

NON REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4986-4987 OF 2010

(Arising out of Special Leave Petition (Civil) Nos. 17068-17069 of 2005)

Ras Resorts & Apart Hotels Limited & Anr.

....Appellants

Versus

Union of India and Ors.

....Respondents

JUDGMENT

AFTAB ALAM, J

1. Leave granted.
2. Heard learned counsel for the parties.
3. Appellant no.1 is a public limited company incorporated and registered under the Companies Act and appellant no.2 is one of its share holders and Managing Director. The appellants went to the Bombay High Court seeking a direction to the respondents to grant the company interest subsidy and to pay to the financial institutions/banks 5% of the amount of

interest charged by them on the loans taken by the appellants for construction of their hotel at Silvassa. In support of the claim, the appellants tried to invoke the plea of promissory estoppel relying upon the **Draft** Seventh Five Year Plan 1985-90 and certain communications received by the company from the officers in the Department of Tourism, Dadra and Nagar Haveli, UT. The Bombay High Court rejected the appellants' claim and dismissed the writ petition (No.2705 of 1990) by judgment and order dated November 4, 2004. The appellants then filed a review petition (bearing No.19 of 2005). This too was dismissed summarily by the High Court by judgment and order dated March 17, 2005. This appeal is brought to this court against these two orders.

4. The brief facts relevant for the purpose of these appeals may be stated thus. Another public limited company, (described as a sister concern of appellant no.1) made an application before the respondents on May 28, 1984 for grant of lease of a piece of land. It was given 1.35 hectares of land in Silvassa, Dadra and Nagar Haveli on lease on June 12, 1984. The lease was for construction of a three-star hotel over the leased out land. Appellant no.1 took another piece of land measuring 1.39 hectares, adjoining the piece of land earlier allotted to its sister concern, on lease on February 6, 1985 but it was not for any specific purpose. Since no construction was made on the

leased out land within the stipulated period of one year, the appellant no.1 was given a show cause notice dated May 9, 1985 why the allotted plot should not be forfeited to the government without any notice? The company gave its reply on May 11, 1985 explaining the circumstances leading to the delay in the construction of the hotel. On October 14, 1985, appellant no.1 got the piece of land given on lease to its sister concern conveyed in its favour. And finally on September 2, 1986 the appellants began the construction of the hotel building after performing *Bhoomi Puja*.

5. It is stated by the appellants that the Union Territory of Dadra and Nagar Haveli being a backward area failed to draw any significant tourist inflow. Hence, with a view to attract investments in the area, which in turn would help in the promotion of tourism industry the government of the Union Territory offered a number of incentives to the hoteliers. One such offer, according to the appellants, was to subsidise interest on loan by 5%. One of the materials on which the appellants strongly rely in support of their case is the **draft** seventh five year plan 1985-90 and Annual plan 1985-86.

In the plan document it was provided as follows:

“...It is **proposed** to subsidise interest on loan by 5%. Besides, Administration offers 25% subsidy on fixed assets as the territory has been declared as "No Industry District by Government of India"..."

6. There is no dispute that the appellants have received 25% subsidy on fixed assets and the present proceeding relates to their claim for 5% interest subsidy.

7. We completely fail to see how the draft seventh five year plan or the annual plan for the year 1985-86 can support the appellants' claim based on the plea of promissory estoppel. The annual plan for the year 1985-86, as part of the seventh five year plan was prepared by the Administration of Dadra and Nagar Haveli in or about January 1985. The first piece of land was given on lease to the sister concern of appellant no.1 on June 12, 1984, on the basis of an application made on May 28, 1984. The lease was for the express purpose of constructing a three-star hotel over the leased out land. It is, thus, evident that the land was taken at a point of time when there was not even a scent of any interest subsidy. Though, the land was formally conveyed in favour of appellant no.1 by its 'sister concern' on October 14, 1985, it appears that the allotment in favour of the so called sister concern was benami in nature, for the show cause notice for not completing the construction in terms of the lease was given (before the formal conveyance of the land in its favour) to appellant no.1 and it was appellant no.1 that had given reply to the show cause notice. Appellant no.1 was, thus, fully aware that the only purpose for which the land could be used was construction of a

hotel and further that the condition to construct a hotel over it was attached to the lease from before the proposal for interest subsidy was mooted. After formally acquiring it, they amalgamated with it the other piece of land taken on lease by them, thus bringing for all intent and purpose the second piece of land too under the same condition that was attached to the first one. In the aforesaid facts and circumstances, we fail to see, how it can be contended by the appellants that they made huge investments and altered their position on the basis of any representation made by the respondents.

8. More importantly, there was no firm offer or representation. The seventh five year plan was in the draft form and the subsidy on interest was merely a proposal. According to the respondents, the proposal for interest subsidy was only mooted in the seventh five year plan pertaining to the period 1985-90 and the proposal for grant of 5% interest subsidy was included for consideration as part of overall comprehensive plan for development of tourism in the Union Territory. This plan was to be included in the annual plans for subsequent years subject to the approval and sanction by the Planning Commission and the Government of India. But the Planning Commission declined sanction to the proposal. Hence, no specific scheme was formulated to grant interest subsidy and the terms and conditions subject to which payment of 5% interest subsidy would be made was also

not spelled out. The necessary details in this regard are furnished by the respondents in their counter affidavits filed before the High Court and this Court. In paragraphs 5 and 6 of their counter affidavit filed in this Court the respondents have even reproduced the relevant extracts from the minutes of the meetings held at the Planning Commission on February 28, 1985 and March 6, 1986 from which it is clear that the proposal mooted out in the draft five year plan 1985-90 failed to get the Planning Commission's approval. For want of the sanction from the Planning Commission the proposal did not get finalised and the scheme of interest subsidy never came into being for enforcement. It is contended by the respondents, and in our view rightly, that a mere proposal in the plan that was yet to be finalised cannot be taken as an offer or a representation to the appellants.

9. The next material on which the appellants rely heavily is an exchange of correspondence with respondent no.4, the Deputy Conservator Forests & Tourism In-charge. On August 6, 1985 the appellants wrote a letter to him seeking confirmation that 5% interest subsidy was available. Respondent no.4 gave his reply by letter dated August 29, 1985 stating:

“....I am to inform that we have **proposed** to provide for adequate incentive to hotel industry....It is **proposed** to subsidise interest on loan by 5% besides 25% subsidy on fixed asset under the VIIIth Five Year Plan”

10. The appellants once again wrote to respondent no.4 on March 24, 1986 asking him to confirm about the interest subsidy. This time the appellants got the desired reply. Respondent no.4 without the loss of a single day wrote back on March 25, 1986 stating:

“....I am to inform that Hotel is entitled for 5% interest subsidy besides 25% subsidy on fixed asset...”

11. There is nothing in the government records to sanction or justify the assurance given by respondent and the alacrity with which the appellants were able to get the desired assurance does not leave the communication with much credibility. As a matter of fact the respondents maintain that respondent no.4 was not competent or authorised to give any such assurance to the appellants. In regard to the letter dated March 25, 1986 given by respondent no.4 to the appellants it is stated by the respondents in paragraph 16 of their counter affidavit as follows:

“16. With reference to paragraph 10 of the petition, it is submitted that on 25.3.1986, when Ext. E was written there was no sanctioned proposal or scheme pertaining to any assistance muchless the alleged 5% interest subsidy in favour of the petitioners or other hoteliers. The letter, Ext. E. was, therefore, patently irrelevant and is without any basis. Significantly, the letter dated 25.3.1986 is in reply to the petitioner's letter dated 24.3.1986. The very fast action of the employees concerned shows that it was issued without application of

mind even to the facts from record. The writer of the letter did not obviously bother to find out whether the Planning Commission or the Govt. of India or even the administration under whom he worked had in fact introduced or brought into existence a scheme of giving 5% interest subsidy to the petitioners. No alleged assurance or promise or representation could have been made firstly, because there was no such sanctioned plan proposal or sanctioned scheme, and secondly, the officer had no authority to make any assurance or promise or representation so as to bind the respondents.”

12. From the other materials on record it becomes clear that the appellants were having serious difficulties in getting loan for their project. The Gujarat State Financial Corporation whom the appellants had approached for loan did not seem to consider their request favourably. The appellants were anxious to secure the loan for their project. In those circumstances, even before writing the second letter to respondent no.4 the appellants had addressed a letter to the Lt. Governor, Goa, Daman and Diu plainly asking him to canvass for the grant of their loan by the Gujarat State Financial Corporation and in particular “to impress upon two of the important members on the board of Gujarat State Financial Corporation (viz. Shri R. D. Shah, Chairman, GSFC & Shri H.K. Khan, Addl. Chief Secretary, Government of Gujarat) to reconsider their decision and grant a term loan of Rs.60/- lakhs”. (We are surprised that not only such a letter was written to

the Lt. Governor but quite unabashedly it has also been brought on record before this court!) Arguing its case for grant of the term loan of rupees sixty lakhs it was stated in paragraph 9 of the letter:

“9.The Administration saw an opportunity to help improve the Union Territory’s economy by supporting this hotel and hence has made provision in its Seventh 5-Year Plan for giving a 5% interest subsidy on term loans and 25% capital subsidy limited to Rs.25/- lakhs. The purpose of both these subsidies is to provide a cushion in case of any setback due to lack of marketability of hotel rooms. This is an important aspect and must be considered hotel for all hotels setup in Backward Area.”

13. Having thus based their case for grant of loan *inter alia* on the basis that interest on the loan would be subsidised by 5% it was essential for them to secure the assurance. And that is how the appellants seem to have obtained the assurance from respondent no.4.

14. It thus appears that even though the proposal for interest subsidy was actually aborted for want of sanction and approval by the Planning Commission, the appellants were using it for their own ends.

15. In support of the plea of promissory estoppel the appellants also rely upon a communication from the Central Government in reply to the request of approval made to it. It appears that some officer in the Union Territory wrote to the Central Government requesting the approval of the payment of

interest subsidy and asking for the necessary procedure to be followed. The Central Government gave its reply by letter dated February 24, 1989 stating:

As the scheme of 5% interest subsidy is operated by the Union Territory of Dadra and Nagar Havel and the payment involved is to be made from their own funds, the Central Department of Tourism does not come into the picture for giving No Objection for the disbursement of the subsidy.”

16. This letter too is of no help to the appellants. Firstly, it was a government to government communication and not a representation to the appellants. Secondly, the reply of the Central Government cannot be read to hold that in fact there was in existence a scheme of interest subsidy of the Administration of the Union Territory. All that the Central Government said was that it had no concern with the matter.

17. Mr. Anand Grover, learned counsel for the appellants strenuously argued that the company was granted loan by financial institutions and banks and the repayment of the loans were scheduled on the basis that interest on the loans would be subsidised by the respondents by 5%. Mr. Grover submitted that non-payment of the interest subsidy by the respondents caused acute financial stringency to the appellants. Further, in April 1986 the appellants had issued a prospectus for public issue clearly

stating that subsidy was available both on capital assets and interest and on that basis had received a large amount of public investments.

18. We are quite unimpressed by the submissions. The loan repayment schedule was drawn up by the banks on the representation made by the appellants themselves for which apparently there was no basis. Similarly, they tried to attract public investments in the company by saying something in the prospectus for which there was no sanction. We, thus, again see the same picture emerging. Rather than making huge investments and, acting on the basis of any representation made by the respondents, altering their position adversely, the appellants tried to use the issue of interest subsidy to their advantage even though it was only a proposal that in fact never materialised into a scheme.

19. Mr. Grover lastly took us through the letters sent by the appellants and their creditors to the respondents making demand for disbursement of the 5% interest subsidy. Learned counsel submitted that in reply to these letters the respondents never squarely denied the appellants entitlement to interest subsidy but they only tried to hedge the issue.

20. In our considered view the letters referred to by the Counsel too are of no help to the appellants.

21. On a careful consideration of the materials on record and the submissions made on behalf of the appellants we find ourselves in complete agreement with the view taken by the Bombay High Court.

22. In the end we find no merit in these appeals, which are, accordingly dismissed. No order for costs.

.....J
(AFTAB ALAM)

.....J
(SWATANTER KUMAR)

New Delhi,
July 7, 2010