Secretary to the Government of Assam, Agriculture Department, by his letter dated 30.07.2005 informed the Managing Director of the AAIDC the decision on principle to close down AAIDC subject to the final approval by the State Cabinet. The recommendations of the Committee as extracted hereinabove were also set out in the said letter ad verbatum. It was communicated thereby that no budgetary support by the State Government would be extended thereafter and that its assets should not be disposed of without the specific and prior approval of the Government.

Subsequent thereto, the Principal Secretary to the Government of Assam, Public Enterprises Department, was requested to move the Cabinet for approval of the closure of the Corporation. The letter dated 28.12.2005 issued by the Secretary, Agriculture Department to the said effect disclosed that the proposal for closure had the approval of the Minister of State (1 & D), Agriculture and the Chief Minister of the State. By the notification dated 26.09.2006, issued by the Principal Secretary to the Government of Assam, Agriculture Department, AAIDC was declared to be closed w.e.f. 31.08.2006. As the said notification discloses, it was preceded by the Cabinet approval of the said proposal sanctioned on 22.08.2006. By the said notification, however, the Managing Director of the Corporation was requested to furnish the list of employees who had not opted for VRS by indicating their designation, educational qualification, date of birth, superannuation and entry in service as well as the scale of pay.

A representation on behalf of the employees Association of the Corporation was submitted on 30.10.2006 before the Additional Chief Secretary to the Government of Assam, Department of Agriculture and beseeching the State authority to absorb the non VRS opting employees in terms of the notification dated 26.09.2006, and the voluntary retirement scheme circulated by the Government notification No. PEA/2006/28, dated 15.02.2006. Early release of the arrear salary was also appealed for. Their entreaties, however, remained unresponded.

The revised policy on voluntary retirement scheme for the employees of the State Level Public Enterprises Assam was circulated by the aforementioned notification dated 15.2.2006. The benefits of the VRS package, were in respect of all State Level Public Enterprises in the State irrespective of whether those were to be closed or revived or could afford to discharge the dues of their employees from their own resource generation. Clause 9 thereof having a definitive bearing on the present adjudicatory process deserves to be extracted:

9. A section of employees of some SLPEs who may be absorbed in the State Govt. Departments, will not be entitled to the VRS package. However, for the period of service rendered by such employees in an SLPE prior to absorption in the Government Department, he/she will be paid the arrear salary/wages (basic pay+dearness allowance only). They will not be eligible for any other component of the VRS package, as their problem of post-SLPE service rehabilitation will be fully mitigated by employment in Government Departments.

It is thus manifest from the voluntary retirement scheme that it does not obligatorily require all the employees of the Corporation to subject themselves thereto, without any option and compulsorily avail the benefits offered therounder. The notification dated 15.02.2006, read as a whole also reinforces the above determination. There is no clause incorporated therein, making it incumbent for the employees of the Corporation to indispensably accept the stipulations of the scheme with no discretion to them to avoid the mode of exit from the services as prescribed thereby. To the contrary, the scheme comprehends that a section of the employees of the Corporation may be absorbed in the State departments and for those adopting that course, they would not be entitled to the benefits under the scheme. However, for the period of service rendered by them prior to absorption in any Government department, he/she, would be disbursed the arrear salary (wages, basic pay and dearness allowance only).

33. Clause 9 is categorical to the said effect, which clarifies that they would not. be eligible for any other component of the VRS package as their problem of post SLP service of rehabilitation, would be fully mitigated by their employment in Government departments. This contemplation for the non optee(s) adjustment/accommodation in State service falls in place with the recommendation of the Committee on State Public Sector Enterprise and accepted by the Government. It is not in dispute that in terms of the notification dated 26.09.2006,

the Managing Director of the Corporation had solicited from the non VRS optees, their bio-data and service particulars are duly forwarded to the Secretary to the Government of Assam, Agriculture Department on 20.11.2006. The petitioners are included therein. Though, the respondents, have contended that 14 of them had earlier opted for VRS, it is not clear as to whether the benefits under the Scheme, had in the meantime, been extended to them.

34. Noticeably, it is not the respondents'' avowal that the recommendation of the Committee on State Public Sector Enterprises recommending that the employees of the Corporation would get their dues and compensation and that there future would be covered under the Social Safety Net (SSN), as mooted by the Asian Development Bank for re-deployment/re-employment for their view livelihood and expected on opportunity by the Government, did not tantamount to a representation to them to be adjusted and/or accommodated in the State service. The respondents have only reiterated that no policy decision to that effect, had been taken at any point of time.

35. The Cabinet memorandum prepared by the Department of Public Enterprises on the issue of closure of the Corporation circulated under Rule 17 of the Assam Rules of Executive Business amongst others, mentions that there were 205 employees of the AAIDC and that release of 91 of them, had been proposed under the VRS. It was recorded therein that the rest of the employees would have to be retrenched as per Rule, if the Agriculture Department cannot absorb them for which the Agriculture Department would explore possibility or they do not opt VRS subsequently. The views of the Agriculture Department referred to therein, demonstrates that it had no objection to the placement of the issue of closure of the Corporation before the Cabinet as per the Cabinet memorandum prepared by the Department of Public Enterprises. The Finance (FA) Department as well, as the memorandum discloses, had no objection to the draft memorandum on the closure of the Corporation subject to availability of ADB sub programme I of AGPRMP. By the memorandum, approval of the Cabinet was thus sought for closure of the AAIDC, in principle, so that the Agriculture Department could implement the voluntary retirement scheme as per the guidelines vide notification No. PE. 4/2006/28, dated 15.02.2006. It clarified in categorical terms that the implementation of the voluntary retirement package, would be as per this notification.

36. The official records reveal that the Cabinet memorandum in the form submitted, was accepted and the proposal for the closure of the AAIDC under the administrative control of the Agriculture Department, was approved by the Cabinet on 22.08.2006.

37. The Apex Court in Motilal Padampat Sugar Mills Co. Ltd. (supra), while dwelling on the purport of the doctrine of promissory estoppel, propounded that the principle ingrained is that where one party had by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or

affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not.

Their Lordships differentiated the notion of estoppel in the common understanding from that of promissory estoppel to hold that the latter ought not to be acknowledged to have a limited application by way of defence only. It was held that the precept was not really based on the principle of estoppel but is a doctrine evolved by equity in order to prevent injustice where a promise is made by a person knowing that it would be acted upon by the person to whom it is made and in fact it is so acted on and that it is inequitable to allow the party making the promise to go back upon it.

This view found reiteration amongst others in Surya Narain Yadav and Ors. (supra).

38. This Court in Union of India and Ors. v. Shree Ganapati Rolling Mills (P) Ltd.. and Ors. (supra), after exhaustive survey of the authorities on the subject enunciated that the rule of promissory estoppel being an equitable doctrine cannot be reduced to a rigid and inflexible framework and may have to be moulded to suit the particular fact situation, the predominant objective being to do justice between the parties and to extend an equitable treatment to them. It held that to permit the public bodies to breach the promise made by them may amount to allowing them to act unfairly. It concluded that the doctrine is an aspect of concept of fairness which is an index of accepted moral standards.

39. A cumulative consideration of the above recorded inputs leaves no manner of doubt that the State Government and the Agriculture Department in particular, were clear in their notion that the feasibility of absorption of non VRS optees of the Corporation, would have to be explored in terms of the recommendation of the Committee on the State Public Sector Enterprises and accepted as an essential precondition of the closure. The proposal of closure of the AAIDC as communicated by the letter dated 30.07.2005 (Annexure T to the writ petition) and the notification dated 26.09.2006, indicating the Cabinet''s approval of the said recommendation read with the notification dated 15.02.2006, embodying the revised voluntary retirement scheme and the exercise of collecting the bio data of the employees, who had not opted for the VRS, in my estimation comprise, a explicit promise to accommodate them in the State service against the posts which are commensurate to their academic qualifications and experience. Further, the Cabinet memorandum and the approval thereof, by the Cabinet as noticed hereinabove, demonstrates that the State authorities were reconciled to this proposition and hence the post closure drill to collect the bio data and other service particulars of the non VRS

optees/employees of the Corporation for their future rehabilitation in Government service. In this conspectus of facts, it would be iniquitous to permit the State respondents to renege from their promise and disown their responsibility of assimilating such employees in the State service subject to the vacancy position as well as the conditions of eligibility attached thereto. The attempt on the part of the respondents to squirm out from their representation in the attending facts and circumstances, is repugnant to the letter and spirit of the rule of promissory estoppel.

40. In recognition of the rule of administrative law as a check against arbitrary exercise of power by the executive, the Apex Court in Ramana Dayaram Shetty (supra), pronounced that such an authority must be rigorously held to the standards by which it professes its action to be judged and it must scrupulously observe those standards on the pain of invalidation of an act in violation thereof. Negating the concept of unrestricted and unbridled power and discretion of the executive, there Lordships propounded that every action of the State and its functionaries must be informed with reason and structured within a system of control free from arbitrariness.

41. In Narendra Kumar Maheswari (supra), the Apex Court, while dilating on the enforceability of administrative guidelines, ruled that where any contravention thereof affects the vested right of persons governed thereby, any deviation therefrom without rhyme or reason, would signify arbitrariness and/or discrimination warranting judicial review.

42. In Kapila Hingorani Vs. State of Bihar, , the contextual facts revealed, deaths due to starvation or suicide of hundreds of employees of several State owned corporations, public sector undertakings or statutory bodies in Bihar, resulting from non payment of remuneration for along time. Dismissing the plea of the State that as most of the undertakings or companies were registered or incorporated under Indian Companies Act, 1956, the fights and liabilities of the shareholders would be governed by the provisions of the Act and that the liability of the said companies/undertakings, cannot be passed on to the Government, the Apex Court held that in view of the deep and prevasive control, it exercises over the Government companies, in the matter of enforcement of human rights and/or rights of citizen to the life and liberty, it has also an additional duty to see that the rights of the employees of such corporation/companies are not infringed. Elaborating on this proposition, their Lordships observed that the State''s dominion over the affairs of the companies/corporations rendered the Government liable to ensure that the life and property of the employees were fully safeguarded. Having regard to the all permeable supervision it conducts over the companies/corporations, the State had a constitutional obligation to protect the life and liberty of the employees thereof, who are the citizens of the country. The facts obtained herein, are almost akin in all salient features.

43. The respondents have not questioned the authenticity of the particulars of the vacant posts in the Agriculture Department as on31.03.2007, as furnished by the Administrative Officer, Directorate of Agriculture, Assam to the Deputy Secretary, Government of Assam, Agriculture Department, Guwahati vide the former''s communication No. Agrl/esstt/5584/2007-08/2, dated 02.06.2007. They have not repudiated either that the petitioners and other non VRS optee/employee of the Corporation are eligible to be accommodated therein.

44. In the above factual premise and in face of the determination made herein, this Court is persuaded to hold that the petitioners are entitled to be considered for absorption against the vacant posts enumerated in the list appended to the aforementioned letter dated 02,06.2007 (Annexure Z to the writ petition), in terms of the representation/promise made by the State respondents for their redeployment/reemployment following the closure of the Corporation and affirmed by the Cabinet in its decision on 22.08.2006. Ordered accordingly.

As the petitioners wait in bonafide expectation and understandably that with the sudden turn of events, they have been left high and dry with their families, the process as directed, should be completed within a period of Six (6) weeks from the date of receipt of the certified copy of this Order.

45. Needless to say, the State respondents would also attend to their claim for arrear salary and allowances due to them before the closure and following the quantification thereof, defray the same to them forthwith. The petition is thus allowed in the above terms. No costs.