

M/S BALAK GASES OXYGEN GAS PLANT AND ANOTHER v. 877  
STATE OF PUNJAB AND OTHERS  
(*Mohinder Singh Sullar, J.*)

*Before Mehinder Singh Sullar, J.*

**M/S BALAK GASES OXYGEN GAS PLANT  
AND ANOTHER,—Petitioners**

*versus*

**STATE OF PUNJAB & OTHERS,—Respondents**

**CWP No. 19007 of 2002**

20th May, 2011

*Constitution of India - 13(3), 154, 162, 226 & 227 - Indian Boilers Act, 1923 - Standards of Weights & Measures (Enforcement) Act, 1985 - Indian Electricity Act, 1910 - Indian Evidence Act, 1872 - S.115 - Indian Electricity Rules, 1956 - Application of Industrial Policy by state of Punjab - Benefits for setting up industries promised - Industrial Units set up by petitioners in consonance with the policies - State of Punjab backtracked - Larger public interest effected - Doctrine of promissory estoppels applicable - State bound to fulfill promises - Petition accepted*

*Held*, That in the instant cases, as the State has miserably failed to point out and no material, much less cogent, is forth coming on record, even to suggest remotely that how, when, at what stage and in what manner, the public interest is going to be served by denying the legitimate rights of the petitioner-Industries, accruing to them in pursuance of the indicated Industrial Policies/relevant rules published by the Government itself. On the contrary, to me, if the amount of incentives and subsidies is not paid to the petitioner-Industries, then, the industrial growth, which is already in doldrums, would further be jeopardized, causing huge loss to the State exchequer directly adversely affecting the larger public interest as well.

(Para 26)

*Further Held*, that State is estopped from denying the legitimate right of petitioner-Industries as well, in view of the analogy of law hidden under section 115 of the Indian Evidence Act, 1872, which envisages that when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to

act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. Above-all, the petitioner-Industries are also legally entitled to the same treatment on the principle of equality enshrined in the Constitution of India.

(Para 27)

*Further Held*, that In this view of the matter, it is held that the State and its instrumentality/officers are legally duty bound to fulfill their promises and are liable to release the indicated benefits to the petitioner-Industries on the principle of promissory estoppel, which is deeply applicable to the facts and in the special circumstances of the present cases. Therefore, the contrary arguments of State counsel "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances as the law laid down in the aforesaid judgment "mutatis mutandis" is applicable to the present controversy and is the complete answer to the problem in hand in this context.

(Para 44)

J.S.Toor, Vikas Bahl, N.K.Jain, Rajesh Kumar Girdhar, Sanjiv Gupta, Sudhir Mittal, P.S.Khurana, Harish Chhabra, Vibhav Jain and Ms.Manmeet Kaur, Advocates for the petitioner-Industries.

Rupinder Khosla, Additional Advocate General, Palwinder Singh, Senior DAG, Punjab and Inderjeet Sharma, Advocate for the respondents.

### **MEHINDER SINGH SULLAR, J.**

(1) What cannot possibly be disputed that all the States, including the State of Punjab, are presumed to be the welfare States, by the people, of the people and for the people, in the regime and democratic set up, as enshrined in the Constitution of India. Article 154 postulates that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. Article 162 further posits that the executive power of a State shall extend to the matters with respect to which the Legislature of the State has the power to make laws.

(2) Perhaps, in exercise of these powers, conferred by the Constitution, the Governor of Punjab was pleased to formulate the new Industrial Policies from time to time, inter-alia, in order to, strengthen the economy, attract fresh investment, further boost the growth of industry, increase annual present industrial growth rate from 8% to 12% in the next two years, to increase the present share of industry in Gross Domestic Product (GDP) from 17% to 25% in the next five years and to divert 15% of the present rural population to manufacturing & related occupations through rapid industrialization in the State of Punjab.

(3) Not only that, the object of the publication of Industrial Policies was also to diminish the stress of agricultural sector, which predominates the State of Punjab being predominantly an agricultural State, occupying once a pride place in India. Subsequently, the agriculture sector witnessed the heavy losses, debt and stress on the farmers. So, with an eye to meet the hopes of the people and to engage them in a variety of larger, medium and small scale industrial units, based on agricultural produce to generate the required GDP, the State notified the different Industrial Policies, promising to grant various incentives, concessions, subsidies, interest, tax exemptions and other benefits indicated therein, such as:-

- (a) *Scheme of interest subsidy @ 5% of the total interest payable on the term loan from financial institutions/banks for industrial units in small scale sector, which would be sanctioned alongwith investment incentive on the basis of certificates to be issued by the financial institutions/banks after the units have gone into production. However, units have the option to avail either the interest subsidy or the sales tax concession.*
- (b) *To encourage the growth of existing industrial units, benefit of investment incentive and sales tax concession shall be allowed on expansion, provided the fixed capital investment (FCI) is increased at least by 50% or the installed capacity as recorded in the industrial licence/certificate of the Department of Industries is increased minimum by 50%.*

- (c) *The investment incentive (capital subsidy) shall be available only in case of small scale units graduating to medium/large category as mentioned in (vii) above and for new units in the small scale sector and for large and medium units in 'A' category incentive areas.*
- (d) *With a view to encourage the rehabilitation of sick industrial units purchased by entrepreneurs from the Punjab Financial Corporation or other Corporations or agencies of the Central or State Government, the same shall be treated as new units for the purpose of incentives provided they are located in the areas eligible for incentives. Following incentives shall be provided to such units:-*
- (i) *The investment incentive to the extent the same has not been availed or earlier by the original promoter. This incentive would also be available on new machinery purchased by the new entrepreneurs.*
- (ii) *Sales Tax incentive for the remaining period which has not been availed of by the original promoter. However, the maximum prescribed limit on the FCI (including new investment) shall be adhered to.*
- (iii) *These incentives shall be as admissible in 'B' category under 1992 package of incentives.*

Likewise, some other concessions were also announced as described therein in the Industrial Policies of 1996 and 2003. In order to implement these Policies, the State of Punjab framed the relevant rules in this respect.

(4) The petitioner-Industries claimed that believing the promises of the State Government, flowing from the Industrial Policies and relevant rules, to be true, they set up their respective industrial units by spending huge amounts and started production as per the terms and conditions of the policies. The State of Punjab did not fulfill its promises and failed to make the payment, in lieu of various kinds of concessions, interest & tax exemptions, incentives, subsidies and other benefits on untenable grounds, leaving them in lurch.

(5) The petitioner-Industries did not feel satisfied with the action of the respondents and preferred the present writ petitions, invoking the provisions of Articles 226 and 227 of the Constitution of India.

(6) As identical questions of law and facts are involved and collectively argued by the counsel for the parties, therefore, I propose to dispose of the instant writ petitions, by virtue of this common judgment, in order to avoid the repetition. However, the facts, which require to be noticed for the limited purpose of deciding the core controversy, involved in these matters, have been extracted from **(1) CWP No. 19007 of 2002** titled as **“M/s Balak Gases Oxygen Gas Plant & another vs. State of Punjab and others”** in this context. Be that as it may, the facts of individual cases would also be separately noticed and discussed at the appropriate place and stage in the subsequent part of this judgment.

(7) The matrix of the facts, culminating in the commencement, relevant for disposal of the present writ petitions and emanating from the record, is that in order to achieve the indicated aims & objects and to strengthen the economy, the Governor of Punjab was pleased to formulate the new Industrial Policies of 1996 and 2003, which were published by the government, by way of notifications dated 20.3.1996 and 26.3.2003 (Annexure P1 annexed with CWP No.19007 of 2002 & CWP No.4917 of 2007). In order to implement these policies, the Government of Punjab further notified the Industrial Policy and Incentives Code/Rules (for brevity “relevant Rules”) under the Industrial Policies of 1996 and 2003, published, by means of notifications dated 1.6.1996 and 2.4.2003 (Annexure P2 attached with the indicated writ petitions). It is not a matter of dispute that such notifications have the force of law as envisaged under Article 13(3) read with Articles 154 and 162 of the Constitution of India. As per the Industrial Policies and relevant Rules, the industries were classified in variety of categories and different area of operation. The relevant rules of 1996 and 2003 came into force w.e.f. 1.4.1996 & 1.4.2003 respectively and were made applicable to such units, which came into production for the first time on or after or undertake expansion/modernization after 1.4.1996 and 1.4.2003. The area of operation of industry was classified in two categories ‘A’ and ‘B’ in this respect.

(8) As is clear that Rule 5 escalates the eligibility of incentives category wise to larger, medium and small scale industrial units, such as for rehabilitation of sick units, modernization and technology up-gradation, internet subsidy, investment incentives, incentives for projects of special significance, incentives for projects of non-conventional energy sources, incentives for Agro-based industry, incentives for electronic industry, export oriented units, village industries units. The incentives to fly ash based units were prescribed in Rules 6 to 15 respectively. Similarly, the industry was also classified in the categories of large scale, medium scale and small scale industries. The different incentives were announced for project of non-commercial agro-based unit, village industry unit, tourism industry, electronic unit, export oriented unit, project of special significance, incentives to fly ash based units and incentives for rehabilitation of sick industry units including the exemption from taxes and interest so on and so forth.

(9) According to the petitioner-Industries that in the same sequence, the Indian Boilers Act, 1923 and Standards of Weights & Measures (Enforcement) Act, 1985, Indian Electricity Act, 1910 and Rules, 1956, implementation of Environmental Laws were promised to be amended to improve and to match the industrial atmosphere. Self Certification scheme under Labour Laws and mechanism of forming the Monitoring Committees were also introduced. Similarly, for the development of border area, the State Government assures to provide capital subsidy to Small Scale Industrial Units to the extent of 30% of the Fixed Capital Investment upto maximum of ₹ 30 lac per unit.

(10) The case set up by the petitioner-Industries, in brief in so far as relevant, was that deeply believing the promises of the State to be true and sincere and in pursuance of the indicated Industrial Policies (Annexure P1), coupled with the relevant rules (Annexure P2), announced by the Government of Punjab, they set up their industrial units, strictly in consonance with the Industrial Policies, having spent huge amounts for establishing the industry of undertaking modernization and up-gradation. The State of Punjab did not fulfill and has back tracked from the promise to give the pointed concessions/incentives on one reason or the other and did not release the amounts of benefits despite letter/representations (Annexures P5 to P8).

(11) Aggrieved by the action of the respondents, the petitioner-Industry (at serial No.1) filed CWP No.16236 of 2002 titled as “M/s Balak Gases Oxygen Gas Plant Vs. State of Punjab and others”, which was dismissed by a Division Bench of this Court, by means of order dated 28.10.2002 (Annexure P9) on the ground that its name figured at Serial No.383 of the seniority list prepared by the State and amount will be paid as per seniority in this regard.

(12) Levelling a variety of allegations and narrating the sequence of their respective events, in all, according to the petitioner-Industries that although they were eligible to claim the concessions and incentives in view of the Industrial Policies and relevant Rules made thereunder, but the State Govt. did not release the amounts of subsidies and concessions to them in the garb of impugned orders, without any legal ground. The plea of discrimination has also been pressed into service by the petitioner-Industries. On the basis of aforesaid allegations, the petitioners claimed the depicted concessions/incentives and benefits and sought the quashment of impugned orders in the manner described hereinabove.

(13) Likewise, the remaining petitioner-Industries have also filed the writ petitions almost on the basis of the same grounds and similar pleadings and challenged the orders impugned therein in this context.

(14) Faced with the situation, the respondents have contested the claim of the petitioner-Industries. The contesting respondent Nos.1 and 2 filed their joint written statement, inter-alia admitting the issuance/publication of the aforesaid policies and relevant rules and that the petitioner-Industries are duly registered as larger, medium and small scale industries with the Industry Department of Punjab State. The factum of sanction of subsidy/incentives in pursuance of the indicated policy/rules was also acknowledged. However, it was further pleaded in para 28 as under:-

*“That it is the prerogative of the State government to assign priorities with the intention to have all-round development of the State and to attract investment in the State. The matter regarding disbursement is not mentioned in the policy Rules. The decision taken by the Government is an administrative decision for which Government is competent*

*to make, priority to Export Oriented Units, was assigned with a view to earn valuable foreign exchange and similarly priority to Poultry Farms and persons belongs to Scheduled Caste Entrepreneurs was assigned with a view to uplift the weaker section of the society, moreover this was in lieu of special component scheme which was discontinued. The disbursement is made as per inter-district seniority list maintained at Head Office of unit pertaining to General category and priority categories, 80% of funds released were disbursed to units of General category and only 20% of funds released were used for making disbursement to priority categories. However, in compliance with the order dated 07.08.2001 passed by this Hon'ble High Court in another case No.14456 of 2000 -M/s Bassi Tubes V/s State of Punjab, the 80% of subsidy shall be disbursed to the Industrial units in accordance with the seniority list and 20% of the amount to the Export Oriented Units in terms of instruction dated 25/30.11.99."*

(15) Sequelly, the State Government was stated to have constituted the committees to formulate the modalities and issued certain guidelines based on the recommendations dated 28.8.2006 and 20.2.2009 of these committees. The impugned orders were stated to have been legally and validly passed in exercise of administrative/executive powers of the State Government. It will not be out of place to mention here that the contesting respondents have stoutly denied all other allegations contained in the writ petitions and prayed for their dismissal.

(16) Controverting the allegations contained in the written statements reiterating the pleadings of the writ petitions, some of the petitioner-units filed their replications. That is how I am seized of the matter.

(17) At the very outset, the counsel for the petitioner-Industries, contended with some amount of vehemence that the State of Punjab, in exercise of its executive powers, issued the Industrial Policies in question and framed the relevant rules in pursuance thereof to implement the same and promised various kinds of incentives, subsidies, tax and interest exemptions and other benefits mentioned therein. Having deep faith in the promise of



the Government, the petitioner-Industries have set up their industrial units, by spending huge amounts, strictly in consonance with the Industrial Policies and relevant rules, but it (State Government) has miserably failed to fulfill its promise. The argument is that although the State has sanctioned the amount of subsidy, incentives and other benefits to all the industrial units and discriminately paid the same to some of its favourite units, but the payment was illegally denied to the petitioner-Industries, for the reasons best known to the respondents. They unilaterally changed the terms and conditions of the incentives already adversely affecting them, without any legal authority. The argument further proceeds that once the State has notified the Industrial Policies and the relevant rules and granted the various concessions, incentives and other benefits depicted therein and having spent huge amounts, the petitioner-Industries have set up their industrial units, then the State is estopped from denying the payment of the indicated benefits to them on the doctrine of promissory estoppel. In support of their contentions, they have placed reliance on the judgments of Hon'ble Apex Court in cases **U.P. Power Corporation Ltd. and Anr. versus Sant Steel and Alloys P.Ltd. (1)** and **Assistant Commissioner of Commercial Taxes (Asst.), Dharwar and others versus Dharmendra Trading Co.etc.etc. (2)**.

(18) On the contrary, the State counsel appearing on behalf of the respondents has acknowledged the existence of the Industrial Policies in question (Annexure P1) and the relevant rules framed thereunder (Annexure P2). He has also fairly conceded that the Government has already paid or is going to release the amount of subsidies to the different categories of Industries as per the Policy dated 8.9.2009, formulated on the basis of the recommendations of the Committees constituted by the State. However, the State counsel further took pain to argue that the petitioner-Industries have no legitimate right, which can legally be enforced and Government has the power to amend the policies and to issue guidelines to restrict the claim of the industrial units in this behalf. He has also placed reliance on the judgments of Hon'ble Supreme Court in case **M/s Motilal Padampat Sugar Mills Co.Ltd. versus State of Uttar Pradesh and others (3)** in this respect.

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(1) 2008 (2) SCC 777 = 2008 AIR (SC) 693  
(2) AIR 1988 Supreme Court 1247  
(3) 1979 (2) S.C.C. 409

(19) Having heard the learned counsel for the parties at quite length, having gone through the records and legal provisions with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, the instant writ petitions deserve to be accepted in this context.

(20) As indicated hereinbefore, the State Government announced the Industrial Policies and published, by way of notifications dated 20.3.1996 and 26.3.2003 (Annexure P1). In order to implement the Industrial Policies, the State framed the relevant rules (Annexure P2). It is not a matter of dispute that the Government has sanctioned the amount of subsidies and incentives, but the same was not released to the petitioner-Industries on variety of grounds of closure of the units and non-availability of the funds etc., by virtue of various orders impugned therein. Similarly, the State of Punjab did not pay the amount of incentives and other benefits to M/s A.S.Forgings (Registered) on the same indicated grounds. It filed CWP No.1801 of 1998, which came to be disposed of by a Division Bench of this Court, vide judgment dated 25.11.1998 (Annexure P3 in CWP No.4917 of 2007), the operative part of which is as under:-

*“However, keeping in view the facts and circumstances that have been brought to our notice during the course of hearing, we hope that the State Government shall take steps to disburse the huge balance of Subsidy to the eligible Units as early as possible. A copy of this order be sent to the Chief Secretary, Punjab for information.*

*With the above observation and directions, this Writ Petition stands disposed of with no costs.”*

(21) Not only that, aggrieved by the same very impugned action of the State, The Mohali Industries Association and others filed another CWP No.1436 of 2005 to issue directions to release the amount of subsidies and for quashing the impugned sanctioned letters only to the extent that a condition has been incorporated that the disbursement would be made subject to the availability of the funds. It was decided alongwith CWP No.8719 of 2002 and bunch of other petitions, which again was disposed

of by a Division Bench of this Court, by virtue of order dated 11.5.2006 (Annexure P5 attached with CWP No.4917 of 2007), which, in substance, is as under:-

*“Learned Senior Deputy Advocate General appearing for the State of Punjab has placed on record a decision dated February 6, 2006, taken by the State Government of Punjab on the basis of the decision taken by the Council of Ministers in its meeting dated January 30, 2006. Decision taken by the Council of Ministers on January 30, 2006 is extracted as below:*

*“The Council of Ministers noted that the State Government has already discussed the matter with Ministry of Finance, Government of India to issue bonds for discharging the liability created under Subsidies announced from time to time and it is expected that their formal approval will be received during February 2006 after which the Scheme will be notified. With the implementation of this Scheme, liability worth Rs.100 Crores Per Annum from 2006-07 will be cleared till the total liability created is discharged. However, in case this Bond Scheme could not be notified due to any reason then the State Government will release an amount of Rs.50 Crores up to March 31, 2006 for this purpose and from the year 2006-07 onwards an amount of Rs.100 Crores will be released per year.”*

*At the outset, Mr.M.C.Berry, Learned Senior Deputy Advocate General, Punjab informs the Court that the Bond Scheme has not been notified so far and therefore, in consonance with the decision taken by the Council of Ministers, the State Government shall release an amount of Rs.50 Crores within a period of 2 months from today and from the year 2006-2007 onwards, an amount of Rs.100 Crores would be released per year and would be disbursed strictly in accordance with the Seniority List already placed on the record of the case and available on the Website of the Department of Industries.*

*The aforesaid Statement of Mr.Berry fully satisfies Learned counsel appearing for the petitioners. In view of the aforesaid fact, present petitions are disposed of accordingly.*

*The State Government shall abide by the decision of the Council of Ministers dated January 30,2006 as notified above and as so stated by Mr.M.C.Berry today, in the Court.”*

(22) Thus, it would be seen that the State of Punjab has repeatedly admitted its liability to pay the amount of subsidies/incentives to the Industrial Units and sanctioned the amount, but it did not release the same on untenable grounds of closure of units and non-availability of funds etc. without any legal basis in this relevant connection.

(23) Ex facie, the argument of counsel for the respondents that in the wake of recommendations of the committees, the State Government has issued the guidelines dated 8.9.2009 to make the payment in public interest, so, the doctrine of promissory estoppel is not applicable in the present case, is neither tenable nor the observations of Hon’ble Apex Court in M/s Motilal Padampat’s case (supra), are at all attracted to the facts of the present case, wherein it was observed that “when the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and after his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies.”

(24) Possibly, no one can dispute with regard to the aforesaid observations, but, to me, the same would not come to the rescue of the respondents-State in the instant controversy, as at the same time and in the same judgment, it was also ruled (in M/s Motilal Padampat’s case (supra)) in para 24 as under:-

*“Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry*

*out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisal of the circumstances in which the obligation has arisen. 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 promisee 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. It is elementary that in a republic governed by the rule of law, no one howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned; the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith" ? Why should the Government not be held to a "high standard of rectangular rectitude while dealing with its citizens" ? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations; but, let it be said to the eternal glory of this Court, this doctrine was emphatically negated in the **Indo-Afghan Agencies** case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of*

*promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society.”*

(25) Hardly, there is any quarrel that it is the sheer grit and entrepreneurial spirit of Punjabi industrialists that they are surviving in Punjab despite every kind of odds and neighbouring States are taking away a major chunk of industries by attractive fiscal policies and incentives. To my mind, instead of taking immediate steps to save the industry in the State, which is fast falling prey to other States, having better atmosphere and facilities, the State of Punjab is still denying the benefits already announced, promised and accrued, leaving the petitioner- Industries in lurch in this direction.

(26) In the instant cases, as the State has miserably failed to point out and no material, much less cogent, is forth coming on record, even to suggest remotely that how, when, at what stage and in what manner, the public interest is going to be served by denying the legitimate rights of the petitioner-Industries, accruing to them in pursuance of the indicated Industrial Policies/relevant rules published by the Government itself. On the contrary, to me, if the amount of incentives and subsidies is not paid to the petitioner-Industries, then, the industrial growth, which is already in doldrums, would further be jeopardized, causing huge loss to the State exchequer directly adversely affecting the larger public interest as well.

(27) The matter did not rest there. As indicated earlier, the State has already admitted its liability during the course of hearing of the above mentioned writ petitions and have sanctioned and paid the subsidy amount to other industrial entrepreneurs. The petitioner-Industries have also pressed

into service the plea of discrimination. In that eventuality, it cannot possibly be saith and State is estopped from denying the legitimate right of petitioner-Industries as well, in view of the analogy of law hidden under section 115 of the Indian Evidence Act, 1872, which envisages that when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. Above-all, the petitioner-Industries are also legally entitled to the same treatment on the principle of equality enshrined in the Constitution of India.

(28) This is not the end of the matter. The question of applicability of promissory estoppel was considered by the Hon'ble Supreme Court in case **Union of India and others versus Anglo-Afghan Agencies etc.** (4) and it was held that "we are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional setup no person may be deprived of his right or liberty except in due course of and by authority of law : if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law - common or statute, the Courts will be competent to and indeed will be bound to, protect the rights of the aggrieved citizen."

(29) Not only that, having considered the various judgments, including the judgment of M/s Motilal Padampat's case (supra) (relied on behalf of the respondents) on the point of promissory estoppel, in a recent judgment of U.P.Power Corporation Ltd.'s case (supra), the Hon'ble Apex Court has observed (para 20) as follows :-

*"In this 21st century, when there is global economy, the question of faith is very important. Government offers certain benefits to attract the entrepreneurs and the entrepreneurs act on those beneficial offers. Thereafter, the Government withdraws those benefits. This will seriously affect the credibility of the Government and would show the shortsightedness of the governance. Therefore, in order to*

*keep the faith of the people, the Government or its instrumentality should abide by their commitments. In this context, the action taken by the appellant-Corporation in revoking the benefits given to the entrepreneurs in the hill areas will sadly reflect their credibility and people will not take the word of the Government. That will shake the faith of the people in the governance. Therefore, in order to keep the faith and maintain good governance it is necessary that whatever representation is made by the Government or its instrumentality which induces the other party to act, the Government should not be permitted to withdraw from that. This is a matter of faith.”*

(30) Meaning thereby, the doctrine of promissory estoppel is also applicable to the State and its instrumentality/officers. The Rule of estoppel is a principle of law by which a person is held bound by the representation, made by him or arising out of his conduct. If, a person made a statement intending that some other person should act upon it, he will be estopped and will be prevented, from denying the truth of his statement once the other person has altered his position on the basis of the statement. Where any person by his words or conduct willfully causes another to believe in the existence of a certain state of things, rule of estoppel precludes a person from denying the truth of the statements previously made by him. In order to hold a person bound by estoppel, there should be a representation that a certain state of thing is true and secondly, the person to whom such a representation is made, should have acted on the belief of it.

(31) Above being the legal position and material on records, now the short and significant questions, thought important that arises for determination in these cases, are (i) as to whether the principle of promissory estoppel is applicable in the instant case and (ii) whether the State has the power to unilaterally alter the eligibility clause, by means of administrative guidelines, to deny the benefits already accrued to the petitioner-Industries emanating from the Industrial Policies/relevant rules (Annexures P1 and P2) on the grounds of closure of units and non-availability of funds etc. or not?



(32) Having regard to the rival contentions of counsel for the parties, to me, the answer to first question must obviously be in the affirmative and answer to second question is in the negative. The respondents are legally bound to release the amount of subsidies, incentives and other benefits to the eligible petitioner-Industries, as per the Industrial Policies and relevant rules framed thereunder (Annexures P1 and P2) in this behalf.

(33) As is evident from the record that the Governor of Punjab was pleased to formulate the new Industrial Policies of 1996 and 2003, which were published by the Government, by virtue of notifications dated 20.3.1996 and 26.3.2003 (Annexure P1 annexed with CWP No.19007 of 2002 & CWP No.4917 of 2007). In order to implement these policies, the Government of Punjab further notified the Industrial Policy and Incentives Code/relevant Rules under the Industrial Policy of 1996 published, by way of notifications dated 1.6.1996 and 2.4.2003 (Annexure P2 attached with the indicated writ petitions), presumably in exercise of their respective powers under Articles 154 and 162. Such notifications have the force of law as contained under Article 13(3) of the Constitution.

(34) In this regard, the petitioner-Industries (in CWP No.19007 of 2002) have specifically pleaded that they got prepared a project report taking into consideration various aspects, such as availability of land, production of gas and its possible uses, market potential, future scope of the industry and production targets. They worked out the production detail and process of manufacturing. The project report involving the investment of more than Rs. 106 crores was prepared, which was accepted by the respondents. Thereafter, they approached the Union Bank of India for a term loan, which was sanctioned for a sum of Rs. 57 lacs, vide letter (Annexure P4). Then, considering its case, sanction of Rs. 18,48,800/- as subsidy was granted to them, by means of letter (Annexure P3).

(35) Likewise, the petitioner-Industries (in CWP No.4917 of 2007) have reiterated that in pursuance of the promises and policies of the respondents, they invested the huge amount for their projects in border area of Amritsar, after obtaining a term loan of Rs. 24 lacs and cash credit of Rs. 24 lacs by pledging a residential house of their proprietor. The said loan was taken at the exorbitant rate of 1% higher than the primary rates, vide agreement (Annexure P7). Having arranged the amount and taken the loan,

petitioner No.1 set up an Embroidery Unit at Head Water Works Road, Ram Talai, Amritsar by further investing about Rs. 45 lacs. The machinery was imported from China. Since the amount of subsidy/exemption in tax was not provided, so, petitioner No.1 was compelled to pay the instalments with higher amount of interest and it has repaid almost equivalent to subsidy, which is to be finally released to it.

(36) Instead of reproducing the details of project reports, arrangement of loans and capital investments for establishment of the Industrial units and in order to avoid the repetition, suffice it to say that all other petitioner-Industries, have also categorically claimed that after completing all the required formalities and spending the huge amount, they have established their respective industrial units believing the promises of the State to be true, strictly in consonance with the Industrial Policies and relevant rules framed thereunder. The pleadings to that effect have not been specifically denied by the respondents at any stage, rather they have acknowledged the factual matrix of spending of huge amounts and arrangement of loans etc. for establishing their respective industrial units. It is not the case of the respondents that any of the petitioner-Industries, has committed any fraud in this relevant connection. On the contrary, they (respondents) have repeatedly admitted their liability to make the payment of amount in lieu of subsidies, incentives and all other benefits, in pursuance of the aforementioned Industrial Policies and relevant rules.

(37) Sequently, in case **Bhim Singh versus State of Haryana (5)**, the State held out certain specific promises as an inducement for the appellants to move into a new Department. Subsequently, State wanted to back out from its promises. It was observed by the Hon'ble Apex Court that the appellants, having believed the representation made by the State and having further acted thereon, cannot now be defeated of their hopes, which have crystalized into rights, thanks to the application of the doctrine of promissory estoppel. Thereafter, it was not open to the State to backtrack and it was directed to implement the promises and confer such rights and benefits as were promised thereunder in entirety.

(38) Similarly, in case **Hardwari Lal, Rohtak versus G.D. Tapase, Chandigarh and others (6)**, the petitioner was appointed as Vice-Chancellor

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(5) AIR 1980 SC 768

(6) AIR 1982 P&H 439 (FB)

of the Maharshi Dayanand University for a period of three years with a further promise to the appointee that on the expiry of term of office of three years, his term will be renewed. After the expiry of period of three years, further term was not extended/renewed by the Chancellor. The petitioner challenged the action of the respondents on the basis of doctrine of promissory estoppel based under section 115 of the Evidence Act. Having considered the relevant provisions of law, it was authoritatively ruled by a Full Bench of this Court that the respondents were duty bound to fulfill and cannot backtrack the promises and a direction was issued to the Chancellor of the University to issue notification renewing the term of the petitioner as Vice-Chancellor.

(39) In the present cases, the offer of subsidy is a manner of providing incentives for such investment and an entrepreneur that assumes a business risk in investment, is entitled to believe that the scheme is not an empty promise but rooted on a sound government policy and is squarely covered under the regime of promissory estoppel of the industrial units. The State could not legally be permitted to completely defeat the rights of petitioner-Industries by constant reappraisal of the scheme retrospectively, that too by issuing administrative instructions of any kind and by its officers by passing the impugned orders. Even in case of those industries, which after several years of operation has performed to close its business by the only reason that assured subsidy did not reach him or any other valid ground beyond their control. A businessman, who makes investment and obtains loans from the market or financial institution for establishment of the industry, is at least entitled to assume that a portion of debt could be redressed from the amount of subsidy/incentive and benefits as promised by the State emanating from the Industrial Policies and relevant rules framed thereunder.

(40) Now advertent to the next celebrated contention of the State counsel that since the respondents have issued administrative instructions/guidelines, altering the original Industrial Policies (Annexure P1) and the relevant rules framed thereunder, so, the petitioner-Industries, as such, are not entitled to the subsidies/incentives contrary to the guidelines, is not only devoid of merit but misplaced as well. Once the Governor has issued the notifications publishing the Industrial Policies (Annexure P1) in Government Gazette and State Govt. notified the relevant rules (Annexure P2) to implement the indicated Policies, then, to my mind, the administrative/executive

instructions/guidelines cannot legally be issued, unilaterally to alter the eligibility criteria and imposing such restrictions on the payment of amount of incentives detrimental to already accrued valuable rights of the petitioner-Industries, that too, without issuing any notice and providing adequate opportunity of hearing to them. Such substantive rights of the petitioner- Industries cannot be taken away by issuing the executive instructions/guidelines, which have no sanctity of law and did not contain any legal force. It cannot possibly be denied that only the State Government (not its officers) has the power to amend the rules in a legal manner that too prospectively and even State cannot take away any such rights already accrued to a party by way of subsequent amendment. In the present cases, as the impugned guidelines are based on recommendations of the officers' committees, therefore, the administrative instructions/guidelines will not in any way override the effect and operation of Industrial Policies and relevant rules framed thereunder in this regard by the State.

(41) Moreover, the respondents cannot be permitted to keep on changing the eligibility criteria for the benefit emitting from the scheme, which was primarily intended to promote the industrial growth in the specified category of area and industry in general and production and employment in border area in particular. As indicated earlier, the entitlement of petitioner-Industries to claim the incentives and subsidies under the scheme has not been denied and was sanctioned, but the respondents did not release the amount for one or the other untenable grounds in the garb of impugned orders, which are entirely beyond the scope and jurisdiction of the original Industrial Policies and relevant rules framed thereunder. In the same manner, a welfare State cannot possibly be heard to say that the amount was not released on account of paucity of funds with it.

(42) In this manner, to my mind, any subsequent administrative instructions/guidelines issued by the State or any orders passed by its officers, impugned in the present writ petitions, which have no sanctity of law and legal force, are illegal, contrary to the Industrial Policies and indicated relevant rules, without jurisdiction and in operative on the rights of the petitioner-Industries. The State cannot deny the release of the amount of incentive/subsidies to them (petitioner-Industries) in this relevant connection.

(43) Therefore, there cannot be any gainsaying that the petitioner-Industries did act on the assurance of the State. If the crux of the pleadings, materials placed on the records and admission of the respondents, as discussed hereinabove, is put together and the case is construed in its totality, then the only possible conclusion, that can be drawn, is that the petitioner-Industries were given an assurance by the respondents-State and they actually acted in pursuance of the assurance in this behalf. That by itself would be sufficient to attract the doctrine of promissory estoppel.

(44) In this view of the matter, it is held that the State and its instrumentality/officers are legally duty bound to fulfill their promises and are liable to release the indicated benefits to the petitioner-Industries on the principle of promissory estoppel, which is deeply applicable to the facts and in the special circumstances of the present cases. Therefore, the contrary arguments of State counsel “*stricto sensu*” deserve to be and are hereby repelled under the present set of circumstances as the law laid down in the aforesaid judgment “*mutatis mutandis*” is applicable to the present controversy and is the complete answer to the problem in hand in this context.

(45) No other legal point, worth consideration, has either been urged or pressed by the counsel for the parties.

(46) In the light of aforesaid reasons, all the writ petitions are accepted. Consequently, the impugned guidelines and the impugned orders, in all the cases, having the effect of denying the incentives/subsidies and other benefits to petitioner-Industries, emanating from the Industrial Policies and relevant rules framed thereunder, are hereby set aside in the obtaining circumstances of the case. The respondents are directed to release the amount of incentive/subsidies and other benefits, to the petitioner-Industries, (if they are otherwise eligible and entitled to it), within a period of six months from the date of receipt of certified copy of this judgment, failing which, thereafter six months, they (petitioner-Industries) would also be entitled to interest at the rate of 6% per annum on the accrued benefits till the realization of the amount in this context.

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***A. Aggarwal***