

(2002) 04 MAD CK 0207

Madras High Court

Case No: W.A. No. 74 of 1995 and Writ Petition No's. 2932 and 3311 of 1998

Government of Tamil Nadu and
Others

APPELLANT

Vs

Ponni Sugars and Chemicals Ltd.
and Others

RESPONDENT

Date of Decision: April 17, 2002

Acts Referred:

- Constitution of India, 1950 - Article 299

Citation: (2003) 129 STC 30

Hon'ble Judges: P. Thangavel, J; P. Shanmugam, J

Bench: Division Bench

Advocate: R. Muthukumaraswamy, A.A.G. and T. Ayyaswamy, Special Government Pleader, for the Appellant; A.L. Somayaji, for Aiyar and Dolia and G. Masilamani, K. Mohan Ram and K. Govi Ganeshan, for the Respondent

Final Decision: Allowed

Judgement

P. Shanmugam, J.

--Both these writ petitions are preferred against the orders passed by the Tamil Nadu Taxation Special Tribunal raising a common question.

2. M/s. Ponni Sugars and Chemicals Limited, petitioner in T.P. No. 568 of 1997 before the Tamil Nadu Taxation Special Tribunal (hereinafter referred" to as "the Tribunal"), have commenced their production of sugar on January 27, 1984. M/s. Bannari Amman Sugars Limited, petitioner in T.P. No. 517 of 1997 before the Tribunal, started their production of sugar on January 22, 1986.

3. Initially, by G.O. Ms. No. 1414/Industries (MID.I) Department dated November 30, 1984, M/s. Ponni Sugars and Chemicals Ltd., were granted subsidy equivalent to the quantum of purchase tax on sugarcane due from it for a period of two years from the date of their commencing production. Subsequently, on their request, the

subsidy was extended for a period of five years in G.O. Ms. No. 1497/ Industries (MID.I) Department dated December 26, 1987.

4. By G.O. No. 268 dated April 16, 1987, M/s Bannari Amman Sugars Ltd., were sanctioned subsidy equivalent to the quantum of purchase tax for sugarcane due from it for a period of five years from the date of commencement of their production.

5. The Government, by its orders in G.O. Ms. No. 989/ Industries (MID.I) Department dated September 1, 1988, modified the scheme of purchase tax subsidy to one of deferral of purchase tax subject to certain conditions. The said order was impugned in T.P. Nos. 568 of 1997 and 517 of 1997 before the Tribunal. By order dated November 26, 1997, the Tribunal allowed the petitions on the ground of promissory estoppel and granted the consequential relief. The present writ petitions are preferred by the Government of Tamil Nadu and others, who were respondents before the Tribunal, praying for issue of writs of certiorari to quash the orders of the Tribunal.

6. Mr. R. Muthukumarasamy, learned Additional Advocate-General, appearing on behalf of the petitioners, submitted that there is no scope to apply the principle of promissory estoppel in these cases. The pre-conditions required to satisfy the claim are not available in these cases. According to him, the Government grants exemption in public interest in the form of sales tax or excise duty exemption or assistance like that of subsidies or incentives. The Government exercises their statutory powers to grant certain exemptions in public interest and whenever there are statutory exemptions subsequently modified or withdrawn, no question of promissory estoppel would arise in such cases on the principle that the exemptions granted can be recalled by the Government by exercising the same power. The principle of promissory estoppel will arise only if a citizen acts on the representation of the Government and alters his position. Before claiming promissory estoppel against the Government, one has to specifically plead and furnish materials as to how they had been induced and acted and altered their position by virtue of that representation. By referring to a series of decisions on this point, learned counsel submitted that the Government orders granting subsidies in the form of purchase tax cannot be taken to mean that there was an inducement and that the respondents have acted on the basis of the said promise. Both the respondent factories have been in existence even prior to the Government order and that their requests for concession had been considered individually and it was granted. The said concession can also be withdrawn by the Government. He submitted that there is no vested interest in favour of the respondent to continue to claim the same. According to him, the Government has got valid and good grounds to sustain the modification of the scheme of granting subsidy. He has taken us through the report of Sampath Committee and its recommendations and justified the modified scheme. He submitted that the concession that was given to the respondents cannot be

construed as benefit given to them to earn their profit at the cost of public revenue. There is no equity in favour of the respondents in these cases. He submitted that the stand taken by the Government in their counter, additional counter and the arguments is supported by the materials on record in the file. According to him, the Tribunal erred both on the applicability of promissory estoppel, the law on the subject and on merits and hence he prays that the orders may be set aside.

7. Mr. Somayaji, learned Senior Counsel, appearing on behalf of the respondent in W.P. No. 2932 of 1998 and Mr. G. Masilamani, learned Senior Counsel, appearing on behalf of the respondent in W.P. No. 3311 of 1998, argued to sustain the order of the Tribunal. According to them, the respondent-factories have acted on the declared policy of the Government and altered their position by expanding their area of operation. The respondents have continued their operation based on the legitimate expectations on the belief and acceptance of the policy of the Government. They had been making representations in writing continuously and in the absence of immediate reply, construing the existing policy of the Government to grant concession to the sugar mills, they have acted by expanding their investment and operation. Therefore, the impugned Government order withdrawing the said concession is contrary to the recognised principle of promissory estoppel. The grant of subsidy was intended to make the industry viable and but for this concession, the industry would have incurred loss. The reasons that are now stated both in the affidavit as well as in the counter-affidavit cannot be countenanced by this Court since the Government is trying to supplement the reasons that are not stated in the impugned Government Order. The only reason stated in the Government order is to bring about unity in the type of assistance given to industrial units. Learned counsel assailed the impugned Government order as one contrary to the policy of the Government and contrary to the recommendations of the Sampath Committee. There was no mention of public interest anywhere in the Government order. Therefore, no new grounds can be permitted to be raised at this stage. It is submitted that if the impugned order is sustained, it will amount to unjust enrichment and would be contrary to the above policy of encouraging industrialisation and production of raw sugar.

8. We have heard the learned counsel for the parties in extenso and considered the matter carefully.

9. In the light of the arguments advanced by the learned counsel for the parties and the decision of the Tribunal, the point that arises for consideration is as to whether, by the grant of concession to an existing unit, the Government is bound to continue the concession as per the order and also whether the Government is bound by the principle of promissory estoppel in the facts of the case.

10. The fact, that both these industries have commenced their production of sugar on January 27, 1984 and January 22, 1986 respectively is not in dispute. The sugarcane was taxable at 13.25 per cent at the point of last purchase in the State

under entry 62 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, during the relevant period. They have been granted relief in the form of an annual subsidy equivalent to the quantum of purchase tax payable by them on sugarcane due from them for a period of five years from the date of commencement of their production by Government orders in G.O. Ms. No. 1497 dated December 26, 1984 for M/s. Ponni Sugars and Chemicals Limited and G.O. Ms. No. 268 dated April 16, 1987 for M/s. Bannari Amman Sugars Limited. Therefore, on the date of grant of subsidy, the respondents are functioning units after having commenced the production and they should have established their units much earlier. Therefore, at the outset, it has to be stated that the units have not come into existence on the assurance or promise of the Government to grant subsidy.

11. By the impugned Government Order in G.O. Ms. No. 989 Industries (MID.I) Department dated September 1, 1988, the Government modified the scheme as follows :

- a. The type of assistance, viz., grant of subsidy equivalent to the quantum of purchase tax on the sugarcane is modified to one of deferral of purchase tax for a period of four years.
- b. The ceiling, i.e., restriction to the levy of purchase tax is introduced on the basis of the capacity of production.
- c. No subsidy will be granted to any new sugar mill.
- d. The subsidy will continue to the units who are getting the subsidy even though they are granting dividends.
- e. The ceiling will be restricted to the purchase tax leviable for the sugarcane actually drawn from the reserved areas.
- f. If the subsidy has been disbursed in excess of the ceiling indicated, no further disbursement will be made.
- g. However, no recovery of such excess will be effected.

The ceiling has been worked out taking into consideration the optimum crushing capacity of the mill. In respect of 1250 TCD mill, the optimum capacity of cane to be crushed would be 1250 TCD x 172 days = 2.15 lakhs M.T. of cane. The crushing of optimum level difference would generate adequate resources to the sugar mills to meet their commitment in the normal course.

12. Reliance is placed by both sides on the Sampath Committee's Report and hence, the relevant recommendations can be looked into. The Government of India constituted a committee on April 5, 1974 to examine the matters relating to economic viability of new sugar factories. The terms of reference were :

to examine the present cost of establishing a new sugar factory of 1250 tonnes daily cane crushing capacity ;

to suggest ways and means of reducing the total cost of such project ;

to suggest minimum economic size of a new sugar factory ; to suggest various incentives ;

and other measures for making new sugar factories economically viable.

13. As per the committee's report, the total quantity of sugarcane crushed per year is as follows :

First year - 60,000 tonnes

Second year - 1,00,000 tonnes

Third year - 1,40,000 tonnes

On the basis of past experience and available data, the committee felt that in case of low recovery region, the crushing may stabilise at 1,40,000 tonnes and in the case of medium and high recovery areas, the crushing may stabilise at 1,70,000 tonnes and 1,85,000 tonnes by the fourth and fifth year respectively.

14. The duration of crushing season in the low, medium and high recovery areas would be 80 days, 100 days and 120 days respectively in the third year in all cases. In the case of low recovery area, the duration will stabilise at 120 days achieved in the third year. But, in the case of medium and high recovery areas, the Reason is expected to stabilise at 140 days, 150 days in the fourth and fifth year respectively.

15. The suggested suitable incentives that may be required to the new sugar factories considering the deficits that are likely to be suffered for 1250 sugar plants mechanically viable were as follows :

(a) capital subsidy,

(b) allowing a larger percentage of free sale sugar,

(c) high levy sugar price in the case of new sugar factories,

(d) allowing rebate on excise duty,

(e) remission of purchase tax imposed by the different State Governments.

16. In reference to rebate of excise duty, the committee recommended that "for every 100 lakhs of deficit to be compensated, excise rebate would have to be given in the case of new sugar factory for the first 25,000 tonnes of sugar produced. The committee feels that this mode of rebate will be more equitable than to give the rebate for a fixed number of years".

Coming to the remission of purchase tax, the committee recommended as follows :

"The committee, therefore, suggests that different State Governments may be moved to exempt all new sugar factories from payment of purchase tax on sugarcane up to the same level of sugar production for which excise duty rebate is allowed by the Central Government."

17. It is seen that the Government in G.O. Ms. No. 1294, Industries Department dated October 24, 1975, had issued orders regarding remission of purchase tax payable by sugar industries in the co-operative and public sector for sugarcane purchased by them to the State Government. During the Sixth Five-year Plan period, i.e., from 1980-81 to 1984-85, three sugar mills were commissioned; two in co-operative Sector and one in private sector and M/s. Ponni Sugars and Chemicals Limited commenced their production from January 27, 1984. On the representation made by M/s. Ponni Sugars and Chemicals Limited, the Government decided to extend the same concession granted to the sugar mills in co-operative sector and public sectors. The Government estimated the purchase tax subsidy commitment for the Government in respect of the two respondent-Co-operative Sugar Mills and M/s. Ponni Sugars and Chemicals Limited at about Rs. 9.60 crores. The initial grant of subsidy equivalent to the quantum of purchase tax on sugarcane due from it for a period of two years from the date of commencement of production was subsequently extended to five years by G.O. Ms. No. 1497, Industries Department dated December 26, 1984.

18. It is further seen that during the Seventh Five-year Plan period, i.e., 1985-86 to 1989-90, six more sugar mills have started their commercial production one in co-operative sector and five in private sector. The particulars of those mills are as follows :

SI. No.	Name of the mill	Date of commencement of production
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Co-operative sector :

NPKRR Cooperative Sugar
Mills 21-01-1987

SI. No.	Name of the mill	Date of commencement of production
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Private sector :

1.	Bannariamman	22-1-1986
2.	Dharani I	6-3-1989
3.	Sakthi II	21-3-1989
4.	Rajshree	18-1-1990
5.	Thiru Arooran Sugars II	24-11-1990

The purchase tax subsidy commitment of the Government for the mills during the seventh five-year plan period was estimated about Rs. 19.20 crores.

19. By going through the order in G.O. Ms. No. 1414, Industries Department dated November 30, 1984, by which subsidy equivalent to the purchase tax was granted to M/s. Ponni Sugars on the basis of their representation dated August 6, 1984, paragraph 3 sets out the grounds of their representation for extending the concession granted to co-operative and public sector sugar mills. The earlier Government Order in G.O. Ms. No. 1294, Industries dated October 24, 1975 granted the relief from purchase tax to the co-operative and public sector sugar factories who were yet to be commissioned. Ponni Sugars have not represented anywhere as seen from grounds (a) to (l) that they have established their sugar industry on the representation of the Government. On the contrary, it is seen that even the initial concession granted to co-operative and public sector mills was given only on October 24, 1975, that too to a yet to be established industry. Whereas, Ponni Sugars had commenced their crushing operations in January 1984 itself and their representation was dated August 6, 1984 and nowhere they have stated of any representation to the Government which permitted them to establish the unit. The grant of two years" subsidy was extended to five years by G.O. Ms. No. 1414, Industries dated November 30, 1984 on the representation of M/s. Ponni Sugars dated December 6, 1984. It was stated to be an appeal against the earlier Government Order granting subsidy for two years, seeking to extend the said relief for a period of five years. In this representation also, they explained certain difficulties and problems faced by the industry and therefore, they requested for an extension of the subsidy.

20. The Government, by an order in G.O. Ms. No. 1497 dated December 26, 1984, extended the subsidy to five years. From the file relating to the Government Order, it is seen from the note put up before the Secretary in the file relating to G.O. Ms. No. 1497, dated December 26, 1984, it is stated that the request for concession was originally rejected by the Government and subsequently conceded for a limited period of two years, probably on account of the fact that according to the statements furnished by the company, the company was shown to be incurring loss in the first two years and making profits thereafter. The note further says that in the

present position, no new grounds have been given except an argument that possible drought situation may alter their calculations. This is a remote possibility and it is also liable for verification in the next two years. There is no urgency as the concession for the next two years seems to have already been extended to the company and the question of extending it for the subsequent years will arise only in 1986. However, the Government Order came to be issued dated December 26, 1984.

21. M/s. Bannariamman Sugars Limited (BS) have made a representation dated June 6, 1986 for waiver of purchase tax and the Government has considered and granted subsidy by their order in G.O. Ms. No. 268 dated April 16, 1987. From the order, it is seen that the Government considered the reasons set out by the company in their representation like project cost, transport charges and similar concessions. Their representation dated June 6, 1986 shows their effort to get the purchase tax holiday, which formed the whole background in which the project has been conceived. From the Government Order, it is seen that no such representation was made by them earlier. The factory commenced its commercial production on January 22, 1986. In their first representation dated April 14, 1984, they have stated that the project cost will exceed rupees ten crores and with the present cane price and other revenue expenses, it will be very difficult to meet both ends unless relief is granted to them by way of waiver of purchase tax. They have made further representations dated June 25, 1984, November 22, 1984 and March 27, 1986. In their representation dated March 14, 1987, they have admitted that they had to draw cane from Kollegal Taluk in Karnataka State and from far away places such as Perambalur, Kallakurichi, Dharmapuri, etc., to keep their operation and after referring to their financial commitments and the similar concession given to other sugar factories, they have requested for a relief.

22. Their request was considered and from the file, it is seen that a note was put up to the effect that the total value of the concession likely to be availed by BS for five years would be Rs. 610.10 lakhs as shown below :

		Rs.	
Sales	-	520.82	lakhs
from			
additional			
free			
levy			
sugar			
Excise	-	89.28	lakhs
duty			

Total - 610.10 Lakhs

As regards the purchase tax liability of the company, they have to pay 13.25 per cent of the cane price and the total liability of the company on account of the first five years of its operation is Rs. 349.51 lakhs. In the project report, the company has not taken into account the purchase tax payable to the State Government and as per the report of the Government, it will earn a total net profit of Rs. 728.51 lakhs before providing for purchase tax and Income Tax during its five years of operation. And, if purchase tax is also taken into account, the total profit likely to be earned by the company would be Rs. 379.20 lakhs. A note was put up to the effect that the company will earn Rs. 379.20 lakhs providing for purchase tax and its profitability will be still higher if it is able to increase its capacity utilisation and it will not lose on any account if it is directed to pay purchase tax. Initially, it is stated in the file that as per the order of the Chief Minister dated July 25, 1986, M/s. BS cannot be granted purchase subsidy tax and it should pay the tax and the grant of subsidy to Ponni Sugars cannot be a precedent. On a further representation, the Government issued an order in G.O. Ms. No. 268 dated April 16, 1987, granting the subsidy to M/s. BS. From the above, it is clear that there was no representation as claimed now that they have acted to set up the industry only on the basis of the concession. On the contrary, they were expressing high financial commitments and other problems relating to sugarcane. Though the Government initially found on materials that there is no need to grant the subsidy since the unit was making profit, on a re-consideration, they were granted the subsidy.

23. From the impugned Government Order and the related file, yet another aspect that has come to the notice is relevant for our consideration. As per the report of the Director of Sugar dated July 23, 1987, M/s. BS have purchased sugarcane worth Rs. 1,66,75,878.07 up to March 31, 1986, i.e., for 68 days, for which purchase tax works out to Rs. 22,09,554. Likewise, during the year 1986-87 up to March 31, 1987, they have purchased sugarcane for about Rs. 9,48,93,922.79, for which the purchase tax liability works out to Rs. 1,28,10,608. It was pointed out that the mill started its production on January 22, 1986 and they have crushed up to March 31, 1986, about 68,000 tonnes of sugarcane and during 1986-87, a quantity of 4,42,389.185 MT of sugarcane has been crushed by them. It was further pointed out that if a 1250 TCD capacity mill crushes for 172 days (optimum capacity) in a year, it may crush about 2,15,000 M.Ts. of cane. If the mill pays a price of Rs. 240 per M.T. as in the case of BS, the total payment will come to rupees 516 lakhs and the purchase tax at 13.50 per cent will come to rupees 69.66 lakhs. It is stated that M/s. BS has surpassed all levels. The said report was submitted in reference to the contention of the department that the subsidy to be given in the first year for a 1250 TCD mill is

rupees 22.23 lakhs only. It was further pointed out that there is no such restriction in the Government Order to limit the subsidy. In reference to this report and other letters, the Government, in their reply dated October 15, 1987 to the Director of Sugar, pointed out that it is clear that BS have drawn cane from outside their cane area only to avail full benefit of purchase tax subsidy. It is also likely that BS Mill would have shown cane crushed in some other mills under their control as if they were crushed in BS Mills, just to get the subsidy. The records of the mill have to be perused to see whether there was crushing throughout the entire period. Electricity consumption during this period may be an indicator. In reply to this, the Director of Sugar recommends in his letter dated February 4, 1988 to drop all investigation as nothing will come to surface at this distance of time and inter-related certification by different departments is too technical and complex to be revised. It was further pointed out that according to the existing Government Orders, there is no limit up to which the subsidy can be claimed.

24. For the purpose of re-examination of this issue and to find out how much of purchase tax subsidy has been given, it was pointed out that canes from other States were brought and crushed by BS, which is totally against the spirit of any purchase tax subsidy scheme of the Government of Tamil Nadu. It was also felt that sugarcane bought by some other mill has been shown against BS probably in view to show their operation from 1985-86. In the statements of the Director of Sugar, it is pointed out that there is a serious lapse on the part of the DOS in letting escape of an abnormal phenomena of this nature, and when the full amount of budget provision is involved, and the reply was found to be only exasperating and callous. They have taken strong objection to the reply of the DOS that the mill would not be agreeable to submit their original records for re-examination and that nothing is possible at this distance of time. The note further stated that it is necessary to examine the scheme of purchase tax subsidy and there is no reason why it should be extended to sugar mills in future when they are in a position to make substantial profit even after payment of purchase tax and the orders granted already were requested to be reviewed. It was also pointed out that if sufficient incentives are not given by the Government, BS would not be able to repay the loan to the financial institutions and develop the company on sound lines and it will give an undue benefit.

25. Thus, we find that there is a thorough discussion on the nature of the subsidy granted and as to how the benefits were utilised by the mills and also the reasons for reviewing the concession granted. It was suggested after discussion with the advisor to the Governor then, that instead of withdrawing the concession already announced, it would be enough if the ceilings already decided upon in respect of subsidy are enforced. It was proposed that in the case of 1250/1500 TCD mills, the annual ceiling would be rupees 70 lakhs and the five years" ceiling would be rupees 3 crores and in the case of 2500 TCD mills, the annual ceiling would be rupees 1.25 crores and the five years" ceiling would be rupees 6 crores. In case of mills coming

up now, it was proposed that instead of purchase tax subsidy, interest-free supply be announced. We find that the stand of the Government is fully supported by sufficient materials, discussions, deliberations, suggestions and decisions taken in the light of these discussions. It is a policy decision of the Government fully backed by the records produced before us.

26. It has been argued on behalf of the Government that in the light of the financial strain and taking into account the number of licenses granted to commission the sugar mills, the Government was of the opinion that the scheme of granting subsidy has to be modified. It is further argued that by virtue of this modified scheme, interest saving would come to the tune of Rs. 55 lakhs, as the purchase tax for the first, second, third and fourth year would be collected without interest in the fifth, sixth, seventh and eighth year respectively whereas, as a matter of fact, it could be seen that the respondents have been benefited by more than Rs. 3 crores by way of subsidy in the purchase tax payable at 12 per cent at the time of last purchase in the State.

27. Before the Tribunal, the respondents contended that a request was made by them citing examples of concession extended to public sector and co-operative sector sugar mills that they may also be granted similar concession and their request was also considered favourably and a promise was held out by the Government in the Government Order that purchase tax subsidy will be granted for a period of five years. Therefore, according to them it is not open to the Government to recede from the promise and restrict the benefits. On behalf of the Government, the jurisdiction of the Tribunal was questioned and was further contended by relying on the decision in Bakul Cashew Co. and Others Vs. Sales Tax Officer Quilon and Another, that when the units were started several months before the Government held out a promise, they cannot take advantage of subsequent notification which would give a prospective operation. Therefore, it was submitted that there was no material to show that a definite promise was made by the State enabling the petitioners to raise the plea of estoppel. The Tribunal distinguished the judgment on the ground that the factual foundation for making the plea of estoppel was not available in that case. The Tribunal negatived the objection of the Government on the ground that there was no factual foundation in subsequent cases referred on behalf of the Government.

28. The Tribunal accepted the plea of the respondents that there is an established policy of the Government to encourage new industries by granting subsidy and on that basis, a request was made and the same was accepted by granting subsidy. The Tribunal observed as follows :

"This promise once made would bind the Government for that period and it is not possible for the respondent to recede from that promise and pass orders to the prejudice of the petitioner."

29. Now, we can refer to the decision cited by the learned counsel on this aspect. In [Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others](#), the doctrine has been formulated in the following words :

"The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by article 299 of the Constitution."

30. In [Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another](#), wherein the Supreme Court held rejecting the plea of exemption claimed for the full period of five years on the ground that the appellant had acquired a vested right to the tax holiday of five years, observed that the appellant's plant having been set up long before the notification and the notification being prospective in operation, the period prescribed period would apply only to new industries commissioned subsequent thereto. Their Lordships also held that the appellant did not acquire any vested right to the tax holiday and the State Government was under no obligation to grant exemption from payment of the sales tax ; when it did so, it was only by way of concession and a concession could be withdrawn at any time and no time-limit could be insisted upon before it was withdrawn ; that the rule of promissory estoppel could be invoked only if, on the basis of the representation made by the Government, the industry was established to avail of the benefit of the exemption.

31. In [Arvind Industries and others Vs. State of Gujarat and others](#), it was held by the Supreme Court that the Government is entitled to grant exemption to industries having regard to the industrial policy of the Government. The Government is equally free to modify its industrial policy and grant, withdraw or modify fiscal benefits from time to time. It was found in that case that there was nothing in the notification by which any assurance was held out to any industry and it was an usual Government notification relating to purchase and sales tax, granting relief to certain industries on fulfilment of the conditions laid down in the notification.

32. In [Kasinka Trading and another, etc. etc. Vs. Union of India and another](#), while considering the doctrine of promissory estoppel, their Lordships held that the doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance or the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be

binding on the party making it and that party should not be permitted 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 or are intended to take place between the parties. There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel, clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. The Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present in the mind of the court. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation.

33. In Shrijee Sales Corporation and Another Vs. Union of India (UOI), the honourable Supreme Court held that once public interest is accepted as the superior equity, which can override individual equity, the aforesaid principle should be applicable even in cases where a period has been indicated for operation of the promise. If there is a supervening public equity, the Government would be allowed to change its stand ; it would then be able to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Moreover, the Government is competent to rescind from a promise even if there is no manifest public interest involved, provided, of course, no one is put in any adverse situation, which cannot be rectified.

34. In M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, the Supreme Court held as follows :

"In the light of this settled legal position we, therefore, hold that even though the appellants have succeeded in convincing us that the earlier three notifications dated 29th October, 1982, 13th July, 1984 and 28th January, 1985 did contain a clear promise and representation by the Board to the prospective new industrialists that once they established their industries in the region within the territorial limits of the operation of the Board, they would be assured 10 per cent rebate on the total bills regarding consumption of electricity by their industries for a period of three years from the initial supply of electric power to their concerns, the appellants will not be able to enforce the equity by way of promissory estoppel against the Board if it is shown by the Board that public interest required it to withdraw this incentive rebate even prior to the expiry of three years as available to the appellants concerned."

35. In Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another, it was held that the Government could change its industrial policy if the situation so warranted and merely because the resolution was announced for the period 1979-1983, it did not mean that the Government could not amend and change the policy under any circumstance. If the respondent acted on the basis of the notification, it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest.

36. A division Bench of this Court in W.P. (T) Nos. 11419 and 11420 of 1999 dated November 27, 2001 (Dharani Sugars and Chemicals Ltd, v. Commercial Tax Officer [2002] 128 STC 554) in reference to a similar question raised by another sugar factory questioning the very same Government Order, i.e., G.O. Ms. No. 989 Industries (MIDI) Department dated September 1, 1988, had taken the view that the petitioner in that case commenced the commercial production in January, 1989 after the issuance of Government Order and received the benefits provided for in the revised scheme. The grievance of the petitioner in that case was that the assistance should not have been restricted to what is provided in the Government Order dated September 1, 1988, but should have been similar to that given to the petitioners herein. It was contended that the view of the policy of the Government that they would be giving concession to the new industries and the said concession would continue to govern the petitioner industry therein, the industry came to be established. The said argument was rejected and it was held that there is neither estoppel against the State nor legitimate expectation. The fact that prevailing policy had been made known does not result in a promise not to change that policy. Communicating the existing policy also does not give rise to a legitimate expectation that the policy will not change. In matters of economic policy, the Government enjoys the greatest possible latitude subject only to the overall requirements. Economic policies are necessarily subject to change, as the policy appropriate to a given environment will not be suitable in a changed scenario. The division Bench accepted the justification that the need has been felt to bring about uniformity in that policy ; and as a result, the Government adopted a scheme of deferment of tax, rather than the one for waiver or the grant of subsidy. Even such deferral was to be up to a particular ceiling, annual and overall and for a specific period. The desire on the part of the Government to minimise its revenue loss, having regard to the magnitude of the amount involved, by itself, constituted sufficient public interest justifying the change in the scheme. Their Lordships observed that there was no promise by the State to the petitioner at any point of time that its policy of giving subsidy to the new sugar mills would continue till such time as the petitioner commences commercial production.

37. In W.A. Nos. 74 of 1995, etc. batch dated December 6, 2001, the Government order initially giving concessional rate of supply to new industries for five years after the commencement of production, was subsequently declined to such of those

industries, who start earning profits. The division Bench upheld the Government order on the ground of public interest. But having regard to the fact that the Board is supplying energy to the various types of consumers on various tariffs and that the Board is suffering loss and the Government is making good the said losses from the public funds, the Bench observed that it would be in the interest of the public to ensure that concessions are not extended to persons who do not need them and who are in affluent position to save public funds.

38. From these decisions, the principles that can be deduced are that in order to lay a claim on the basis of promissory estoppel, the petitioners should establish :

- (1) That they have altered their position consequent to the promise.
- (2) There is no vested right to claim concession and the concession can be withdrawn.
- (3) The principle cannot be invoked if it is found inequitable or unjust to enforce it or if it is against public interest.

In our view, the respondents have not pleaded and proved that they have changed the position because of the incentive. They have set up their industries prior to the Government Orders. Their request to grant exemption from payment of purchase tax because of their difficulties was conceded to by the Government in order to alleviate their problems. Their claim that they have acted in the light of the above policy to encourage industries will not come within the parameters of promissory estoppel. Their expansion of their sugarcane area of operation cannot be pleaded for their continuance of the concession. Their expansion of sugarcane area including the areas from other States and crushing more than their capacity, are nothing but their promotion of industrial expansion. The Government cannot be expected to support their endeavour at the cost of public revenue. The facts show that both the industries have exceeded their crushing capacity production and resulted in a higher tax benefit than contemplated. The Government have reasons to bring in a ceiling or outer-limit to the concession in consistent with the capacity, viability and public revenue point of view. The Government has rectified the anomaly or loopholes, if any, in order to reach the objective and preventing the defeating the purpose of granting the concession.

39. Learned Senior Counsel on behalf of the respondents has also relied on some of the decisions in support of their claim of legitimate expectations, which are summarised as follows :

(a) In Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, it was held that whether the expectation is legitimate, is a question of fact that has to be determined not according to the claimants" perception, but in the larger public interest. Their Lordships held that due observance of the obligationas a part of good administration raises a reasonable or legitimate expectation in every citizen to be

treated fairly. Mere reasonable or legitimate expectation of a citizen cannot by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. A bona fide decision of the public authority reached in public interest would satisfy the requirement of non-arbitrariness and withstand the judicial scrutiny.

(b) In [Navijyoti Coo-Group Housing Society etc. Vs. Union of India and Others](#), it was held that the existence of legitimate expectation may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the legitimate expectation without some overriding reason of public policy to justify its doing so.

(c) In [Union of India and others Vs. Hindustan Development Corpn. and others](#), it was held by the Supreme Court that the denial of a legitimate expectation can be justified by showing some overriding public interest.

(d) In [M.P. Oil Extraction and Another Vs. State of M.P. and Others](#), it was held that based on the agreements entered into by the State Government, the industries can legitimately expect that the renewal clause can be given effect to in a usual manner and according to past practice, unless there is a special reason not to adhere such practice.

Applying the above principles, it cannot be stated that the respondents have acted on the assurance that the purchase tax will be exempted for a period of five years without reference to the viability point of view. Further, the Government has overriding reasons to prescribe conditions for availing such benefits. The decisions cited above support the case of the petitioners in justifying the modification of the concession.

40. In support of the argument that court cannot look into the reasons now set out in the supporting affidavit, the decision of the Supreme Court in [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others](#), was referred to, wherein it was held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and it cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In this case, we are not concerned with the order passed as a quasi-judicial or statutory authority which requires a speaking order and which cannot be supplemented by fresh reasons than what was contained in the order.

41. In [Union of India and others Vs. E.G. Nambudiri](#), it was held that the principles of natural justice do not require the administrative authority to record reasons for its decision as there is no general rule that reasons must be given for an administrative decision. The order of an administrative authority, which has no statutory or implied duty to state the reasons or the grounds of its decision, is not

rendered illegal merely on account of absence of reasons. It has never been a principle of natural justice that reason should be given for decisions. It was further held that there are many areas of administrative activity where no reasons are recorded and if such a decision is challenged before the court for judicial review, the reasons for the decision may be placed before the court. Their lordships have observed as follows :

"In Governmental functioning, before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion.

If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its acts."

42. In Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, the Supreme Court, dealing with this question and referring to the case reported as Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, held as follows :

"A decision must be arrived at after taking into account all relevant considerations ; eschewing all irrelevant considerations cannot for a moment be doubted. initiation of the proposal to the taking of the final decision. It is important to note that unlike in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, where .the court was dealing with a statutory order made by a statutory functionary who could not, therefore, be allowed to supplement the grounds of his order by later explanations, the present is a case where neither a statutory function nor a statutory functionary is involved but the transaction bears a commercial though public character which can only be settled after protracted discussion, clarification and consultation with all interested persons."

Applying the above ratio, we find from the records that the Government has taken into consideration the recommendations of the Sampath Committee, the object of the concession, the extent of production, and the concession and optimum capacity of the industries before reviewing the matter. They have decided to rationalise the grant of concession keeping the revenue point of view. Even after considering the quantum of incentive claimed, the proceedings were initiated to find out whether the object of granting of assistance is achieved, and after a detailed examination of the issue, it was decided to modify the scheme. The reasons and the factors that weighed with the Government are, therefore, germane while considering the validity of the Government Order. The Government could not file their affidavit earlier, since the matter was initially transferred to the Tribunal and at that time, a detailed counter was not filed.

43. The prayer of the respondents was to call for the records on the file of the first respondent relating to G.O. Ms. No. 589, Industries dated September 1, 1988 and therefore, when the files were called for, this Court is entitled to go into the various levels at which the Government Order has been processed and the reasons and opinions contained in the notes on the file before a final decision is taken.

44. After considering the arguments and on going through the records and the decisions, we hold as follows :

(1) The respondents have established their units prior to the Government Orders granting the subsidy and they have no vested right to claim exemption.

(2) No inducement was made in the Government Orders to establish the units.

(3) The respondents have not acted on the basis of the Government Orders for establishing the units.

(4) The grant of subsidy is a concession and the Government has got good reasons for modifying the scheme in public interest.

(5) No prejudice is caused to the respondents since the scheme was intended to make the units viable and the modified scheme provides for safeguards to that extent.

(6) The order granting subsidy can be withdrawn in public interest. The Government has exercised their right to modify the scheme in the interest of public revenue.

45. For all the above reasons, we are of the view that the impugned Government Order is valid and ought not to have been interfered with. The writ petitions are, therefore, allowed and the orders of the Tribunal are hereby set aside. No costs.