IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION No.18644 of 2022

NSL Textiles Limited, Reg. Office: 3rd Floor 'EMGEE House',4th Lane, Ring Road, Guntur, AP – 522 007, Corp. Office: NSL Icon, 4th Floor, 8-2-684/2/A, Road No.12, Banjara Hills, Hyderabda, TS – 500034, represented by its Director.

… Petitioner.

Versus

State of Andhra Pradesh, represented by Special Chief Secretary to Government, Industries & Commerce, Room No.102, Ground Floor, Block 2, AP Secretariat, Velagapudi, AP - 522503 and three others.

… Respondents.

Counsel for the petitioner	:	Ms.Sri Ranja Pujitha Gorantla
Counsel for respondents 1 to 3	:	GP for Industries & Commerce
Counsel for respondent No.4	:	GP for Finance & Planning

ORDER

The above writ petition is filed seeking the following relief:

"… to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of *Mandamus,*

(i) Declaring the inaction of Respondents in complying with the Industrial Investment Promotion Policy

2005-2010 and Industrial Investment Promotion Policy 2010-2015 read with G.O.Ms.No.168, Industries and Commerce (Prog.II) Department dated 30.11.2016 and in consequently not releasing the admitted approved and sanctioned payments due to the Petitioner Company, as per the recommendation of the 3rd Respondent herein in the SLC Meetings for sanction of incentives and not making payment of an admitted approved and sanctioned amount of Rs.131,30,28,649/- due to the Petitioner under the aforesaid policies as illegal arbitrary and unconstitutional and violative of the Petitioners rights under Article 14 and 19(1)(g) of the Constitution apart from being contrary to the Industrial Investment Promotion Policy 2005-2010 and Industrial Investment Promotion Policy 2010-2015 read with G.O.Ms.No.168.Industries and Commerce (Prog.II) Department dated 30.11.2016;

(ii) Consequently direct the Respondents to forthwith make payment of the admitted approved and sanctioned amount of Rs.131,75,41,780/- payable to the Petitioner under the Industrial Investment Promotion Policy 2005-2010 and Industrial Investment Promotion Policy 2010-2015 read with G.O.Ms.No.168.Industries and Commerce (Prog.II) Department dated 30.11.2016;

(iii) Direct the Respondents to forthwith consider and sanction the balance amount of Rs.45,59,72,420/- payable to the Petitioner under the Industrial Investment Promotion Policy 2005-2010 and Industrial Investment Promotion Policy 2010-2015 read with G.O.Ms.No.168.Industries and Commerce (Prog.II) Department dated 30.11.2016;

(iv) Direct the Respondents to pay interest of Rs.190,80,15,274/- till 30th June, 2022 being the interest additionally paid to the Lenders on account of delay in receipt of incentives/incentives to be received along with amounts as prayed for in Prayers i to iii within a period of 4 weeks from the release of the said payments; and ... ...”

2. a) The Government of Andhra Pradesh introduced Industrial Investment Promotion Policy 2005-10 (for short "**IIPP 2005-10**") *vide* G.O.Ms.No.178, Industries & Commerce (IP) Department dated 21.06.2005. Under **IIPP 2005-10**, the Government approved numerous fiscal benefits covering categories of (a) SSI/Tinu units; (b) SC/ST Entrepreneurs; (c) Women Enterpreneurs; (d) Units other than SSI/Tiny (Large& Medium Scale Industries); and (e) Mega Projects. As per **IIPP 2005-10**, a Mega Project means the Industrial unit, which sets up manufacturing with a capital investment of Rs.100 crores or above. A Mega Project is eligible for all incentives available for large and medium scale industries.

b) The petitioner company submitted proposals for setting up Mega Texile Projects at various places in the State of Andhra Pradesh along with its request for approval of certain special tailormade incentives. After examining the proposals of petitioner-company, the respondents extended various tailor made incentives/concessions to the petitioner company for setting up of new units at (a) Inkollu village, Prakasam District; (b) Veeravalli village, Bapulapadu Mandal, Krishna District; (c) Kunchelavaripalem, Chandole Post, Cherukpalli Mandal, Guntur District; (d) Budampadu, Guntur District; (e) Edlapadu and Pulivendula, YSR Kadapa District.

c) The incentives granted by the respondents to several units of petitioner company under IIPP 2005-10, apart from other benefits as follows:

(i) Reimbursement of power cost by keeping the power cost at Rs.1 below the rate as on 01.04.2005 for a period of 5 years from the date of commercial production in respect of all the five units, except Pulivendula unit.

(ii) Additional tax reimbursement at the rate of 25% of VAT paid during first five years to be done from 2nd to 6th years, 50% of the VAT paid in sixth and seventh year in the seventh and eighth year of commercial production respectively.

d) The Government issued another Industrial Investment Promotion Policy 2010-15 (for short "**IIPP 2010-15**") *vide* G.O.Ms.No.61, Industries & Commerce (IP) Department dated 29.06.2010. The incentives/concessions provided for textile sector under **IIPP 2010-15** were further extended for a period of 3 more years, making the total eligibility period 8 years for the units commissioned during the **IIPP 2005-10**. The Petitioner company is entitled to get tailor-made incentives for a total period of 8 years from the commercial operation. The Government *vide* G.O.Ms.No.42 Industries & Commerce (IP) Department dated 05.05.2011 issued Operational Guidelines for implementation of **IIPP 2010-15**. Clause 7.7.0 of the said Operational Guidelines provides that benefits/concessions of **IIPP 2005-10** will be applicable to the enterprises/industries which have gone into commercial production on or before 30.06.2010. The Government of Andhra Pradesh further extended the incentive of power cost reimbursement to the Spinning/Weaving/Fabric, Processing/Garmenting units commissioned during **IIPP 2005-10** @ Rs.1.00 per unit for a period of 2 years after completion of 8 years of the claim period vide G.O.Ms.No.168, Industries & Commerce (Pro g.II) Department dated 30.11.2016. Thus, the petitioner company is entitled to claim incentive of power cost reimbursement for a total period of 10 years from the date of commercial operation of each unit.

e) Petitioner-company embarked on a huge expansion program by borrowing funds of Rs.1001 crores from the banks keeping in view the financial viability of the units owing to the expectation of inflow of huge funds from the respondents in the form of incentives in time.

f) Having complied with the prerequisite conditions for availing the incentives/benefits, the petitioner company filed claim applications before the respondent authorities for sanction of incentives/benefits. The Government approved claims to a sum of Rs.322,06,25,468/-, out of which Rs.190,75,96,819/-, had only been received by petitioner company and the balance amount of Rs.131,30,28,649/-, though sanctioned/approved is yet to be released to the petitioner company. The amount of Rs.45,59,72,420/- representing difference payable in power incentives towards reimbursement of eligible balance is yet to be approved/sanctioned to the petitioner company.

g) Respondents failed to disburse the funds/incentives in a timely manner. Petitioner company had to resort to restructuring under the CDR (Corporate Debt Restructuring)

Scheme on account of abnormal increase in raw material prices with no corresponding increase in sale prices, restriction on expert of cotton yarn etc. Since the petitioner company could not meet its payment obligations to its bankers in time, the banks raised the interest rate from 9.5% to 17%. Petitioner company was forced to undergo S4A restructuring owing to undue and unreasonable delay in disbursement of incentives/benefits.

h) The Canara Bank, being the lead bank of the consortium of banks had classified the petitioner company account as Non-Performing Asset (NPA) in March 2018 with retrospective effect from March 2013. Petitioner company paid interest on working capital loans and terms loans to lenders from the financial year 2014-15 to 2022-23 to the extent of Rs.610.69 crores. As per the guidelines, Mega Projects shall file an application/representation to DICs (District Industries Centre) concerned along with relevant documents for the release of incentives on priority basis. Based on merits, the General Manager will scrutinize the said representations and recommend to the Commissioner of Industries. Then the proposals will be placed before the State

Level Committee (SLC) and as per the decision taken basing on the merits and genuineness of the enterprises, the incentives will be released subject to certain conditions.

i) Petitioner-company submitted a representation dated 20.12.2019 to 2nd respondent as per G.O.Ms.No.32 dated 07.02.2019 to reconsider the release of long pending incentives on priority basis. The representation of petitioner-company was placed before the State Level Committee in its 22nd SLC meeting for sanction of incentives held on 23.12.2019. The SLC, observing the position of spinning industry, recommended the Government to release of 50% of the sanctioned amount i.e. Rs.41.94 crores under priority basis and the remaining amount as per the seriatim of all the sanctioned cases with other similarly placed units. In view of approval, the petitioner-company addressed another representation dated 25.02.2020 and one more representation dated 29.10.2021 to the Special Chief Secretary. Since the amount was not released, the above writ petition is filed.

3. a) The 2nd respondent filed counter affidavit. It was contended *interalia* that as per **IIPP-2005-10** and **IIPP-2010-15** read with G.O.Ms.No.168, Industries & Commerce (Pro g.II) Department dated 30.11.2016, the State Level Committee sanctioned industrial incentives to eligible industries in the State. To the petitioner unit, an amount of Rs.322.06 crores was sanctioned towards various industrial incentives. Out of them, an amount of Rs.190.76 crores were disbursed to the petitioner units and the balance amount of Rs.131.30 crores is pending for release. Out of 131.30 crores, an amount of Rs.0.70 crores is sanctioned towards reimbursement of sales tax and an amount of Rs.130.60 crores sanctioned towards reimbursement of Power cost to petitioner units.

b) The Government decided to adjust the pending incentives of Power cost reimbursement in future CC bills of DISCOMs. Accordingly, a proposal was submitted to the Government that Power incentives payable to the Textiles units may be adjusted @ Rs.2.00 per unit against monthly future CC bills of DISCOMs, based on main meter/standby meter to Large and Mega Textile Units, till the pending power cost reimbursement is exhausted, subject to fulfillment of the set eligibility criteria. Once the decision is finalized by the Government, an amount of Rs.130.60 crores will be adjusted in monthly future bills of DISCOMs to petitioner units. The Government announced to release the pending industrial incentives for MSMEs and other than power cost incentives to Large and Mega Textile Industries in the month of February 2023. Accordingly, an amount of Rs.0.70 crores will be disbursed to the petitioner as per the eligibility.

c) The Government extended concession/benefits to Large and Mega Textile units for another 3 years, which were commissioned during IIPP 2005-10. Accordingly, petitioner units were extended benefits/concessions and the same have been sanctioned by SLC as per petitioner units' eligibility. The SLC sanctioned eligible incentives to petitioner units as per the procedure. Eventually, prayed to dismiss the writ petition.

4. Rejoinder was filed by petitioner. It was contended that 2nd respondent failed to comply with SLC recommendations. The 2nd respondent is estopped from going back on its

promises. The petitioner textile company is highly power intensive and reimbursement of power incentive as promised under the said policy and subsequent extensions on quarterly basis would have considerably eased its cash flow issues. The adjustment pleaded in the counter affidavit will take more than 5 years and it would not alleviate the financial crisis of petitioner-company and eventually, prayed to allow the writ petition.

5. Heard Sri Dammalapati Srinivas, learned senior counsel representing Ms.Gorantla Sri Ranga Pujitha, learned counsel for petitioner and the learned Government Pleader for Industries and Commerce for respondents.

6. Learned senior counsel would submit that respondents admitted and not disputing the entitlement of petitioner to incentives as per SLC. However, respondents are not releasing the amount. He would also submit that as per IIPP 2005-10, petitioner is entitled to reimbursement. The SLC in its meeting held on 23.12.2019 recommended for release of 50% of sanctioned amount, being Rs.41.94 crores under priority basis and the remaining amount as per the seriatim.

He would also submit that respondents are estopped from contending that amount will be adjusted in future bills in view of IIPP 2005-10. Learned senior placed reliance on the order passed by the learned single Judge of this Court in W.P.No.29482 of 2022 dated 10.04.2023. He also placed reliance on the judgment of the Apex Court in **Manuelsons Hotels Private Limited Vs. State of Kerala and others**[1]. He would also submit that petitioner is entitled to interest and in support of his contention he relied upon the judgment of the Gauhati High Court in **M/s Ishwar Food Products Limited Vs. The State of Assam**[2].

7. *Per* contra, learned Government Pleader for Industries and Commerce would submit that petitioner unit was sanctioned an amount of Rs.322.06 crores towards various industrial incentives. Out of it, an amount of Rs.190.76 crores was disbursed to the petitioner units and the balance amount of incentives will be adjusted towards future bills as per G.O.Rt.No.56 dated 05.04.2023. He would also submit

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[1] (2016) 6 SCC 766
[2] W.A.No.243 of 2019 dated 12.06.2020

that incentive being public money, petitioner is not entitled for interest and the amount will be released as per seriatim and thus, prayed to dismiss the writ petition.

8. In W.P.No.29482 of 2022, learned single Judge of this Court while disposing of writ petition on 10-4-2023, qua the aspect of undisputed bill amount sanctioned towards reimbursement of power consumption charges, directed the respondent to pay the amount to the petitioner therein, towards reimbursement of power cost incentive within a period of 6 months from the date of receipt of a copy of the order.

9. In the case on hand, the counter filed by 2nd respondent made it clear that petitioner-company was sanctioned an amount of Rs.322.06 crores towards various industrial incentives. Out of the same, an amount of Rs.190.76 crores were disbursed to the petitioner units and the balance amount of Rs.131.30 crores is pending for release. Out of 131.30 crores, an amount of Rs.0.70 crores are sanctioned towards reimbursement of sales tax and an amount of Rs.130.60 crores sanctioned towards reimbursement of

Power cost to petitioner units. Thus, as seen from the counter filed by 2nd respondent, there is no dispute regarding entitlement of petitioner towards incentives.

10. **Whether the 2nd respondent after admitting the incentive in favour of petitioner, as per IIPP, be allowed to contend that the amount will be adjusted in future monthly bills?**

11. As per G.O.Ms.No.42 dated 05.05.2011, the Government accorded the Operational Guidelines for implementation of **IIPP 2010-15**. As per the operational guidelines, entrepreneur/company shall file claim application within six months period, from the date of issue of operational guidelines for existing Enterprises/Industries which have already commenced commercial production with effect from 01.07.2010. Clause 6.4 of Operational Guidelines deals with Reimbursement of Power Consumption Charges. As per Clause 6.4.4, the reimbursement of power cost shall be applicable to all (a) new industrial enterprises and (b) Expansion/Diversification Projects, subject to fulfillment of the conditions stipulated at paraNo.4.4 or 4.5. Clause 6.4.6

manifests that reimbursement of power cost will be allowed in case of Expansion/Diversification Projects over and above base power consumed. For reimbursement, annual power consumption will be considered. The reimbursement will be made every six (6) months, but in case of actual power consumed during the year is less than annual base consumption, reimbursement made during any previous period will be adjusted in future reimbursement. If excess is paid, and cannot be adjusted in future claims, will be recovered under R.R. Act.

12. Clause 6.4.1 manifests that all eligible industrial Enterprises shall submit their claims in the prescribed application form given at Annexure-VII for reimbursement of Power cost within six months after completion of every half year i.e. last date of filing claim application is 31st March for first half year and 30th September for second half year along with the documents mentioned in the application to the General Manager, District Industries Centre concerned.

13. Powers of State Level and District Level Committees are indicated in Clause 22.0. Clause 22.2 manifests that the

decisions of the State Level Committee shall be final in scrutinizing, deciding the eligible investment, sanctioning the incentives. It can also review the decisions wherever is necessary. In case of any doubt/ambiguity on any issue or item covered by these guidelines for implementing the scheme of IIPP, the decision/interpretation of State Level Committee is final and binding on all concerned. Clause 24.0 deals with the Procedure for Disbursement of subsidy. Clauses 24.4 to 24.8 delineate the disbursement.

14. The State Level Committee meeting was held on 23.12.2019. In respect of petitioner-company it was observed as follows:

20	REQUEST OF M/s NSL TEXTILES LIMITED TO RELEASE INCENTIVES ON PRIORITY BASIS *M/s NSL Textiles engaged in Ginning, Spinning, Weaving, Fabric processing to Garmenting with 4 units – Guntur, Krishna, Prakasam and Kadapa district. So far *Company could not meet its payment to Bankers in time due to delay in release of incentives and opted for CDR followed by SAA which compelled the Banks to raise its initial rate of interest of 9% to >17% over the years, making the operations almost untenable. *Latest position e Company has been declared as NPA, no usual facility for working capital and more than 8000 workforce are at stake. *Incentive – Sanctioned and Pending for release – Rs.83.87 Crs; Yet to be sanctioned – Rs.44.45 Crs; amount disallowed under Mega Project to be considered – Rs.15 Crs; FSA – Rs.30.52 Crs. Approved Power Cost– Rs. *Requested to release incentives on priority basis. *Requested to release under prioritization.	The SLC observed that the position of spinning industry has been forcibly thrown into a very bad financial situation and it is in distress position and some corrective measures are to be initiated by the Government. Hence, it is agreed to recommend to the Government for release 50% of the sanctioned amount under priority basis and the remaining

	*GO Ms.No.32, Inds&Com(P&I) Dept, dt:07/02/2019, the SLC is authorized to prioritize the release of incentives – *Units eligible – MSMEs, Sick, Women and Units intend to expand/diversification – 35% of new Investment. *The SLC may take a view.	amount as per the seriatim of all sanctioned cases, in line with other similarly placed units.

15. Thus, the SLC observed that the spinning industry has been forcibly thrown into a very bad financial situation and it is in distress position and some corrective measures are to be initiated by the Government. The SLC, in view of the above situation, recommended the Government for release 50% of the sanctioned amount under priority basis and the remaining amount as per the seriatim of all sanctioned cases. The amount sanctioned and pending for release is Rs.83.87 crores and the amount yet to be sanctioned is Rs.44.45 crores. As per IIPP, the petitioner-company is entitled for reimbursement of the amount. In the light recommendation made by SLC, the respondents ought to have released 50% of the sanctioned amount immediately and the remaining amount as per the seriatim of all cases.

16. It is pertinent to mention here that the recommendation by SLC was made in the year 2019. After four years, without releasing the amount, the Government issued G.O.Rt.No.56

dated 05.04.2023. After four years of SLC, the government cannot contend that the incentives will be adjusted in future electricity bills. In fact, as per the table extracted supra, petitioner-company has been declared as NPA. It is not out of place to mention here that the petitioner-company provided jobs for nearly 8,000. The Government, having promised to extend reimbursement of Rs.1-00 and after recommendations of SLC, cannot turn around and say that the amount will be adjusted in future bills. In the opinion of this Court, the Government is estopped from changing its commitment as per IIPP from reimbursement to future adjustment.

17. In **Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Ors.**[3], the Hon'ble Apex Court dealt with promissory estoppel. The appellant therein was engaged in the business of manufacture and sale of sugar. An assurance was given by the State Government in the said case that new vanaspati units in the State which go into commercial production 30.09.1970 would be given partial concession in sales tax for a period of three years. The appellant set up

[3] (1979) 2 SCC 409

Vanaspati unit, thereafter, went into the production of vanaspati on 02.07.1970 and sought exemption. The Government rescinded its earlier decision of January, 1970 in August, 1970, by which time the factory of appellant had gone into commercial operation. In that connection, the Apex Court held thus:

> "24. … 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. 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

negatived 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 and the constant endeavour of the Courts and the legislature, must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. 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 alter 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. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole Judge of its liability and repudiate it "on an ex parte appraisement of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. <u>Mere claim of change of policy would not be sufficient to exonerate the Government from the liability</u>: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the Rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise

> would become final and irrevocable. Vide **Emmanuel Avodeji Ajaye v. Briscoe** [(1964) 3 All ER 556]"

It was further held that –

> "33. … Of course, it may be pointed out that if the U.P. Sales Tax Act, 1948 did not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute, but since Section 4 of the U.P. Sales Tax Act, 1948 confers power on the Government to grant exemption from sales tax, the Government can legitimately be held bound by its promise to exempt the Appellant from payment of sales tax. It is true that taxation is a sovereign or governmental function, but, for reasons which we have already discussed, no distinction can be made between the exercise of a sovereign or governmental function and a trading or business activity of the Government, so far as the doctrine of promissory estoppel is concerned. Whatever be the nature of the function which the Government is discharging, the Government is subject to the Rule of promissory estoppel and if the essential ingredients of this Rule are satisfied, the Government can be compelled to carry out the promise made by it. We are, therefore, of the view that in the present case the Government was bound to exempt the Appellant from payment of sales tax in respect of sales of vanaspati effected by it in the State of Uttar Pradesh for a period of three years from the date of commencement of the production and was not entitled to recover such sales tax from the Appellant."

18. In **Manuelsons Hotels Private Limited Vs. State of Kerala and Ors.**[4], the Hon'ble Apex Court held thus:

[4] (2016) 6 SCC 766

"19. In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court reported in The Commonwealth of Australia v. Verwayen 170 C.L.R. 394, by Deane, J. in the following words:

> "1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.
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> 2. The central principle of the doctrine is that the law will not permit an unconscionable-or, more accurately, unconscientious-departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.
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> 3. Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.

4. The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party: (a) has induced the assumption by express or implied representation; (b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption; (c) has exercised against the other party rights which would exist only if the assumption were correct; (d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so. Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within category (a), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within category (b), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.

5. The assumption may be of fact or law, present or future. That is to say it may be about the present or future existence of a fact or state of affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct).

> 6. The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, "equitable estoppel" should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).
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> 7. Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. In some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the Defendant in an action for a declaration of trust is estopped from denying the existence of the trust).
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> 8. The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed.”

22. The above statement, based on various earlier English authorities, correctly encapsulates the law of promissory estoppel with one difference-under our law, as has been seen hereinabove, promissory estoppel can be the basis of an independent cause of action in which detriment does not need to be proved. It is enough that a party has acted upon the representation made. The

importance of the Australian case is only to reiterate two fundamental concepts relating to the doctrine of promissory estoppel-one, that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And two, that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party."

19. In **Shree Sidhbali Steels Ltd. and Ors. Vs. State of U.P. and Ors.**[5], the Hon'ble Apex Court held thus:

"32. The doctrine of promissory estoppel is by now well recognized and well defined by catena of decisions of this Court. Where the Government makes a promise knowing or intending that it would be acted on by the promise and, in fact, the promise, 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 promise 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 229 of the Constitution. The rule of promissory estoppel being an equitable doctrine has to be molded to suit the particular situation. It is not a hard and fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. This doctrine is a principle evolved by equity, to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of contract nor in the

[5] (2011) 3 SCC 193

realm of estoppel. For application of doctrine of promissory estoppel the promise must establish that he suffered in detriment or altered his position by reliance on the promise.

33. Normally, the doctrine of promissory estoppel is being applied against the Government and defense based on executive necessity would not be accepted by the Court. However, if it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promise and enforce the promise against the Government. Where public interest warrants, the principles of promissory estoppel cannot be invoked. Government can change the policy in public interest. However, it is well settled that taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law. There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the Government or public authority cannot be compelled to make a provision which is contrary to law. Thus, as held by this Court, when the public interest warrants, the principles of promissory estoppel cannot be invoked."

20. Thus, a conspectus of expressions of the Hon'ble Apex Court, government cannot change the policy except in case of public interest. Case at hand, there is no dispute that petitioner established five units and as per the affidavit, it provides employment for nearly 8000 people. As per IIPP, the petitioner is entitled to reimbursement at Rs.1.00 ps from the electricity tariff, out of the total tariff. It is not the case of the Government that reimbursement is against public policy and

hence it requires to be changed. Thus, the contention of the learned government pleader that amount adjusted in future bills, since is contrary to the promise made cannot be acceptable and hence is negatived.

21. As seen from the material on record, the State Level Committee after noticing the financial constraints of the petitioner recommended to release of 50% of the incentive immediately and other incentive as per seriatim. Though four years have elapsed, even 50% of the recommended amount has not been released so far. In view of the discussion *supra*, respondents shall release Rs.83.87 crores 'sanctioned and pending release', as per the State Level Committee recommendation dated 23.12.2019 within a period of six weeks from the date of receipt of order.

22. The amount yet to be sanctioned as per SLC is Rs.44.45 Crores. Respondents shall consider releasing the amount strictly in accordance with the scheme.

23. Learned senior counsel would contend that petitioner is entitled to interest for the delay in releasing of the amount/incentive. In that connection learned senior counsel

relied upon the **Ghaziabad Development authority Vs Union of India and another**[6] and the Judgment of the Division Bench of the Gauhati High Court in **M/s Iswar Food Products Private Limited Vs. The State of Assam, rep by Principal Secretary and others**[7].

24. Learned Government Pleader, per *contra* would submit that incentives itself is public money and hence petitioner is not entitled to interest. He also would submit that under the industrial incentive policy after the recommendation amount will be released in seriatim. Thus, the petitioner is not entitled to interest and placed reliance upon the order passed by the Division Bench of this Court in **W.A.No.461 of 2022 and batch dated 02.12.2022**.

25. In **Ghaziabad Development Authority's** case, a scheme was announced for allotment of developed plots. The brochure was issued for public information. Some persons who subscribed money, later approached different forums complaining about failure or unreasonable delay in

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[6] **(2000) 6 SCC 113**
[7] **WA No. 243 of 2019 dated 12.06.2020**

accomplishing the schemes. Persons aggrieved approached Allahabad High Court under Article 226 of the Constitution of India and sought refund of amount. The High Court allowed writ petition and also granted interest at 12% per annum from the date of deposit to the date of refund. The matter was carried to the Apex Court. The Hon'ble Apex Court observed that interest on equitable grounds can be awarded in appropriate cases.

26. The facts of the present case at hand are different from the facts of the case referred to *supra*. The other judgment of Gauhati High Court, the Division Bench of the Gauhati High Court granted interest at 8% on subsidy amount paid to the appellant therein from the date of approval of claims till actual date of release. The order of the division bench of Gauhati High Court does not bind this Court, however it got persuasive value.

27. The Division Bench of this Court in W.A.No.461 of 2022 and batch dated 02.12.2022, while allowing writ appeals filed against the order of learned single *qua* grant of interest observed as follows:

> "Award of interest, even where it is made admissible under the contract, depends on host of factors most which are contentious between the parties. Different considerations also apply for awarding interest under the various enactments like Interest Act, 1978, CPC etc., Rates of interest are also subject to fluctuations/market conditions etc and are matters of pleading and proof. It is always advisable to leave such relief to be considered by the appropriate forum when the agreement contains arbitration and or a clause for filing of civil suit."

Eventually, intra-court appeals were allowed and the orders of the learned single judge in respect of award of interest were set aside. The Division Bench order binds this Court.

28. Case at hand, incentive recommended to the petitioner, by SLC is as per IIPP. It is not the case of the petitioner that petitioner is discriminated in releasing the incentive. In fact, along with petitioner other entrepreneurs who are also entitled to the incentive as per IIPP, the State is releasing the amount in seriatim. The delay in releasing the amount depends upon so many factors and it requires evidence. Thus, in the facts and circumstances of this case, the claim of the petitioner *qua* the interest is negatived.

29. Accordingly, the Writ Petition is partly allowed directing the respondents to release the amount of Rs.83.87 crores within a period of six weeks from the date of receipt of the copy of this order. The amount of Rs.44.45 crores, yet to be sanctioned, the respondents shall consider the same and release the same as per the scheme. Insofar as claim of interest is concerned, the same is dismissed. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE SUBBA REDDY SATTI

29th August, 2023

PVD