

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 4030 of 2004****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE RAJESH H.SHUKLA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
- =====

NARODA ENVIRO PROJECTS LTD.....Petitioner(s)

Versus

UNION OF INDIA & 1....Respondent(s)

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Appearance:

MR SN THAKKAR, ADVOCATE for the Petitioner(s) No. 1

SHRI BIPIN BHATT, AGP for the Respondent(s) No. 2

MR MRUGEN K PUROHIT, ADVOCATE for the Respondent(s) No. 1

MS AMEE YAJNIK, ADVOCATE for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE RAJESH H.SHUKLA

Date : 30/09/2013

ORAL JUDGMENT

1. The present petition has been filed by the petitioner under Articles 14 and 226 of the Constitution of India and also in the matter of Financial Assistance under Industrial Pollution Control Project of Ministry of Environment and Forests, Government of India for the prayers:

“(A) Your Lordships be pleased to hold and declare that the action of the respondents of withholding the grant / financial assistance due and payable to the petitioner under the Industrial Pollution Control Project of the Ministry of Environment and Forests, Government of India or any other subsequent scheme as framed by the respondent no.1, for and in respect of the Common Effluent Treatment Plant set up by the petitioner, is invalid, illegal and unconstitutional.

(B) Your Lordships be pleased to issue a writ of or in the nature of mandamus directing the respondents to release the whole / balance of the grant / financial assistance due and payable to the petitioner under the Industrial Pollution Control Project of the Ministry of Environment and Forests, Government of India or any other subsequent scheme as framed by the respondent no.1, for and in respect of the Common Effluent Treatment Plant set up by the petitioner along with interest at the rate of 18% per annum from 1.10.1997 till the date of payment of such amount.

(C) Pending admission, hearing and final disposal of this petition your Lordships be pleased to direct the respondents to release the whole / balance of the grant / financial assistance due and payable to the petitioner under the Industrial Pollution Control Project of the Ministry of Environment and Forests, Government of India or any other subsequent scheme as framed by the respondent no.1, for and in respect of the

Common Effluent Treatment Plant set up by the petitioner, on such terms and conditions as deemed just and proper.

(D) Ex-parte ad interim relief in terms of prayer C above be granted.

(E)

2. The facts of the case briefly summarised are that the petitioner is a Limited Company registered and incorporated in 1995 under the Companies Act, 1956 and promoted by 229 member units having their industries of chemicals, dyes and dye intermediates, food, beverages, textiles, rolling mills etc. located at Naroda Industrial Estate, GIDC, Ahmedabad. It is stated that the principal objective of the Petitioner Company is to reduce the intensity of pollution caused by member units by commissioning and running a Common Effluent Treatment Plant ("CEPT") for the effluent treatment. Therefore, the petitioner is said to have established a Cleaner Production Center at Naroda. It is stated that the Industrial Pollution Control Project was mooted by Respondent No.1 – Union of India with the support of World Bank to prevent fundamental degradation caused by the industrial development in the country. The project comprised of investment component to support setting up of CETP facilities, which provide that the Central Government will contribute up to 25% of the project cost and 25% grant by the State Government. Therefore, such set up of the CETP by internal finance as well as by contribution / loan from the member units as well as aid of the government, the

purpose was sought to be achieved regarding the environmental degradation. However, it is the case of the petitioner that Respondent No.1 has failed to contribute though it had promised under the project and the member units of the petitioner as well as the State Government have made the investment, which the Respondent No.1 – UoI has failed to make towards the project, which has lead to filing of the present petition.

3. Heard learned Counsel Shri S.N.Thakkar for the petitioner. He pointedly referred to the background and the history of the case and also tried to submit with regard to the profile of the Company, the purpose for which it has been set up and also the objective and the project, which is produced at Annexure-B. Learned Counsel Shri Thakkar pointedly referred to the aspect and the objective of the project and the investment component to support his submission. He emphasized that the setting up of CETP facility was provided, and based on this, the project was initiated. He emphasized that a notifications dated 20.3.1990, 25.7.1991 and 28.2.1993 have been issued. Learned Counsel Shri Thakkar referred to the communication at Annexure-O dated 26.3.1990 from the Government of India, Ministry of Environment and Forest to the Pay and Accounts Officer and submitted that there were similar such projects with the same objects, which was sought to be achieved, including the establishment of Odhav Environment

Project, for which the payment has been made. However, in case of the petitioner, the stand is totally different. He submitted that, initially it was contended that the files have been misplaced, and subsequently, vide communication dated 1.3.1999 from Ministry of Environment and Forest addressed to the Industries Commissioner, Government of Gujarat, it was communicated that necessary details may be furnished and also the pay order issued by the State Government releasing the said share of the subsidy, so as to take necessary action to release the appropriate fund with the approval of the Ministry of Finance. Learned Counsel Shri Thakkar pointedly referred to this letter and submitted that, on the one hand there is an acceptance and promise held out for release of such a share of the subsidy by Respondent No.1 – UoI, and when the details were furnished, it was conveyed that the files are missing, and thereafter again, a different stand is taken that the Central Government has made the disbursement, which was available, for which he referred to the affidavit in reply. Therefore, learned Counsel Shri S.N.Thakkar submitted that it clearly makes out the case that the Respondent No.1 – UoI has backed out from the promise which was held out. He emphasized that on the basis of the initiative of the Respondent No.1, such a project was undertaken for the environmental issues to prevent the degradation of environment, and the authority, including the petitioner herein has made a huge investment and altered

the position. He submitted that therefore the Respondent No.1 is stopped from baking out and cannot deny to release the share of grant, which was promised. Learned Counsel Shri Thakkar has referred to and relied upon the judgment reported in **1991 (2) GLR 852 – Sabarkantha Jilla RU Utpadakoni Co-op Spinning Mills Ltd. v. The General Manager, District Industrial Centre & Ors.** and emphasized the observations made in paragraphs 9, 13 and 14:

“9.It is stated that the unit of the petitioner, though eligible for subsidy was subject to viability of the project and in view of the fact that it was not economically viable project, it was not entitled to cash subsidy. On that basis, and on that basis alone, it was repeatedly mentioned in the reply that the action of non-disbursement of the amount of cash subsidy was taken by the respondent – Authorities and the said decision was legal, valid and in accordance with law.

13. Therefore, taking into account all the clauses of the agreement, there is no doubt in my mind that when the agreement was entered between the parties, there was no question of any economic viability of the unit. Thus, looking to both these documents, namely, the scheme as well as the agreement, apart from the fact that there is no specific condition regarding economic viability of the unit, such an inference cannot be drawn from the facts and circumstances.

14.It is also not disputed that the petitioner had made an application pursuant to the said resolution and the scheme. It is an admitted fact that application submitted by the petitioner was processed. A detailed report was submitted.

The report was considered by the appropriate authority and the cash subsidy was sanctioned. It is also an admitted fact that the decision was acted upon and amount of more than Rs.10 lacs had already been paid.”

Similarly, he referred to and relied upon the judgment of the Bombay High Court reported in **AIR 1984 Bombay 161-Tapi Oil Industries and another etc. v. State of Maharashtra and others.**

4. Per contra, learned Counsel Shri Mrugen Purohit appearing for Respondent No.1 referred to the affidavit in reply filed by Union of India in detail and submitted that there is no dispute that such a project was mooted and it was suggested to take steps to prevent degradation of the environment. He referred to the letter dated 1.3.1999 produced on record and submitted that the present petition suffers from gross delay and laches. He submitted that in case of so called promise for release of part of the grant promised by the Union of India in 1997 to 1999, the petition is filed in 2004. He emphasized that such a project was pursuant to the World Bank Aid Programme to prevent the degradation of the environment, and it would be subject to the availability of the funds. Learned Counsel Shri Mrugen Purohit submitted that though the scheme was mooted in 1993, it was required to be implemented and in fact the other similar project, including Odhav Environment Project has also been granted the benefit. Therefore, the petitioner cannot make any

claim at such a belated stage on the ground of estoppel. He emphasized and submitted that this project, which is subject to finance by the World Bank Aid, has been granted financial assistance like Odhav Environment Project and other projects, and after the funds have been spent, it is too late now at this stage to make a claim based on any such ground of subsidy. He again emphasized that it was subject to availability of funds as well as fulfillment of the criteria. He referred to the correspondence and submitted that the Union of India, Ministry of Environment and Forest has pointedly stressed for need for sludge management in each case and it was also provided that the World Bank insist about such a project that the amount may not be released until there is proper sludge management in each of the CETP. Therefore the project details were required to be given, which could be processed and scrutinized before the release of the amount of subsidy. He submitted that admittedly, the Odhav Environment Project and other projects have been granted. He further submitted that in the name of grant of subsidy, which is subject to fulfillment of some of the corresponding obligation and also subject to availability of the funds, cannot be questioned in such a petition. He therefore submitted that since the scheme is over around 1999, the petition, which is filed in 2004, is too late and should not be entertained only on the ground of delay and laches. Learned Counsel Shri Mrugen Purohit also submitted that before any

such judgments, which have been relied upon by learned Counsel Shri Thakkar could be attracted, there has to be a promise held out and breach of firm commitment or promise. He submitted at the cost of repetition that it was only a broad guidelines for the implementation of some projects for preventing degradation in the environment, and therefore, the subsidy cannot be claimed as a matter of right.

5. In rejoinder, learned Counsel Shri S.N.Thakkar has referred to various judgments including the judgment of the Hon'ble Apex Court reported in **AIR 1968 SC 718 – The Union of India and others v. M/s Anglo Afghan Agencies etc.** Similarly, a judgment reported in **(1979) 2 SCC 409 – M/s Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh and others** to emphasize about the aspect of promissory estoppel or the equitable estoppel and how the doctrine would have been its application in the facts of the case. He has also referred to and relied upon the judgment reported in **JT 1997 (7) SC 224 – M/s. Pawan Alloys & Casting Pvt. Ltd., Meerut etc. v. U.P. State Electricity Board and ors.** and also the judgment reported in **AIR 2004 SC 4559 (1) – State of Punjab v. M/s Nestle India Ltd. and another** to emphasize that the government is stopped from withdrawing the benefit. Learned Counsel Shri Thakkar has also referred to and relied upon the judgment reported in **1991 (2) GLH 339 – Sabarkantha Jilla Ru Utpadakoni vo-op. Spg. Mills Ltd. v.**

General Manager and others, District Industrial Centre, Sabarkantha to emphasize the doctrine of promissory estoppel and Article 14. Learned Counsel Shri Thakkar submitted that in this case also the issue with regard to sanction of subsidy of Rs.25 lacs was claimed by the Petitioner Society. He submitted that it was held that the doctrine of promissory estoppel would come into play and the government is bound to pay rest of the subsidy. He therefore submitted that the present petition may be allowed.

6. In view of the rival submissions, it is required to be considered whether the present petition can be entertained or not.
7. From the bare perusal of the record as well as the totality of the issue involved in the present petition, it emerges that a project was undertaken by the petitioner for CETP in respect of the units situated in the industrial estate Naroda. The Petitioner Company has been formed by such industrial units and the CETP was sought to be established to prevent degradation of the environment. However, as it involved the investment and the cost part, a modality was worked out, that the Company like the petitioner, may, with the help of the member units, set up such unit, and subsidy could be given by both Central Government and State Government. The State Government has also released 25% of subsidy whereas it is claimed that the Respondent has not released its share of subsidy, which has lead to the present petition.

8. The correspondence reveal that it was a initiative by the Government of India, Department of Environment and Forest to prevent the degradation of environment. For that purpose, the World Bank aid was claimed, which was to be utilized for financing by way of subsidy and to achieve the ultimate goal of preventing the degradation of environment. The other similarly situated units of the projects have been financed by the Government and the State Government. However, the present petition is said to have missed the bus. There may be a relevant issues, which may have to be addressed when learned Counsel Shri Mrugen Purohit has raised the contention about the delay and laches. This kind of projects were initiated by the Government of India in 1993. It was during the period 1993-1999 whereas the present petition is filed in the year 2004. As could be seen from the correspondence, the Petitioner Company also prepared itself for setting up of such units later on around 1999 and the letters from the Ministry of Environment and Forest at Annexure-J and Annexure-O clearly suggest that they had stressed on the need for sludge management and it was made clear that the World Bank insists that no funds would be released until there is proper sludge management in each of the CETP. The petitioner seems to have clarified by a correspondence to impress that they have been taking necessary steps or rather they have set up the unit, but the fact remains that it is either in 1991 or thereafter.

In fact, the letter from Government of India, Ministry of Environment and Forest dated 23.12.1999 at Annexure-P addressed to the Chairman, State Pollution Control Board, clearly refers to this aspect that the World Bank aided Industrial Pollution Control Project is required to be undertaken and the fund has come to an end in March 1999. Many CETPs have been financed and commissioned successfully. It was also made clear that it would be financed within the available resources of Ministry of Environment and Forest and it was clearly stated that the projects may be undertaken. The affidavit in reply as well as the additional affidavit in reply filed on behalf of the Ministry of Environment and Forest has clearly focused on this aspect that the scheme was completed in March 1999 and the scheme is operated out of the domestic budget from the year 2000-2001. It has been clearly stated that it is not mandatory to consider all the proposals for financial support. The relevant paragraphs 3 and 4 would make it clear that it has been reiterated that there was no commitment or promise held out that it has been specifically claimed:

“As a matter of fact the Govt. of India has not given any commitment for release of funds towards repayment of loan to the petitioner.”

Further it is stated;

“In reply to the averment contained in para-6, I say and submit that while giving sanction of subsidy for CETP, the industry

deptt. Of the Govt. of Gujarat had categorically made it clear that the petitioner company shall have to obtain approval from the Ministry of Environment and Forests, Govt. of India.There is no provision for retrospective funding under the CETP scheme. Besides the financial assistance also cannot be given for re-payment of loan to other financial institutions. It is wrong to suggest that the petitioner was ever assured whether orally or in writing that the financial assistance would be released for refund of loan."

9. Again as back as in 1999, by a communication dated 1.3.1999, it was made clear to the Industries Department, Government of Gujarat, Gandhinagar that it does not have any funds earmarked for release of any subsidy towards CETP. However, it was requested to send the details so that necessary action if re-appropriation of funds for this purpose is released by Ministry of Finance. This itself will suggest that there was never such promise held out. Therefore, the submissions made by learned Counsel Shri Thakkar at length, based on doctrine of promissory estoppel supported by various authorities and judgments, would not have any application to the facts of the case. The reliance on the judgment of the High Court of Gujarat reported in case of **Sabarkantha Jilla RU Utpadakoni Co-op Spinning Mills Ltd. v. The General Manager, District Industrial Centre & Ors.** (supra) also stands on a different footing inasmuch as it was a totally different set of facts, where the party concerned had set up the unit and made investment as required under the scheme, which was mooted by the

Government. In the facts of the case there is no such firm commitment or the scheme or a promise held out or any assurance given by Government of India to the petitioner. Further, the so called broad modalities about the costing of project that the subsidy of the Central Government and the State Government was again subject to fulfillment of various conditions as well as availability of the funds. The scheme or such projects were for a period from 1993 to 1999. It has been categorically stated that it has been over since 1999 and the petition has been filed in 2004. There have been correspondence by the petitioner, and as stated above, even in 1999 or 2000, Respondent No.1-UoI, Ministry of Environment and Forest has also suggested that it will be subject to availability of funds, which have been now over and similar such units have been financed.

10. A useful reference can be made to the judgment of the Hon'ble Apex Court reported in **(2004)6 SCC 465 – State of Punjab v. Nestle India Ltd.**, wherein it has been observed that what are the conditions before the doctrine could be attracted. It has been observed and stated:

*“(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.”*

Therefore, the limitations as to the doctrine of promissory

estoppel has been discussed. Therefore, in background of the facts, when the necessary foundation has not been laid, on the basis of which such doctrine invoked, the present petition cannot be entertained.

11. Therefore, once it is subject to such limitations, no claim can be made by the petitioner for repayment of the borrowed finance or the subsidy, and the present petition cannot be entertained and deserves to be dismissed and accordingly stands dismissed. Rule is discharged. No order as to costs.

(RAJESH H.SHUKLA, J.)

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