
(2012) 08 CAL CK 0108

Calcutta High Court

Case No: Writ Petition No. 445 of 2011

Bally Jute Company
Ltd. and Another

APPELLANT

Vs

Director of Industries,
West Bengal and
Others

RESPONDENT

Date of Decision: Aug. 2, 2012

Acts Referred:

- General Clauses Act, 1897 - Section 3

Citation: (2012) 4 CALLT 439

Hon'ble Judges: Ashoke Kumar Dasadhikari, J

Bench: Single Bench

Advocate: S. Talukdar and Mr. D. Ghosh, for the Appellant; Debobrata Saha Roy, Mr. Indranath Mitra and Mr. Rudra Sarkar, for the Respondent

Judgement

Ashoke Kumar Dasadhikari, J.

Both the writ petitions being matter W.P. No. 445 of 2011, filed by Bally Jute Company Limited & Anr., and other matter W.P. No. 447 of 2011 made by Usha Corporation Limited are taken together since the issue involved in those two cases are same. The petitioners in both the said writ petitions are contending that they are large Industrial units and they are eligible to apply for incentive since they are covered under "the West Bengal Incentive Scheme, 2004" formulated by the Government of West Bengal in 2004 and effective from 1st April, 2004 till 31st March, 2009. Under no circumstances the new notification dated 26th April, 2008 published on 17th June, 2008 and/or 2008 Scheme published on 26th April, 2009 before 31st March, 2009 is applicable to them. It is submitted that the writ petitioners made applications for registration under West Bengal Incentive Scheme, 2004 during May, 2008 for getting benefit of the 2004 Scheme which remained effective from 1st April, 2004 till 31st March, 2004. Mr. Talukdar, learned Senior Counsel appearing in support of the writ petitions submitted that an industrial unit seeking

subsidy under the Scheme of 2004 was to make application for registration within the period of operation of the scheme. Upon receipt of such application the director of industries, as per operational procedure shall scrutinize the application and to register the applicant unit with a number and to issue a certificate for registration with a copy to West Bengal Industrial Development Corporation Limited hereinafter referred to as "WBIDC Ltd." along with the application for issuing eligibility certificate by the said WBIDC Ltd. The applications are to be made as per the format published in the Gazette notification dated March 31, 2004. According to Mr. Talukdar, on the date of making application it was not necessary to start operation as would appear in Clause 17 of the Gazette notification dated March 31, 2004. It is only after the unit is registered by the director of industries and the eligibility certificate is issued by WBIDC Ltd., an application for grant of subsidy can be made to the Managing Director of WBIDC Ltd. in the prescribed format. Thereafter it would be processed and the amount of subsidy would be quantified.

2. Mr. Talukdar submitted Clause 2 of the aforementioned Scheme stipulates that the Scheme shall come into effect on and from 1st day of April, 2004 in whole West Bengal and shall remain valid for a period of five years ending on 31st March, 2009. He also submitted as per Clause 4 of the said Scheme, it would generally be applicable to all large/small scale projects and tourism units in large/small scale sector to be set up and also expansion project of existing units on or after 1st April, 2004 and the units may be in private sector, cooperative sector, large sector as also companies/undertakings owned or managed by the State Government. He also submitted that under Clause 6.1, 6.1.1, 6.1.2, 6.1.3 and 6.2 eligibility criteria for incentive under 2004 scheme was prescribed.

3. Mr. Talukdar, then submitted that on the basis of assurance and promises given by the State through the Incentive Scheme of 2004 that an existing unit going for substantial expansion will be entitled to various subsidies under the said scheme, the writ petitioners expanded its existing unit of manufacturing jute goods and jute products invested a large sum of money and under took expansion work in terms of the Scheme. It was submitted that the writ petitioner, Bally Jute Company Limited by investing more than Rs. 25 crores became a mega unit within the meaning of Clause 3 (XIII) of the Scheme. As per Scheme of 2004 a mega unit along with all other units are entitled to get various subsidies. He submits that in case of mega unit the State Government may consider granting of special package of incentive. According to him the special package is in addition to the subsidies which are to be considered by the Government. And the special package of incentive are described in Clause 20(e) of the said 2004 scheme. It was submitted by Mr. Talukdar that Bally Jute Company Limited filed an application on 20th may, 2008 in form No. 1 before the director of industries for registration as mega unit. Thereafter, project of the said petitioner was made operational. He submitted, since the application for registration was pending before the director of industries and no eligibility certificate could be issued by WBIDC Ltd. to the petitioner although from time to time the petitioner gave various reminders to the director of industries.

4. Mr. Talukdar, submitted in case of other writ petitioner viz. Usha Corporation Limited which also made application for registration of its unit to the director of industries under the aforementioned scheme came to know that the Deputy Director of Industries in his letter dated 2nd April, 2009 expressed his views to the effect that in terms of the notification dated 26th April, 2008 a new Incentive Scheme of 2008 has been announced and as per Gazette notification dated 26th February, 2009 the same was made effective from 1st April, 2008 and application for registration made after 31st March, 2008 could not be entertained and fresh application for registration would have to be made in terms of 2008 Scheme, if eligible. He submitted in both cases the same view was adopted by respondent authorities although in case of Bally Jute Company Limited no such communication was made. It was submitted by him that although in first case no such communication was there but in case a direction is given to communicate the result of the application and/or representation in that event also the same result would come. Therefore, Mr. Talukdar submitted that the applicability of the Scheme of 2004 should be considered and decided before this Hon"ble Court.

5. It was submitted by Mr. Talukdar that the applications were made on 20th May, 2008 during the validity period, ending on 31st March, 2009. And the Scheme of 2008 for which a notification was issued on 26th April, 2008 which was gazetted on 17th June, 2008, but, fact remains that the new Scheme of 2008 was gazetted on 26th April, 2009. 26th April, 2008 notification speaks of a new scheme of 2008 which is under formulation. It was submitted that the notification dated 26th April, 2008 became effective only from the date of publication of the Gazette notification on 17th June, 2008 and practically the new Scheme of 2008 came into effect on and from 26th February, 2009 when it was published. Therefore, the applications made by the petitioners in May, 2008 were be considered and disposed of under 2004 Scheme specially when the notification dated 26th April, 2008 came into effect only after formulation of the new Scheme of 2008 coming into effect on and from 26th February, 2009 or at best on and from 17th June, 2008 but not before. Mr. Talukdar cited two decisions in support of his contention that notification becomes effective only form the date of Gazette notification. The first judgment is reported in [M/s. Pankaj Jain Agencies Vs. Union of India and others](#), and the second is reported in [Union of India and Others Vs. M/s. Ganesh Das Bhojraj](#),

6. He submitted that the application made by the petitioners in May, 2008 was much before the Scheme of 2008 came into effect which is admittedly published on 26th February, 2009. He submits that the application made by the petitioners cannot be turned down in view of the notification dated 26th April, 2008 published on 17th June, 2008, specially when the said Scheme was not at all formulated till then.

7. Mr. Talukdar also submitted that there is no scope to make any application for registration under 2008 scheme claiming subsidy for the units for the following reasons:-

i. In order to claim subsidy under the 2008 Scheme, the petitioner No. 1 would have to show that it had altered its position to its detriment on the basis of assurances given

under the 2008 Scheme which came into effect from 1st April, 2008. However, the petitioner No. 1 had made substantial investments and had altered its position to its detriment by expanding its existing Unit on the basis of assurances under the 2004 Scheme prior to 1st April, 2008.

ii. Under Clause 4.1 of the 2008 Scheme at page 109 of the writ petition it is clearly mentioned that all large and medium scale units set up after commencement of the 2008 scheme i.e. after 1st April, 2008, would be eligible for subsidy under the 2008 scheme. The substantial expansion in the unit of the petitioner No. 1 took place prior to 1st April, 2008.

iii. The petitioner No. 1 cannot make an application for registration in Form No. 1 under the 2008 scheme at page 122 of the writ petition. Under Clause 5.1 of the form at page 123 of the writ petition, the quantum of investments made on or after 1st April, 2008 will have to be mentioned. As in the case of petitioner No. 1 the investments have been made by the petitioner No. 1 prior to 1st April, 2008, the question of making any application for registration under 2008 Scheme does not arise.

iv. The question of making any application under the 2008 scheme does not arise and/or the question of claiming any subsidy under the 2008 scheme does not arise in view of Clause 3.12 of the 2008 scheme at page 108 of the writ petition which says that fixed capital investments under the 2008 scheme will have to be made only after obtaining the registration certificate under the 2008 scheme. In the case of petitioner No. 1, the investments were made by the petitioner No. 1 under the 2004 scheme before obtaining registration because under the 2004 scheme, it was not necessary that investments should be made only after obtaining registration certificate. Please see operational procedure of incentive scheme 2004 Clause 1 at Page 68 of Writ Petition.

v. While in the 2004 scheme there is a concept of MEGA Project which is entitled to some additional benefits as described in Clause 20(e) in the new scheme of 2008 there is no concept of MEGA Project.

8. Mr. Talukdar also submitted that the accrued right of the petitioner's to claim subsidy under 2004 Scheme cannot be retrospectively taken away by notification dated 26th April, 2008 which was published on 17th June, 2008 or the Scheme formulated and published on 26th February, 2009. Mr. Majumder cited the judgment of the Hon"ble Apex Court reported in [State of Uttar Pradesh and Others Vs. Vam Organic Chemicals Limited](#), Mr. Majumder pointed out on the basis of the promise of the respondent State authorities his clients have changed their position by making huge investments as per 2004 Scheme and, therefore, they are to be considered under the said scheme only and the State Governments are estopped from contending that the petitioners are to make fresh application under 2008 Scheme which was formulated and published of 26th February, 2009.

9. It was submitted that the applications made in May, 2008 is much before the date of expiry of 2004 Scheme on 31st March, 2009 and also before coming into effect of the notification dated 26th April, 2006 Gazetted on June 17, 2008 when the Scheme of 2008 was not formulated even. He submitted that the applications of the petitioners should be considered under 2004 Scheme for registration which the State Government cannot refuse. Further they are estopped from contending that the petitioners are to apply under the new Scheme of 2008 if eligible. It was further contended that the respondents are under obligation to issue necessary eligibility certificate as per the old scheme. It was also submitted as per Clause 22 of 2004 Scheme the State Government has power to repeal the Scheme but such power of repeal subject to plea of promissory estoppel and as such it cannot affect any right which has accrued in favour of the petitioners. Mr. Talukdar submitted that the judgment cited by the learned Counsel for the State respondents are totally different on the facts and circumstances of this case, which has no application in the present case. According to Mr. Majumder the impugned letter dated 2nd April, 2009 issued by Deputy Director of Industries (M) for Director of Industries West Bengal should be set aside and the respondents be directed to consider the case of the writ petitioners under the West Bengal Incentive Scheme of 2004 for registration, etc.

10. These two writ petitions were moved upon notice to the respondents. Although directions for filing affidavits were given the respondent state and/or its other organs did not chose to file any affidavit. However, upon notice the learned Counsel representing the State respondents appeared and submitted their written notes of arguments. Mr. Saha Roy, learned Counsel also submitted that although his client viz. West Bengal Industrial Development Corporation Ltd. did not use any affidavit but a common question of law arose in both the matters which is required to be answered by him. Mr. Saha Roy submitted as per Gazette notification dated 26th February, 2009 "West Bengal State support for industries Scheme 2008" came into effect on and from 1st day of April, 2008 in place and stated of West Bengal Incentive Scheme of 2004. He submitted admittedly petitioners started their commercial protection at the expanded unit on and from 30th June, 2008. According to Mr. Saha Roy the writ petitioners are not "existing industrial unit" as per Clause 3.8 of the 2008 Scheme and the said Scheme of 2008 came into effect retrospectively on and from 1st April, 2008. Mr. Saha Roy submitted that as per Section 3 Sub-section (13) of General Clauses Act, 1897 the word "commencement" used with reference to Act or regulation, shall mean the day on which the Act or regulation comes into force. He submitted that the West Bengal State support for industries Scheme 2008 specially provides "unless" specifically mentioned against the respective item of incentive mentioned under the West Bengal State Support for Industries Scheme 2008 it shall come into effect on and from 1st day of April, 2008. Mr. Saha Roy submitted that it was held by the Full Bench of Allahabad High Court in a case reported in [State Vs. Banshidhar](#), that the only consequences of the impugned order being published in the official Gazette was that it came into force being as piece of subordinate legislation on the statute Book. From this it would not follow that it became law with immediate effect indeed there are no words express or implied in the order itself

that it was intended to enforce its provisions from the date of its publication. Mr. Saha Roy further cited the other decision rendered by the Hon"ble Apex Court in [Kasinka Trading and another, etc. etc. Vs. Union of India and another,](#) and the Hon"ble Apex Court observed that the doctrine promissory estoppel cannot, however, be pressed into aid to compel or the public authority to carry out the representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or public authority to make. It was also observed that the doctrine of promissory estoppel cannot be invoked in the abstract and 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.

11. It was submitted by Mr. Saha Roy that in the facts and circumstances of the cases it is abundantly clear that no assurance was given to the petitioners that their application would be considered under the West Bengal Incentive Scheme of 2004. Therefore, the plea of alteration of their position on the basis of representation made in the Incentive Scheme of 2004 could not be accepted. Mr. Saha Roy submitted that the duration period in normal course would end on 31st March, 2009 unless specifically mentioned against the respective items of incentive which is clearly stipulated in Clause 2 of the 2004 Scheme. Mr. Saha Roy pointed out that similar question arose before the Hon"ble Division Bench of this Hon"ble High Court in APO No. 332 of 2008 in case of Abhijit Tea Company Private Ltd. vs. West Bengal Industrial Development Corporation Ltd. & Ors. He submitted that in view of the said judgment the prayer for declaration that 2008 scheme is not applicable in the case of the writ petitioners are not at all entertainable and the representation should be dismissed. It was submitted that the judgment cited by the learned Counsel for the writ petitioners are not at all applicable in the facts and circumstances of this case. It was also submitted that no equitable relief can be granted by this Hon"ble Court in favour of the petitioners. The learned Counsel for the State also submitted written notes on arguments. In the written notes it was stated that with a view to encourage the entrepreneurs/industrialists to promote industries (large/small scale industries) in State of West Bengal the commerce and industries department Government of West Bengal notified in Kolkata Gazette, West Bengal industries scheme 2004 on 31st March, 2004. Clause 4.1 of the said notification indicates that the scheme shall generally be applicable to all large/small scale projects and tourism units in large/small scale sector to be set up and also expansion project of existing units on or after 1st April, 2004. The writ petitioners having knowledge of the same did not apply for registration of the company under 2004 scheme till 20th May, 2008. When the respondent authorities under notification bearing No. 104/CI/O/incentive - 387/08/ADMN dated 26.04.2008 notified that Government has decided to modify the existing scheme of incentive in order to encourage large and medium industrial units to create more employment and the new Incentive Scheme to be called "West Bengal Incentive Scheme, 2008 (WBIS 2008)" which is under formulation, they applied under the old Scheme. After the notification dated 26th April, 2008 the petitioner submitted their application in May, 2008 for registration under the previous Scheme of 2004. The notification dated 26th April, 2008

was published in Kolkata Gazette on 17th June, 2008 and the new scheme was notified on 26th February, 2009. It was pointed out that under Clause 4 of 2008 Scheme large and medium units are to be set up and also expansion of the existing units to make in the State after commencement of Scheme of 2008. It was submitted that since there is no violation of the fundamental right or any statutory right or any legal right the writ petition is no maintainable. It was further submitted that the scope judicial review is limited in view of the law laid down by the Hon"ble Supreme Court in case of [BALCO Employees Union \(Regd.\) Vs. Union of India and Others](#), wherein it was held that the Courts are not infer in the economic polity which is the function of the experts. It is not function of the Court to seat in the judgment over the matters of economic policy. It must necessarily to lay to the expert bodies. Another decision cited by the learned Counsel for the State reported in [Ram Singh Vijay Pal Singh and Others Vs. State of U.P. and Others](#), where in the Hon"ble Apex Court held that the Government is entitled to make pragmatic adjustment and policy decision which may be necessary or called for under the prevalent peculiar circumstances. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or wiser or more scientific or logical. The learned Counsel also cited a judgment of the Hon"ble Apex Court reported in case of (Union of India Vs. Shankar Lal Soni & Another) Paragraph 16, reported in 2010 12 SCC 563. The other decision in support of his contention cited by the learned Counsel reported in [Shree Sidhballi Steels Ltd. and Others Vs. State of U.P. and Others](#). Lastly the learned Counsel submitted that the principles of promissory estoppel is not applicable to policy decision of the Government and the point taken by the writ petitioner do not find any merit in the facts and circumstances of this case. It was submitted that the decision taken by the Government is fair, reasonable and grounded with logic and there is no illegality in taking such lawful decision by the Government. Therefore, this writ petition should be dismissed.

12. Heard the learned Counsel appearing for the respective parties and considered the available materials disclosed in the affidavits and also considered the judgments cited by the learned Counsel representing the respective parties.

13. The point for consideration as raised by the writ petitioners in this writ petition is whether the writ petitioners are covered under 2004 Scheme and whether the respondent state is authorized to withdraw or modify 2004 Scheme retrospectively and whether there is any scope to make application under the new Scheme of 2008.

14. The plain reading of the notification dated 31st march, 2004 clearly indicates the validity period of 2004 Scheme hereinafter referred to as "the said Scheme" starting from 1st April, 2004 till 31st March, 2009. Under operational procedure of the said Scheme the mode and manner of making application by an Industrial unit in the large sector for registration and obtaining eligibility certificate and also for making and also for submission of application for quantification of admissible subsidy and mode of disbursement is prescribed. The relevant portion of operational procedure is quoted hereunder:-

1. An Industrial Unit in the large sector claiming to be eligible for incentives available under West Bengal Incentive Scheme, 2004 shall submit an application to the Director of Industries, West Bengal at New Sectt. Bldgs., 9th Floor, 1, K.S. Roy Road, Kolkata - 700001 for registration of the unit in the Form No. I annexed hereto. Any application submitted for registration of any project under the said Scheme shall be treated to be valid if submitted within the period of operation of the Scheme.

1.1 On receipt of application for registration of any project the Director of Industries shall same, as expeditiously as possible, scrutiny of enquiry into the particulars furnished by the applicant unit and on being satisfied that the application in terms of the provision of the said scheme, is in order, shall register the applicant unit with a No. and issue a certificate for such registration to the applicant unit with a copy to West Bengal Industrial Development Corporation Ltd., together with a copy of the application, for issue of Eligibility Certificate by the WBIDC Ltd. if, however, any application is found to be not eligible for Registration under the 2004 Scheme, the Director of Industries will issue a letter of rejection, to the applicant unit with an information to the WBIDC Ltd.

1.2 The Director of Industries shall maintain a separate register for each district mentioning the group to which the district belongs and also enter therein all relevant details in respect of the project, necessary to carry out the purpose of the said Scheme.

2. After receipt of the application from the Director of Industries, West Bengal, together with the copy of the Registration Certificate issued by him, the WBIDC Ltd. will scrutinize the particulars necessary for issue of the Eligibility Certificate by them and also make such further enquiry as may be deemed necessary in respect thereto. If on such scrutiny/enquiry the Corporation is satisfied that such unit is eligible for one or more than one incentives available under the terms of the Scheme, an Eligibility Certificate shall be forthwith issued by the said Corpn. to such applicant unit. A copy of the Eligibility Certificate shall also be endorsed to the Director of Industries of information and record in that office.

3. The Directorate of Industries and the WBIDC Ltd. may cause a joint inspector if they consider so necessary anywhere in any case under the 2004 Scheme. The Directorate of Industries and the WBIDC Ltd. will keep each other informed of the decision taken by either of them in respect of any case under the Scheme.

4. An Industrial Unit, after receipt of the "Eligibility Certificate" from the West Bengal Industrial Development Corporation Ltd. may apply for the incentives to which it may be entitled, under West Bengal Incentives Scheme 2004 in the manner as prescribed below:

4.1 State Capital Investment Subsidy:

An eligible unit shall submit an application to the Managing Director, WBIDC Ltd. in the form II as appended hereto for the purpose.

The Corporation, if on scrutiny of the documents is satisfied, will workout the admissibility of the Capital Investment Subsidy and will, as early as possible, inform the applicant of the quantum of admissibility of such subsidy and the mode of disbursement thereof, by the Corporation.

15. It is admitted position that the applications were made by the writ petitioners in May 2008 when the said Scheme was in operation. However, by a Gazette publication of 17th June, 2008 the notification dated 26th April, 2008 was published wherein it was disclosed that the new Incentive Scheme of 2008 is under formulation. Only on 26th February, 2009 by a Gazette notification the new Incentive Scheme of 2008 was published and came into operation. Thus it is evident that 2004 Scheme was in operation till 25th February, 2009. Therefore, the applications made during operational period of the said Scheme of 2004 should also be considered and disposed of under it. The writ petitioners specifically stated that they have started its other commercial production at the extended unit in June, 2008 in terms of the said old scheme. There is no denial by the respondent authorities. The writ petitioner Bally Jute Company Limited contended in its petition, that they have invested more than Rs. 25 crores and they are coming under "mega unit" as classified in the Scheme and they are eligible to all the benefits including the Industrial promotion assistance only after such investment as per the said Scheme of 2004. It appears from 2008 Scheme that there is no such class viz. "mega unit" which is eligible to apply for special package/incentive and, therefore, the said Bally Jute Company Limited cannot also make any application under the subsequent Scheme of 2008. The respondent's authorities in spite of directions did not use any affidavit. Therefore, the statements made by the petitioners are all accepted by them. Since the writ petitioners have made application during the subsistence of said Scheme of 2004 and further since they are contending that they have invested the required amount of money to be classified under 2004 Scheme for getting Incentive, they are entitled to be considered under it. Accordingly I hold that a right for being considered under 2004 Scheme has accrued in favour of the writ petitioners.

16. It is now well settled that the State authorities can be made subject to equitable doctrine of promissory estoppel in cases, where because of their representation, the party claiming estoppel has changed its position and if such an estoppel does not fly in the face of any statutory prohibition, abusing of power and authority of the promisor and is otherwise not opposed to public interest, and also when equity in favour of the promisee does not outweigh equity in favour of the promisor entitling the latter to legally get out of the promise. In my view the respondent State authorities are subject to equitable doctrine of promissory estoppel and they are obliged to consider the applications of the writ petitioners and scrutinize the contentions of the applicants who have applied for the registration and eligibility certificate under the said Scheme of 2004. Otherwise also the right accrued in favour of the writ petitioners cannot be withdrawn by the respondents retrospectively by a subsequent notification specially when the writ petitioners claiming that they have already changed their position as per old Scheme of 2004 by making huge

investment which are not denied by State Authorities.

17. In this regard it would be appropriate to refer the decision of the Hon"ble Apex Court rendered in case of [State of Uttar Pradesh and Others Vs. Vam Organic Chemicals Limited](#), wherein it was specifically held when a recognition certificate is issued, a benefit of concessional rate of tax is given to the dealer, he arranged his business affairs on those lines. Therefore, the benefit cannot be withdrawn retrospectively. Such benefit can be withdrawn at the highest from the date of show cause notice when the assessing authority delete an item from the recognition certificate.

18. In case of (S.L. Srinivasa Jute Twine Mills (P) Ltd. v. Union of India & Anr.) reported in Judgment Today 2006 (2) SC 397 it was also held that it is settled principle of interpretation that:

Retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication; there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary.

19. So far the arguments advanced on behalf of the respondent No. 4 as regards the fulfillment of eligibility criteria under Clause 3(viii) is concerned, the concern respondent did never decide the eligibility of any of the writ petitioners nor they have considered the same nor passed any order. It would not appear from the impugned letter issued on 2nd April, 2009 that the concerned authority has ever took a decision in that regard. In my view the arguments advanced for and on behalf of the respondent No. 4 is of no substance. It is also well settled that so long as the new Scheme is formulated and come into operation the question of availing benefit under the same or making application under it do not or cannot arise at all. The plea of the respondent authorities are very unsound and not acceptable.

20. Further, the alleged plea of making no promise or giving no assurance as taken by State counsel is also without any substance specially when the Government published its policy decision for giving subsidy/incentives to the eligible Industries who are to apply as per the Scheme and to comply with some terms and conditions, and in the instant case the petitioners have accepted the terms of such policy and also changed their position. Therefore, they are entitled to be considered under it. The publication of policy decision of Government itself is a promise and nothing more is required in that regard. Therefore, the submission of Mr. Saha Roy is not accepted by this Court. It is relevant to point out that the unreported judgment of Abhijit Tea Company as relied on by him also not applicable in the facts and circumstances of this case. In that case the dispute was basically on tea plantation and the question was whether the tea plantation is not an industry and further the grievance of Tea Company as ventilated in that proceedings that respondents wrongly and illegally did not treat the tea plantation as an industry. Therefore, the issue was totally different which has no manner of application in these cases. Accordingly I

reject the submissions made by the learned Counsel for State.

21. It is undisputed that during the operational period of 2004 Scheme the writ petitioners have made applications for registration and for issuance eligibility certificate but the respondents authorities did not consider the same under 2004 Scheme and only on 2nd April, 2009 issued a letter for making fresh application as per new Scheme of 2008 if eligible. In view of my aforementioned findings the writ petitioners are not required to apply under 2008 Scheme and further there no scope to apply under it. Therefore, the impugned communication dated 2nd April, 2009 communicating the decision the respondent authorities are set aside and the respondent authorities are directed to consider the application of the writ petitioners under 2004 Scheme. Both the writ petitions are disposed of. Let urgent Xerox certified copy of this judgment, if applied for, be given to the learned Advocates of the parties on usual undertaking.