

Devi Multiplex & Anr vs State Of Gujarat & Ors on 13 May, 2015

Equivalent citations: AIR 2015 SUPREME COURT 2348, 2015 AIR SCW 3251, 2016 (161) AIC (SOC) 7 (SC), AIR 2015 SC (CIVIL) 2034, 2015 (9) SCC 132, (2015) 5 MAD LJ 115, (2015) 6 SCALE 317, (2015) 3 JLJR 243, 2016 (116) ALR SOC 32 (SC)

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Bench: Uday Umesh Lalit, Anil R. Dave

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6478 OF 2009

DEVI MULTIPLEX & ANR.

... Appellants

Versus

STATE OF GUJARAT & ORS

... Respondents

WITH

CIVIL APPEAL NOS.6479/2009, 6480/2009, 6481/2009,
6482/2009, 6483/2009, 6484/2009, 6485/2009, 6487/2009, 6488/2009,
6489/2009, 6490/2009 AND 6491/2009

J U D G M E N T

Uday Umesh Lalit, J.

1. Civil Appeal 6478 of 1979 is directed against the judgment and order dated 26.06.2009 passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No.18692 of 2005 to the extent it dismissed the challenge to the order passed by respondent no. 3 dated 20.07.2005 rejecting the application of the appellants for extension of time under Clause 10 of New Package Scheme of Incentives for Tourism Projects, 1995- 2000. Similar challenge stands raised in other civil appeals against Orders rejecting their applications for extension of time. Since Civil Appeal No.6478 of 2009 was taken as the lead matter, facts relating thereto are dealt with in detail hereafter.

2. On 20.12.1995 Government of Gujarat announced policy named “New Package Scheme of Incentives for Tourism Projects, 1995-2000” (hereafter referred to as the Scheme) with a view to make available all fiscal and non fiscal incentives, reliefs and concessions enjoyed by industries to ‘Tourism’ which was accorded the status of an industry, in order to give a boost to tourism sector by attracting higher investment in the areas with tourism potential and to generate employment opportunities. Under Clause 2, the Scheme came into operation on 1.8.1995 and was to remain in force for a period of five years upto 31.07.2000. Under Clause 3, to be eligible, a new tourism unit ought to be registered after 1.8.1995. Clause 4.7 dealt with effective steps which such unit was expected to undertake. Under Clause 5, after taking initial effective steps a tourism unit could apply to the Director of Tourism for registration. All projects had to conform to the specifications and requirements spelt out in Appendix B which Appendix dealt with various categories of tourism units and Item 22 thereof pertained to Entertainment Complexes including multi cinema theater complexes or multiplexes. Clause 7 categorised tourism units in four categories, namely, Prestigious Tourism Units, Large Scale Tourism Units, Small Scale Tourism Units and Tiny Tourism Units with minimum fixed capital investment of Rs. 10 Crore, 90 lakhs, 10 lakhs and less than 10 lakhs respectively. Clause 8 dealt with incentives and stated that a tax holiday of 5-10 years would be available in respect of exemptions from (i) Sales Tax (ii) Turnover Tax (iii) Electricity Duty (iv) Luxury Tax and (v) Entertainment Tax, upto 100% of capital investment. In clause 8.1 it was stated that the quantum of incentives would not exceed 100% of eligible capital investment and it further stated the period of eligibility in respect of Prestigious Tourism Unites, Large Scale Tourism Units, Small Scale Tourism Units and Tiny Tourism Units to be 10 years, 8 years, 6 years and 5 years respectively. Clause 9 dealt with composition of sanctioning authority whereunder State Level Committee was competent to issue eligibility certificate in respect of Prestigious and Large Units while District Level Committee was to issue eligibility certificate for all Small Scale and Tiny Tourism Units. The procedure for registration tourism units for incentives was detailed in Clause 10.

Clauses 4.7 and 10 of the Scheme are quoted hereunder:-

“4.7 EFFECTIVE STEPS The effective steps shall comprise

(a) initial effective steps which shall include:

i) Effective possession of land by an eligible unit free from all encumbrances.

ii) Registration in respect of company/Cooperative Society/Trust in respect of a partnership firm, evidence of execution of partnership deed and filling of requisite application with payment of necessary registration fees with the Registrar of Firms.

iii) Submission of project report specifically mentioning the category of tourism activity (coverage) and the incentive that are proposed to be availed of by the eligible unit with all relevant details.

iv) Copy of application duly acknowledged by all statutory and executive authorities from which permission is required.

(b) final effective steps shall mean and include:

- i) Clearance, if any, from Central/State Government and other authorities concerned for implementing the project.
- ii) Tying up of the means of finance for the project to the satisfaction of the incentive sanctioning authority.
- iii) Acquisition of fixed assets at site to the extent of 10% of the total fixed assets as envisaged for the project, and
- iv) Evidence regarding expenditure on the project, including advances and pre-operative expenses paid, aggregating to at least 25 percent of the capital cost envisaged for the project.

10. PROCEDURE FOR REGISTRATION OF TOURISM UNITS FOR INCENTIVES:

All tourism units eligible for the Scheme will apply to the Director of Tourism in a prescribed Form. The Directors of Tourism will scrutinize the application and will issue temporary and permanent registration adopting the following procedure:

- a) Director of Tourism shall give provisional registration in the first instance upto 2 years to the eligible unit after scrutinizing the application received by him under the Scheme.
- b) If such a unit is not in a position to start commercial operation during the initial validity period the unit will have to apply with the progress report to the State Level Committee which is authorized to grant extension upto six months at a time or a total period of 2 years after examining the difficulties experienced by the individual unit in implementing the project and also record the reasons thereof in writing.
- c) The units which are unable to go into operation after it has been given extension under para (b) above will have to apply to Government the reasons for the delay. Such application will have to be forwarded by the director of tourism, who will carry out physical inspection of projects and report to government for decision. If the director of tourism is satisfied that the steps to implement the project are adequate he shall inform the Government about the same.
- d) The State Government on examination of details made available by the director of tourism may decide to extend or reject the registration depending upon the merit of each case. The decision of Government in this regard will be final and binding on the party.

e) The unit will become eligible to apply for provisional or temporary registration only after taking initial effective steps as stipulated in para 4(7)(a).

f) The eligible unit will be registered permanently only after the commencement of commercial operation and completion of the project.”

4. The State Government, in exercise of powers conferred upon it under Section 29 of the Gujarat Entertainment Tax Act, 1977 (Act 16 of 1977), issued Notification dated 14.02.1997 which was published in the Government Gazette of even date. The relevant part of the Notification was as under:

“Whereas the Government of Gujarat has introduced a New Package Scheme of incentives for Tourism Projects 1995-2000, under the “New Package Scheme for incentives for Tourism Projects 1995-2000, under the “New Tourism Policy, 1995” vide Government Resolution, Information, Broadcasting and Tourism Department No.NTP-1095-1983-C, dated the 20th December, 1995 (hereinafter referred to as “the aid resolution”):

And whereas the Government of Gujarat considers it necessary so to do in the public interest:

Now, therefore, the exercise of powers conferred by sub-sec. (1) of Section 29 of the Gujarat Entertainment Tax Act, 1977 (Guj. 16 of 1977), (hereinafter referred to as “the said Act”) and in supersession of Government Notification, Information, Broadcasting and Tourism Department No. (GHT.91.45) MNR-1391-285-E, dated the 24th December, 1991 the Government of Gujarat hereby exempt wholly the tax on the entertainment which fulfils the criteria laid down in Appendix-B of the said resolution (hereinafter referred to as the eligible entertainment) during the eligible period or upto the period of expiry of the limits of incentives, whichever is earlier, to the extent referred to in para 8.1 of the said resolution.....

.....”
Paragraph 17 of the Notification stated that the exemption under said Notification would be subject to all terms and conditions referred to in Government Resolution dated 20.12.1995 in the Scheme and further conditions stipulated in the Notification.

5. The appellants being desirous of setting up a multiplex and avail the incentives under the Scheme took effective steps as stated in the Scheme and the Notification dated 14.02.1997 and applied for Temporary Registration Certification (TRC for short). Said application was examined by the concerned authorities and TRC was granted on 17.09.1999 and the same was sent to the appellants under covering letter dated 04.11.1999. In pursuance thereof the appellants started constructing the multiplex in accordance with the Scheme.

6. On 28.06.2000 Government Resolution No.NTP/1098-3219/C was issued by the State Government seeking to clarify incidental/ancillary aspects as regards treatment of certain cases covered under the Scheme. Clause A of the Resolution stated that an application for TRCs under the existing policy would be accepted till 31.07.2000 and TRCs would be issued provided initial effective steps were taken on or before 31.07.2000. Clause B of the said Resolution was as under:

“B. ADHOC/FINAL ELIGIBILITY CERTIFICATE:

All the units to whom TRC has already been issued under the guidelines of Tourism Policy 1995-2000, shall apply for the Eligibility certificate within 180 days from the date of commencement of commercial activities.

All the units to whom TRC has been issued & have not commenced commercial activities on or before 31.07.2000 shall be considered as pipeline case.

The units falling under the pipeline cases shall complete the respective project within the time-limit given below.

- a) Tiny Project 1 year w.e.f. 31/7/2000
- b) Small Project 1 year w.e.f. 31/7/2000
- c) Prestigious Project 2 year w.e.f. 31.7.2000
- d) Large project 2 year w.e.f. 31.7.2000

No further extension or relaxation shall be available to pipeline cases.

The unit falling under the pipeline cases who fails to complete the project as stipulated above shall not be eligible for any incentive Adhoc or Final as per tourism Policy 1995-2000.

No investment made after operative period or Scheme, i.e. 31.7.2000 shall be considered as eligible investment. However, in case of projects not completed and commissioned up to 31.7.2000 the investment made during extended period mentioned above shall be considered while computing eligible investment.

The validity period of the TRC issued under the existing policy 1995-2000 shall be two years from date of issue or expiry of operative period or policy, i.e. 31.7.2000 whichever is earlier.

The pipeline cases, once rejected shall not be eligible to apply again for incentives under the Tourism Policy 1995-2000.” The Scheme was extended upto 30.09.2000 and later upto 30.11.2000 vide Resolutions dated 31.07.2000 and 30.09.2000 respectively issued by the State Government.

7. On 26.01.2001 a massive earthquake took place in the State resulting in collapse of number of buildings and structures. This caused suspension of the process of issuing development permissions, for the purposes of maintaining structural safety standards in Development Control Regulations under the provisions of the Gujarat Town Planning and Urban Development Act, 1976. On 27.03.2001 it was directed by the State Government that all development permissions must adhere to structural safety norms as stated in annexure to said order dated 27.03.2001 and that even with respect to the existing development permissions, necessary certification regarding structural stability and strengthening ought to be issued by Structural Engineers having requisite qualifications. The appellants submitted building plans along with the requisite structural stability certificate.

The approval was accorded by the Municipal Corporation in October 2001 and the appellants resumed construction work. Since more than a year was lost because of subsequent changes in building norms, the appellants applied on 11.12.2001 for grant of extension for completing the project pointing out the aforesaid difficulties. It was stated that as on the date, the appellants had incurred expenditure to the tune of Rs.91.25 lakhs for which a certificate of the Chartered Accountant was enclosed. Photographs of the completed civil works were also enclosed.

8. Around 26.02.2002 large scale communal riots took place in the State and Naroda (where the project of the appellant is located) was one of the worst affected areas. Normal civil life was disrupted for a considerable time, the labour force had left the site and accordingly, as per the appellants, no construction could take place for more than four months. On 04.04.2002 in its 12th meeting, State Level Committee considered the application dated 11.12.2001 preferred by the appellants. It clarified that the date of TRC in case of the appellants shall be 4.11.1999. Keeping in view the delay in continuation of operation due to earthquake and so also the progress made by the appellants, the Committee granted extension in validity period of TRC by six months which decision was communicated on 15.04.2002. The appellant wrote on 24.02.2002 stating that though the extension was granted by the State Level Committee, the appellants could effectively get only 17 days out of the extension of six months. The appellants informed that the civil work was complete and the electrification and air-conditioning work was in progress. It was further stated that as on that date Rs.1.11 crores were spent on various items of capital work, as supported by certificate from the Chartered Accountant and prayed for further extension of four months. By subsequent letter dated 19.08.2002 it was stated that the civil work and the electrification was complete and the ducting and air-conditioning work was on the verge of completion. The status of investment as on that date was said to be more than Rs.3.21 crores, as supported by the certificate from the Chartered Accountant. The appellants then requested for extension of six months instead of four months as was prayed earlier vide request dated 29.04.2002.

9. The State Level Committee in its 13th meeting held on 21.09.2002 discussed the provisions of extension in validity period of TRCs as per the policy. It felt that the implementation of various projects was affected on account of the earthquake and subsequent finalisation of Development Control Rules and Regulations for the earthquake resistant building structures. As regards the application of the appellants, the Committee found that the delay in commencing the operation due

to earthquake and in completing the operation due to riots was justifiable and that the physical progress of the project was satisfactory. However, it took the view that extending the validity period would result in extension beyond 31.07.2002 and as such the matter was required to be deferred till the Government took a decision on modification of GR dated 28.06.2000.

10. The appellants vide letter dated 30.10.2002 reiterated their request for extension which was repeated by letters dated 13.12.2002 and 22.04.2003. On 20.06.2003 the Commissioner of Tourism informed that a proposal for amendment of GR dated 28.06.2000 was sent and the matter was being considered at the governmental level. It was stated that the eligibility as per TRC issued to the appellants was in force and that their project was still eligible. The appellants commenced commercial operations on 11.07.2003 and applied for grant of appropriate eligibility certificate on 04.11.2003.

11. In June 2004 Multiplex Association of Gujarat filed Special Civil Application No.5574 of 2004 on behalf of its members in the High Court seeking appropriate directions for grant of eligibility certificate to its members. The High Court by its order dated 22.06.2004 directed the State Government to decide the applications/representations for extension of time. Thereafter, on 22.07.2004 the Commissioner of Tourism issued a show cause notice calling upon the appellants why their application dated 04.11.2003 for grant of eligibility certificate should not be rejected. Relying on the GR dated 28.06.2000, it was stated that the project was not completed by 31.07.2002 and as such the appellants did not qualify for the benefit of the Scheme dated 20.12.1995. The show cause notice was replied by the appellants. On 20.07.2005 the application for grant of eligibility certificate was rejected stating the following reasons:

“1. Sufficient time extension has already been given for starting commercial activities of the project.

2. Further extension of time limit would lead to undue burden on the State's Exchequer.

Multiplicity of multiplexes beyond the requirement in the State.” The aforesaid order dated 20.07.2005 was challenged by the appellants by filing Special Civil Application No.18692 of 2005 in the High Court seeking declaration that period for starting commercial operation as envisaged in the Scheme stood extended upto 11.07.2003 and that the appellants were entitled to be issued eligibility certificate and to all incentives under the Scheme. The High Court while rejecting the submissions observed that the operative period of the Scheme came to an end on 30.11.2000 by which time the appellants had not commenced commercial operation and that the appellants were not entitled to any benefits or incentives under the Scheme. It found that the time for completing the project and commencing the commercial operation would stand extended as a result of Government Resolution dated 28.06.2000 only upto 31.07.2002 and upto 30.11.2002 in view of Government Resolutions dated 31.07.2000 and 30.09.2000, that there could be no further extension of time limit and that since the commercial operations had not commenced even within such extended time period, the claim of the appellants was rightly rejected. It observed that in the facts and circumstances of the case there could be no application of the principles of Promisory Estoppel. The present appeal by

Special Leave seeks to challenge the view so taken by the High Court. During the pendency of the matter this Court had directed the appellants and similarly situated multiplex theatre owners to keep paying the current taxes and to deposit the outstanding dues as on 31.07.2009 in six equal quarterly installments with interest @ 9 per cent on reducing balance.

Appearing for the appellants, Mr. Rakesh Dwivedi, learned Senior Advocate submitted that the incentives provided in Clauses 8 and 8.1, and the procedure prescribed for registration in Clause 10 formed the core of promise and representation on part of the State Government based on which eligible units including that of the appellants had altered their position and made huge investments in Large Scale Tourism Units. He submitted that such units could not now be told that the non fiscal benefits of extension of validity period would not be granted to them despite they have been fulfilled the conditions of satisfactory progress. It was further submitted that Clause 10(b) and more particularly the expressions “in the first instance” and “initial validity period” in said Clause 10 (b) promised an over all validity period of four years; the initial validity period being two years granted straight away under TRC while the subsequent period of two years could be granted depending upon the progress report and difficulties experienced. He submitted that the notification dated 14.2.1997 was issued under Section 29 of Act 16 of 1977 incorporating the terms and conditions of the Scheme dated 20.12.1995 and as such Clause 10 of the Scheme had acquired a statutory status. In his submission, G.R. dated 28.06.2000 was a mere resolution not being translated into similar notification under Section 29, and therefore said GR dated 28.06.2000 could not detract or derogate from statutory notification dated 14.2.1997. On merits, it was submitted that the reasons in the letter of rejection dated 20.07.2005 were incorrect and irrelevant. He stated that out of 108 TRCs issued under the Scheme, only in 22 or 23 cases the projects were completed and commercial operations had started. Evidently, the State Government must have considered that the burden with respect to 108 TRCs could comfortably be borne, keeping in mind the advantages flowing from establishment of the projects. Further, three projects had shut down after they became operational. In the circumstances, the reasons regarding undue burden on the Exchequer and requirement of Multiplexes in the State as stated, were absurd and baseless.

14. Mr. Pritesh Kapur learned Advocate appearing for the State submitted that the Scheme was to remain in force up to 31.07.2000 which period was further extended up to 30.11.2000 and that the Scheme including Clause 10 in its entirety ceased to be operative thereafter. In the submission of the learned counsel, the right to seek an extension of the validity period beyond the cut off date would survive only if such right was an accrued right, which was not so in the present case. He further submitted that GR dated 28.06.2000, rather than detracting from the Scheme granted further extension to such units and as such cases for extension after the period of operation of the Scheme had come to an end must and ought to be governed by G.R. dated 28.06.2000 alone and that since said G.R. did not contemplate any extension, the State Level Committee was right in not exercising any powers for grant of extension. The Government was also right in his submission, in taking a policy decision in not granting any further extensions.

15. Mr. Rakesh Dwivedi learned Senior Advocate in rejoinder submitted that incentives under Clause 8 which span beyond 5 years and up to 10 years, were designed to survive even after expiry of the Scheme. He further submitted that in a case where TRC was granted towards the end of the

operative period of the Scheme, the final effective steps would necessarily have to be taken after the expiry of the Scheme and thus the Scheme itself contemplated that the actions under various clauses would continue to be undertaken even after the expiry of the Scheme. In his submission the concept of “accrued right” is to be seen in the context of Section 6 of the General Clauses Act which may not strictly apply in the present case. It was submitted that in any case positive acts in the form of huge investments for setting up the projects having been undertaken during the initial validity period of the Scheme, the entitlement to claim benefit of consideration of case for extension under the Scheme was an “accrued right”.

16. Reading of the Scheme shows that to be eligible for the incentives under the Scheme, a new project ought to have obtained registration after 1.8.1995 and taken initial effective steps under Clause 4.7(a) which inter alia included effective possession of land free from all encumbrances and submission of Project Report. It is only thereafter that an intending unit could apply and be given provisional registration under Clause 10(a). Said clause indicates that such provisional registration “in the first instance” would be up to two years. If the unit was not in a position to start commercial operation during this initial validity period of two years, it would be entitled to apply with progress report to the State Level Committee for extension, which could be granted up to six months at a time or a total period of two years after examining the difficulties experienced in implementing the project. This first level of extensions for a total period of two years could be granted by the State Level Committee and even if a unit was unable to go into operation after availing such extensions, it could still apply to the Government for further extension. Clauses 8 and 8.1 dealt with incentives and period of eligibility which would go up to ten years after a unit was found to be fully eligible. These clauses clearly show that such stages or eventualities would survive even after the expiry of period of the operation of the Scheme. The reading of the Scheme further shows that no fresh application and TRCs could be granted after the period of operation but those who had crossed the threshold and were given TRC, could have the full benefit of the stages contemplated in Section 10. In our considered view, it would be incorrect to say that all the clauses including Clause 10 would cease to operate after the period of operation had come to an end. It being the clear intent that such stages and eventualities ought to survive even after the expiry of the Scheme, we reject the submission advanced on behalf of the State.

17. Clause 7 of the Scheme classifies projects in different categories and for a Large Scale Tourism Unit, with which we are presently concerned, fixed capital investment was required to be more than Rs.90 lakhs. The Scheme definitely promised an initial period for completion of the project under Clause 10 (a) as two years after the initial effective steps were under taken by the concerned unit. Clause 10 (b) further promised an extension for two years subject to State Level Committee being satisfied that an individual unit had experienced difficulties in implementing the project. A unit was therefore promised the availability of an opportunity, depending upon the individual fact situation, to pray for extension up to two years. Clause 10(C) further entitled such unit to approach the State Govt. even after the aforesaid aggregate period of four years for further extension. In our view, Clause 10 was one of the core features of the Scheme based on which eligible units were invited to make capital investment of more than Rs. 90 Lakhs with a promise of incentives under Clause 8. Having given such promise, based on which the appellants incurred capital expenditure, the question now arises as regards applicability of doctrine of Promissory Estoppel.

18. The law on the subject of Promissory Estoppel was recapitulated and succinctly dealt with by this Court in State of Punjab Vs. Nestle India Ltd.[1] It found the foundation of the doctrine laid in the decision in Collector of Bombay Vs. Municipal Corporation of the City of Bombay[2], the principle built upon in Union of India Vs. Anglo Afghan Agencies[3] and the superstructure of the doctrine, with its pre-conditions, strengths and limitations outlined in the decision in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of UP[4]. This Court then dealt with the discordant note in Jit Ram Vs. State of Haryana[5] and how that was firmly disapproved in Union of India Vs. Godfrey Philips India Ltd.[6] by a bench of three judges. We deem it appropriate to quote paras 27, 28, 29, 34, 35 and 36 from the decision in State of Punjab Vs. Nestle India Ltd. (Supra):-

“27. However, the superstructure of the doctrine with its preconditions, strengths and limitations has been outlined in the decision of Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.3 Briefly stated: the case related to a representation made by the State Government that the petitioners’ [pic]factory would be exempted from payment of sales tax for a period of three years from the date of commencement of production. It was proved that the petitioners had, as a consequence of the representation, set up the factory in the State. But the State Government refused to honour its representation. It claimed sales tax for the period it had said that it would not. When the petitioners went to court, the State Government took the pleas:

(1) in the absence of notification under Section 4-A, the State Government could not be prevented from enforcing the liability to sales tax imposed on the petitioners under the provisions of the Sales Tax Act;

(2) that the petitioners had waived their right to claim exemption; and (3) that there could be no promissory estoppel against the State Government so as to inhibit it from formulating and implementing its policies in public interest.

28. This Court rejected all the three pleas of the Government. It reiterated the well-known preconditions for the operation of the doctrine:

(1) a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee;

(2) such acting upon the promise by the promisee so that it would be inequitable to allow the promisor to go back on the promise.

29. As for its strengths it was said: that the doctrine was not limited only to cases where there was some contractual relationship or other pre- existing legal relationship between the parties. The principle would be applied even when the promise is intended to create legal relations or affect a legal relationship which would arise in future. The Government was held to be equally susceptible to the operation of the doctrine in whatever area or field the promise is made — contractual, administrative or statutory. To put it in the words of the Court:

“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.

(SCC p. 442, para 24)

* * *

[E]quity will, in a given case where justice and fairness demand, prevent a person from insisting on strict legal rights, even where they arise, not under any contract, but on his own title deeds or under statute. (SCC p.

425, para 8)

* * *

Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel [pic]and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it.” (SCC p. 453, para 33)

34. The discordant note struck by Jit Ram case⁵ was firmly disapproved by a Bench of three Judges in Union of India v. Godfrey Philips India Ltd.⁶ It was affirmed that: (SCC p. 387, para 12) “12. There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel.”

35. It was held that irrespective of the nature of power wielded the Government is bound to wield that power provided it possessed such power and has promised to do so knowing and intending that the promisee would act on such promise and the promisee has done so: (SCC p. 389, para 14) “We think that the Central Government had power under Rule 8 sub-rule (1) of the Rules to issue a notification excluding the cost of corrugated fibreboard containers from the value of the cigarettes and thereby exempting the cigarettes from that part of the excise duty which would be attributable to the cost of corrugated fibreboard containers. So also the Central Board of Excise and Customs had power under Rule 8 sub-rule (2) to make a special order in the case of each of the respondents granting the same exemption, because it could legitimately be said that, having regard to the representation made by the Cigarette Manufacturers’ Association, there were circumstances of an exceptional nature which required the exercise of the power under sub-rule (2) of Rule 8. The Central

Government and the Central Board of Excise and Customs were therefore clearly bound by promissory estoppel to exclude the cost of corrugated fibreboard containers from the value of the goods for the purpose of assessment of excise duty for the period 24-5-1976 to 2-11-1982.”

36. The limitations to the doctrine delineated in *Motilal Padampat Sugar Mills*³ however, were also reaffirmed when it was said: (SCC pp. 387-88, para 13) “[T]hat there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make.

We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires; if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour [pic]of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority.” Coming to the facts of the present case, we find that the Scheme definitely promised incentives in the form of Tax holiday of 5-10 years in respect of exemptions from Sales Tax, Turnover Tax, Electricity Duty, Luxury Tax and Entertainment Tax upto 100 per cent of capital investment if a new unit was registered after 1.8.1995 and appropriate investment in fixed capital assets was made. It also promised an initial period of two years for going operational in the first instance, extendable by further period of two years subject to satisfactory progress to be found by the State Level Committee. Even thereafter, the Unit could still approach the State Government for further extension. This was part of the core of the Scheme, which invited investment in tourism units promising tax holiday as stated above. Based on such representation, various units including that of the appellants having come forward and altered their position, the State Government would certainly be bound by the principles of Promissory Estoppel. The State Government was thus estopped from going back on the promise so made in the Scheme and could not have curtailed the period and the opportunity specifically made available within which the project could be completed so as to avail the benefits under the Scheme.

We find nothing in the present case on the basis of which there could possibly be room to say that it would be inequitable to hold the State Government to its promise. Out of 108 TRCs issued under the Scheme, the burden that the Government was well aware and thought that it could comfortably bear, only 19 or 20 units have been established and are functional. In any case, the impact of incentives so offered under the Scheme and the consequential burden must have been weighed carefully when such promise was made and the Scheme was formed. We may respectfully refer to the following observations of this Court in *S.V.A. Steel Re- Rolling Mills Ltd. and others v. State of Kerala and others*^[7] to which one of us (Anil R. Dave, J.) was a party:

“30. Before laying down any policy which would give benefits to its subjects, the State must think about pros and cons of the policy and its capacity to give the benefits. Without proper appreciation of all the relevant factors, the State should not give any assurance, not only because that would be in violation of the principles of promissory estoppel but it would be unfair and immoral on the part of the State not to act as per its promise.” Furthermore, the Scheme as framed on 20.12.1995 formed the basis of a statutory notification under Section 29 of Act 16 of 1977 and as such the core components of the Scheme had acquired a statutory status. By virtue of said Section 29, the notification dated 14.2.1997 was required to be laid for not less than 30 days before the State Legislature. If the State Government was desirous of amending, varying or rescinding said notification dated 14.2.1997, the subsequent G.R. dated 28.06.2000 ought to have been translated in a statutory notification under Section 29 of the Act 16 of 1977. In the absence of such steps having been undertaken, G.R. dated 28.06.2000 could not in any way detract from or dilute the effect of the Scheme which had acquired statutory status.

21. We therefore hold that the appellants were entitled to have full benefit and advantage of Clause 10 of the Scheme and the curtailment of the period and opportunity available under said Clause 10 of the Scheme by subsequent G.R. dated 28.06.2000 was bad and ineffective.

The record indicates that the progress of the project of the appellants was greatly hampered as a result of major earth quake in the State on 26.01.2001 and large scale communal riots in the State in February 2002. The State Level Committee was satisfied that the commencement and continuation of the project was so affected as a result of these major difficulties and had granted initial extension of six months but the appellants had benefit of only few days out of such extension. The subsequent request for further extension which was backed with relevant certificate from the Chartered Accountant certainly persuaded the State Level Committee to find that the facts justified grant of further extension but it felt it had lost the power to grant such extension because of G. R. dated 28.06.2000. In the light of the view that we have taken, the State Level Committee was still competent to consider the request for grant of extension.

23. In the circumstances, we allow the appeal and set aside the decision of the High Court in so far as it held that the operative period of the Scheme came to an end on 30.11.2000 and that there could be no further extension of time limit. Since the appellants have already commenced commercial operations, it now needs to be assessed by the State Level Committee whether in the facts of the case the appellants could justifiably have claimed extension under Clause 10 of the Scheme. We direct the State Level Committee to make such assessment in accordance with Clause 10, in three months of the receipt of this decision. Needless to say, if such assessment is found in favour of the appellants, they shall be entitled to the incentives and benefits under the Scheme.

24. All the connected matters raise identical issues and challenge rejection of their applications for extension of time. In each case the Order passed by the concerned authority is similarly worded and passed on 20.07.2005, i.e. the same date. These connected appeals are also allowed with similar

direction.

25. The appeals stand allowed in terms as stated above. No order as to costs.

.....J. (Anil R. Dave)J. (Uday Umesh Lalit) New Delhi, May 13, 2015

- [1] 2004(6) SCC 465
- [2] 1952 SCR 43
- [3] 1968(2) SCR 366
- [4] 1979(2) SCC 409
- [5] 1981(1) SCC 11
- [6] 1985(4) SCC 369
- [7] (2014) 4 SCC 186
