

{REPORTABLE}

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 3962 of 2011

UNION OF INDIA & ORS.APPELLANTS

Vs.

SHRI HANUMAN INDUSTRIES & ANR.RESPONDENTS

With CA No. 3963-65/2011 & CA No. 3966-69/2011

JUDGMENT

Amitava Roy, J.

1. All these appeals seek to impeach the decision rendered by the Guwahati High Court (Shilong Bench) in a batch of Writ Appeals preferred amongst others by the respondents herein being aggrieved by the dismissal of their respective writ petitions, questioning the refusal of the appellants to sanction financial assistance to them under the “Scheme of Promotion of Industries in North East” (SPINE) on the ground of delay and laches. By the determination made in the appeals, the grievance of the respondents has been redressed primarily on the basis of the adjudication made earlier by

the same High Court in Writ Petition(C) No. 279 (SH) of 2007 since affirmed by this Court by Order dated 01-05-2009 rendered in SLP(C) 9578-9584/2009.

2. We have heard Dr. Abhishek Atrey, learned counsel for the appellant and Ms. N. Saikiya, learned counsel for the respondents.

3. The individual facts qua the respondents marginally vary and do not demand separate dilation in the face of the common issues that need to be addressed. Common arguments have also been advanced. The pleadings pertaining to Civil Appeal No. 3962/2011, Union of India and Ors. vs Shri Hanuman Industries & Anr. would, therefore, be outlined for the factual foundation of the debate.

3.1 In the year 1997, a policy decision was taken by the Planning and Development Department, Government of India for promotion of industries in the North East Region, during the period of 9th Plan by providing inter alia a package of incentives to create an entrepreneurial environment. With this objective, a scheme nomenclatured SPINE, as above, was launched by the Ministry of Development of North Eastern Region, North Eastern Council, Shilong (for short DONER). In terms of the scheme, The North

Eastern Council (NEC) was to provide to the newly set up industries to the extent of 25 per cent of the project cost or Rs. 50 lacs, whichever was less as deemed proper by the recommending authority on the fulfillment of the conditions stipulated therein. The Union of India, represented by the Ministry of DONER and the NEC were entrusted with the role of implementing the scheme.

4. In response to this scheme, which was apparently akin to a State policy, the respondents on various dates submitted their applications accompanied by necessary documents for setting up their industries as mentioned therein inter alia disclosing the investments made even by obtaining financial accommodation from banking institutions and otherwise. According to the respondents though their applications remained pending and they were made to understand that the same were being processed as per the norms applicable, it was noticeable, that the implementing authorities were adopting pick and choose methods in the matter of disbursement of the financial assistance to a selected few by overlooking their worthy claims.

5. It is a matter of record that another set of such applicants with the similar grievance had meanwhile instituted writ proceedings registered as WP(C) 279 (SH) to 285 (SH) of 2007 and eventually as adverted to hereinabove a Single Bench followed by a Division Bench of the Guwahati High Court had entertained the challenge made therein and the implementing authorities of the scheme were directed to process the applications of the said writ petitioners for grant of subsidy under it (SPINE) in accordance with law and for sanctioning the same to each of them, within a period of ninety days from the receipt of the copy of the judgment and order. To reiterate, this Court by its Order dated 01-05-2009 passed in SLP(C) 9578-9584/2009, declined to interfere with this adjudication.

6. Be that as it may, a learned Single Judge of the same High Court by judgment and order dated 07-10-2009, rejected the writ petitions filed by the respondents herein on the ground of delay and laches, the decision in the earlier proceedings notwithstanding. This determination, however, was reversed in the appeals filed by the respondents, by the common judgment and order impugned herein,

whereby the direction, in the earlier proceedings to the implementing authority for processing the applications for investment subsidy under SPINE in accordance with the law was reiterated vis-à-vis the present respondents. Being aggrieved, the Union of India and the NEC are before this Court.

7. At this juncture, the admitted facts need be noted. As per the procedure prescribed, the applications submitted by the respondents along with the accompanying documents were to be routed through the Department of Industries of the respective State Governments to be forwarded to the NEC by the Planning Department of the State concerned and that no proposal was to be received directly by the NEC.

8. While the said applications were thus pending a letter dated 05-02-2007 was issued by the Secretary, Ministry of Development of North Eastern Region etc. New Delhi, addressed to the Secretary North Eastern Council, Shilong referring to various correspondences mentioned therein pertaining to request for reports in respect of alleged financial irregularities in the disbursement of Grant-in-Aid under SPINE qua each unit for

inquiry. It was underlined in the said letter that the report had been sought for to positively reach the issuing Ministry by 15-02-2007. It was in clear terms mentioned that in view of the pending inquiry and decisions in connection therewith, further sanction/disbursement of Grant-in-Aid particularly under SPINE should be stopped forthwith. The letter also contained a caveat that in case the report was not submitted by the deadline of time given, the matter would be forwarded for investigation.

8.1 The records reveal that thereafter in the meeting of the Ministry of DONER to review the scheme of the NEC with particular reference to SPINE held on 21-02-2007, it was resolved amongst others that a committee would be constituted to monitor and evaluate projects before release of funds under the SPINE. Subsequent thereto, the Deputy Secretary, NEC addressed a letter dated 23-2-2007 to the Commissioner and Secretary, Planning Department of the North Eastern States as named therein intimating about the receipt of a letter from the Secretary, Ministry of DONER, recommending discontinuance of SPINE immediately. The letter further required that a review of the liabilities be

undertaken and submitted for necessary decision by the Chairman, NEC. That this view of the Ministry of DONER, had also been shared with the State Governments, was mentioned. The addressee was requested to ensure that no new proposal for consideration under SPINE be forwarded to NEC.

8.2 It is noticeable, that with effect from 01-04-2007, the Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion did approve a package of fiscal incentives and other concessions for the northeast region named “Northeast Industrial and Investment Promotion Policy (NEIIPP) 2007”. Parallely by a communication dated 04-09-2007, the Government of India, Ministry of DONER reiterated its request to the Industries and Commerce Department of Government of Assam to get the industries in the list appended thereto, inspected and reports submitted to the NEC as per the format enclosed. The letter disclosed that a formal meeting of the Committee in this regard would consider and recommend further release to the said industries. It was thereafter that the same Ministry i.e. of DONER vide its letter dated 01-10-2007 addressed

to the Commissioner and Secretary, Planning and Development, Assam while referring to its earlier letter dated 23-02-2007, conveyed that as the proposals pending at the time of closure of SPINE could no longer be processed, it had been decided that the same be returned to the State Governments. Thereby a list of the pending proposals, State-wise, was forwarded with the observation that the Units concerned could take the benefit of Northeast Industrial and Investment Promotion Policy 2007(NEIIPP – 2007). It was assured that the relevant papers would be returned at a later date. The list appended amongst others contained the names of the respondent units involved in the present proceedings. It is thus apparent from the communication dated 01-10-2007 and the annexures thereto that at the time of the issuance thereof indicating the closure of SPINE, the proposals vis-à-vis these units had remained pending and were not processed as per the procedure prescribed. In the contemporary context, the media also flashed the decision of withdrawal of SPINE at or about the same time. Prior to these developments, the working group on NEC while deliberating upon the related issues for the 11th Five Year Plan held on 22-06-2006, however, had recommended continuance of SPINE

with improved guidelines to block loopholes, increase opportunities for generating local employment and expedite industrialisation of the region. This recommendation, however, needless to mention, has to be construed in the backdrop of the decision for closure of SPINE as was taken and communicated vide the letters dated 23-2-2007 and 01-10-2007 alluded hereinabove.

9. Exasperated by the delay in the grant of the incentives under SPINE, to reiterate, several similarly situated industrial units had meanwhile approached the Guwahati High Court with a series of writ petitions seeking judicial intervention. By common judgment and order dated 20-06-2008, the petitions were allowed by the Single Judge of that Court directing the implementing authorities to process the applications of the writ petitioners for grant of subsidy under SPINE in accordance with law for sanctioning the same to each of them without being influenced by the letter dated 05-02-2007 of the Secretary, Ministry of DONER within a period of ninety days from the receipt of the copy of the judgment and order. In pronouncing this verdict, the learned Single Judge inter alia recorded that relying on the assurance under the scheme, units

concerned had materially altered their positions by investing huge amounts for setting up their respective new industrial units even by obtaining secured and unsecured loans and that denial of the financial assistance under the scheme would result in their closure observing that the letter dated 05-02-2007 did not indicate withdrawal of the scheme and that only enquiry into some irregularities was comprehended. The learned Single Judge noted as well that meanwhile the concerned industries had made their units functional. The minutes of the meeting dated 21-02-2007 was also taken note of in expressing this view. The learned Single Judge entertained the plea of promissory estoppel as well in issuing the operative directions.

9.1 This decision was taken in appeals before a Division Bench of the Guwahati High Court by the Union of India and NEC which were dismissed on 27-11-2008. Admittedly, the present respondents were not parties in the earlier round of litigation. This adjudication undertaken by the Guwahati High Court, attained finality by the order dated 01-05-2009 passed by this Court in SLP No. 9578-9584/2009, whereby the same was left uninterfered.

10. Close on the heels of this affirmation by this Court, the respondents herein on 27-08-2009 filed their writ petitions claiming the same relief seeking parity of treatment. The learned Single Judge of the Guwahati High Court by judgment and order dated 07-10-2009 dismissed all the petitions analogously heard on the ground of delay and laches. Observing with reference to the relevant decisions of this Court that the benefit of a judicial verdict in a case cannot automatically be extended to another more particularly in the face of unexplained and/or unsatisfactory explanation of delay in between, the learned Single Judge declined the relief holding that the exercise of powers under Article 226 of the Constitution of India was primarily equitable in nature. According to the learned Single Judge, in the attendant facts and circumstances, the respondents were not only aware of the decision of the concerned authorities to wind up SPINE by refusing financial assistance thereunder as intimated by the letter dated 05-02-2007, it was held as well that the respondents without joining the writ petitioners in the earlier outing had deliberately chosen to await the outcome thereof and thus were really fence sitters to avail the benefit of a favourable verdict, if forthcoming. The learned Single

Judge was of the view that the passive conduct of the respondents herein tantamounted to sleeping over their rights for over two years to wake from their feigned slumber after the decision of this Court on 01-05-2009, to agitate their perceived rights. That having regard as were, to the financial implications that would ensue in case the inordinately delayed claim of the respondents is/was by entertained, thus adversely impacting upon public exchequer, the learned Single Judge declined the relief sought for.

11. By the decision impugned in the present proceedings, a Division Bench of the same High Court reversed these findings and granted the relief prayed for by the respondents in the same terms as sanctioned earlier to the otherwise equally placed industrial units. The Division Bench adverted inter alia to the letters dated 05-02-2007 and 04-05-2010 issued by the Ministry of DONER apart from heavily relying on the decision in the earlier lis and returned a finding that SPINE had continued till the issuance of the notification/letter dated 04-05-2010. Their Lordships held the view that as the respondents had set up their industrial units during the validity of the scheme and their claims were pending in course

thereof, the appellants, the implementing authorities were obliged to consider the same. That the view taken by the learned Single Judge was inconsistent with the one taken in the judgment and order dated 20-6-2008 was also noted. It was held as well that apart from the fact that there was no prescribed period of limitation to invoke the writ jurisdiction under Article 226 of the Constitution of India, as under the Limitation Act 1963, it was in any case, three years, their writ petitions could not have been dismissed on the ground of delay. In any view of the matter, it was observed that, the time lag in filing the writ petitions could not have been reckoned from 05-02-2007 where the SPINE was not closed. That the implementing authorities did not at any point of time communicate to the respondents the rejection of their claims was also recorded. The aspect of financial implications was also dismissed as inconsequential. Relying on the determination made in the earlier proceedings, the appellants herein were directed to process the application of the respondents for investment subsidy under SPINE in accordance with the law and without being influenced by the letter dated 05-02-2007 for sanctioning the same within a period of ninety days. In another words, the operative directions contained

in the judgment and order dated 20-06-2008 in the earlier batch of writ petitions was replicated vis-à-vis the respondents.

12. In the backdrop of this factual matrix, Dr. Atrey the learned counsel for the appellants has insistently argued that it being apparent on a combined reading of the letters dated 05-02-2007, 20-3-2007 and 04-05-2010 that a conscious decision had been taken by the concerned authorities to discontinue SPINE with effect from 23-2-2007, the writ petitions of the respondents, who had admittedly not joined the earlier set of industrial units had been rightly rejected by the learned Single Judge on the ground of unexplained delay, laches and inaction on their part. Referring to the letter dated 04-05-2010 in particular, he has urged that it being evident therefrom that SPINE had been discontinued with effect from 23-02-2007, an advance indication to that effect being disclosed in the letter dated 05-02-2007 preceding thereto, and conveyed by the one dated 23-2-2007, it is apparent that the respondents herein had not approached the Guwahati High Court in time, to take a gambling chance later on and to cash upon any favourable verdict in the earlier litigation. As the approach of the

respondents lack in bonafide and as they cannot be construed to have invoked the writ jurisdiction of the High Court in time, their claim had been rightly rejected by the learned Single Judge in the exercise of the equitable prerogative, he urged. The learned counsel maintained that as the claim of the respondents had not been allowed during the pendency of SPINE, they have no vested right to insist for a direction to sanction the incentives thereunder and thus the impugned judgment and order in the prevailing facts and circumstances ought to be interfered with. He further argued that not only on the closure of the scheme in 2007, as conveyed by the letter dated 23-2-2007, the pending proposals including those of the respondents herein had been returned to the respective State Governments, in absence of any challenge to the said decision, the respondents even otherwise are not entitled to the benefit under it. According to the learned counsel, the respondents are not entitled to the benefit of the earlier adjudication and that if their claim is entertained it would not only signify unwarranted premium on their speculative inaction but also would severely impinge upon the financial resources of the State qua an unworthy cause.

13. As against this, Ms. N. Saikia has emphatically argued that the respondents being similarly placed with the writ petitioners in the earlier proceedings, they had been rightly extended equal treatment and thus the impugned judgment and order is unassailable in law and on facts. As admittedly by the letter dated 05-02-2007, the scheme had not been withdrawn and in fact no decision rejecting their claim thereunder had ever been conveyed to the respondents, the action of the appellants in endeavouring to deny the benefit thereunder is patently arbitrary, whimsical and unconstitutional, she urged. In any view of the matter, according to the learned counsel, as the implementing authorities were generally sloth in processing the applications, taking about four/five years' time to complete the process, the respondents could not have been non-suited on the purported ground of delay and laches. While asserting that the scheme was in force when the writ petitions were filed Ms. N. Saikia insisted that the respondents having altered their position in view of the incentives promised thereunder, the action of the appellants in declining them the same is violative of the doctrine of promissory estoppel. According to the learned counsel, as others similarly placed with the respondents have been

extended the benefits under the scheme, the denial to the respondents was discriminatory as well. The following decisions were relied upon to buttress the above assertions:

AIR 1979 SCC 621 M/S Motilal Padampt Sugar Mills Co. –Vs- The State of Uttar Pradesh & Ors., (2004) 6 SCC 465 State of Punjab –Vs- Nestle India Ltd., (2006) 8 SCC 702 MRF Limited Vs Assistant Commissioner Sales Tax., (2004) 1 SCC 139 State of Orissa & Ors Vs Mangalam Timber Products Limited., (2009) 6 SCC 791 Basanti Prasad Vs Chairman, Bihar School Examination Boards & Ors., (2010) 6 SCC 786 Improvement Trust, Ludhiana VS. Ujagar Singh & Ors., (2013) 12 SCC 649 Esha Bhattacharjee Vs. Raghunathpur Nafar Academy & Ors.

14. The pleaded facts and the competing arguments have received our due attention. To start with, it is not disputed that the writ petitioners in the earlier round of adjudication were applicants under SPINE alike the respondents herein. They being appalled by the delay in the grant of their receivables thereunder and being faced with the letter dated 05-02-2007 whereby pending receipt and scrutiny of the reports as called for, further sanction/disbursement

of Grants-in-Aid under the said scheme was stopped, did promptly approach the Guwahati High Court with a batch of writ petitions in the year 2007 itself and as narrated hereinabove were favoured with a direction to the implementing authorities for consideration of their application for the investment subsidy in accordance with law without being influenced by the said letter. Admittedly, the respondents herein elected not to join them and instead, soon thereafter this Court affirmed the above verdict on 01-05-2009, staked their claim on 27-08-2009. There is evidently thus a time lag of more than two years by which the respondents' challenge was delayed.

14.1 It is a matter of record, that by letter/notification dated 04-05-2010 issued by the Secretary, Ministry of DONER, NEC, Shillong, confirmation of the decision of withdrawal and closure of SPINE with effect from 23-02-2007, was notified. A plain perusal of the contents of this document would reveal in no uncertain terms that the withdrawal and closure of SPINE had been effected by an Order of Government of India vide NEC/PLAN/ii-23-2-2007. Thus the letter/notification dated 04-05-2010, did relate back to

23-02-2007 for all intents and purposes. Therefore the scheme, SPINE stood withdrawn and/or closed on and from 23-02-2007. As a corollary, on a cumulative reading of the letters dated 05-02-2007, 23-02-2007 and 04-05-2010 as well as the resolution dated 21-02-2007 it is indubitable that SPINE stood withdrawn and/or closed with effect from 23-02-2007. As adverted to hereinabove, by letter dated 01-10-2007, as a consequential step, the proposal which had remained unprocessed as per the standard procedures of the scheme were returned to the State Governments. The list of proposals remitted back admittedly included those amongst others of the respondents herein. It is thus patent that on such date i.e. 01-10-2007, the claims of the respondents had not been accepted and in view of the closure of the scheme, were returned to the respective State Governments. In this pronounced backdrop, the plea of the respondents that at the institution of the writ petitions in 2009, no decision had been taken rejecting their applications fades into insignificance, as those by implication had not been entertained under the scheme.

14.2 The letters dated 04-08-2006, 04-09-2007 and 12-09-2007 to which our attention has been drawn in course of the arguments, suffice it to mention, do not contain any assurance on the part of the implementing authorities promising grant of the subsidy allowance under the scheme or any other incentive to the respondent. No reference has been made before us of any other document qua the other respondents. We are thus constrained to hold that there was no promise on the part of the public functionaries in charge of implementation of SPINE to the respondents to extend benefits thereunder, inspite of the decision to withdraw or close the same with effect from 23-02-2007.

15. In M/s Motilal Padampt Sugar Mills Company supra, this Court, on an exhaustive survey of the law pertaining to the doctrine of promissory estoppel held that the same was an equitable doctrine that would yield when equity so required. While propounding that the same had been evolved to avoid injustice where it is demonstrated that a party acting on the words or conduct of another, amounting to clear and unequivocal promise and intended to create legal relations or effect legal relationships to arise in the

future had altered his position, then the promise would be binding on the promisor and he would not be permitted to renege therefrom unless it would be inequitable to compel him to do so. While extending this doctrine to the Government as well, it was enunciated that if it can be shown that having regard to the facts as had subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise the equity in favour of the promisee and enforce the promise against the Government. Their Lordships held that the doctrine of the 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. That aside overriding public interest against enforcement of the doctrine qua the Government, it would be still competent for it to depart from the promise on giving reasonable notice which need not be a formal one, affording the promisee a reasonable opportunity of resuming his position was underlined. We consider it inessential to dilate on the other decisions cited on behalf of the respondents on this theme as these are in essence in reiteration of the above proposition.

16. The gravamen of the authorities pertaining to delay highlight in unison that the same has to be explained by cogent convincing and persuasive explanation to justify condonation thereof. The legal diktat being so fundamental that a detailed treatment of the decisions relied upon by the respondents in this regard is not warranted.

17. Noticeably, in the earlier round of litigation, there was no scope to examine the purport of the contents of the letter dated 04-05-2010, which to reiterate only affirmed the decision of withdrawal and closure of SPINE with effect from 23-02-2007. The contents of the said letter to repeat disclose in unequivocal terms that even prior thereto a decision to that effect had been taken on and from that date. This decision as referred to hereinabove amongst others also received media coverage. The plea that the respondents had no knowledge of the withdrawal/closure of SPINE then, is to say the least, unconvincing. We see no weighty or cogent reason for the respondents to wait till the earlier Special Leave Petition was dismissed on 01-05-2009 by this Court to embark upon their pursuit for redress in similar terms. Their writ petitions

dated 27-08-2009 also do not evince that the same were filed after the letter/notification dated 04-05-2010. In our considered opinion therefore, the respondents were deliberately bidding time to seek judicial remedy in case their co-applicants under the scheme emerged successful in their adjudicative enterprise. As the initial decision conveyed by the letter dated 05-02-2007 to stop further sanction/disbursement of Grant-in-Aid under the scheme pending scrutiny of the report of the industrial units involved did eventually metamorphosise in the closure/withdrawal of the scheme, there is an apparent correlation between the intervening developments conveyed from time to time eventuating in such a conclusion. The merit of the factums leading to this decision however has not been questioned or impeached.

18. On a consideration of the totality of the aspects involved, we are thus of the unhesitant view that the respondents herein in view of their deliberate laches, negligence and inaction have disentitled themselves to the benefit of the adjudication in the earlier lis. In the accompanying facts and circumstances in our comprehension, it would be iniquitous and repugnant as well to the public

exchequer to entertain the belated claim of the respondents on the basis of the doctrine of promissory estoppel which is even otherwise inapplicable to the case in hand.

19. For the foregoing determination, we are constrained to interfere with the impugned judgment and order which is hereby set aside. The appeals are allowed. No cost.



.....J.
(M.Y.EQBAL)

.....J.
(AMITAVA ROY)

NEW DELHI

Dated: May 08, 2015

JUDGMENT