

PETITIONER:
A.P. STATE ELECTRICITY BOARD AND ORS.

Vs.

RESPONDENT:
SARADA FERRO ALLOYS LTD.

DATE OF JUDGMENT 25/02/1993

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
KASLIWAL, N.M. (J)

CITATION:
1993 AIR 1521 1993 SCR (2) 114
1993 SCC (2) 425 JT 1993 Supl. 37
1993 SCALE (1) 712

ACT:
Promissory estoppel-Electricity Board-Grant of rebate in demand and energy charges-Subsequent withdrawal of rebate-Industry established during the period when concession was not operative--Held not entitled to rebate--Doctrine of promissory estoppel held inapplicable.

HEADNOTE:
The Andhra Pradesh State Electricity Board granted rebate of 25 per cent in demand and energy charges for High Tension industries and asked the Director of Industries to identify the industries which would be eligible for the rebate. By its order dated July 13, 1976 the State extended the rebate to certain industries. The Board also issued order extending the concession to the notified industries for a period of three years from the date of their going into regular production. By an order dated August 23, 1985, the concession already granted was extended for two more years, i.e. a total of five year. However, by its order dated December 8, 1987 the Board withdrew the concession. The State Government also issued similar order dated July 27, 1989 withdrawing the rebate. The respondent-company which established a Ferro Chrome industry and commenced production on regular basis on August 11, 1990 claimed concession but the same was refused by the Board on the ground that the said concession had already been withdrawn. 'Me company filed a writ petition before the Andhra Pradesh High Court seeking a declaration that it was entitled to rebate as declared by the State Government in its letter dated August 23, 1985. A Single Judge of the High Court allowed the petition on the ground that the respondent-company having acted upon the representation made by the Board and the State Government the doctrine of promissory estoppel was attracted and as such the Board and the State Government were bound to grant rebate for a period of five years. The writ appeal preferred by the Board was dismissed by a Division Bench of the High Court. The Electricity Board riled an appeal in this Court. Allowing the appeal and setting aside the judgment of the High Court, this Court,

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HELD- 1. The High Court was not justified in applying the doctrine of promissory estoppel to the facts and circumstances of this case.

[117H,118A]

2. Only those industries were entitled to the benefit of the incentive who fulfilled the requirements during the period the incentive was operative. The promise or representation made by the Board in its letter dated July 13, 1976, if any, was directly linked with the date of commencement of production by the company. It is not disputed that the respondent-company commenced production on commercial scale on August 11, 1990. The incentive was withdrawn by the Board on December 8, 1987 and by the Government on July 27, 1989. Whichever date is taken into account the company was not entitled to the incentive as it had not commenced production then or before either of these two dates. [119A-B, D]

2.1. Even if it is assumed that a promise or representation was made by the Board the doctrine of promissory estoppel is not attracted in this case as the company failed to act upon the said representation. Therefore, the assumption entertained by the High Court that once the company started the process or setting up an industry and had incurred expenditure, the Board was bound to keep its incentive open for the company till it started production is not correct.

[119B-C]

Union of India v. Godfrey Phillips India Ltd., 119851 4 S.C.C. 369, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 766 of 1993. From the Judgment and Order dated 7.2.92 of the Andhra Pradesh High Court in W.A. No. 1271 of 1991.

Shanti Bhushan, K. Rajendra Chowdhary and R.K. Sharma for the Appellants.

G.L. Sanghi, Duba Mohan Rao, Y.P. Rao, Dhruv Mehta, T.V.S.N. Chari, Ms. Suruchi Aggarwal and Ms. Bharati Reddy for the Respondent.

The Judgment of the Court was delivered by
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KULDIP SINGH, J. Special leave granted.

The Andhra Pradesh State Electricity Board (the Board), in exercise of its powers under Section 49 of the Electricity Supply Act, 1948 (the Act) issued order dated September 17, 1975 granting rebate of 25% in demand and energy charges for High Tension Industries. It was specifically mentioned therein that the rebate was to be allowed from the date of going into regular production on or after January 1, 1976. The Board, thereafter, asked the Director of Industries to identify the High Tension Industries which would be eligible for the 25% rebate declared by the Board. The State Government issued the order dated July 13, 1976 extending the rebate to all the industries except 65 notified in the Government order dated March 9, 1976. Thereafter the Board issued order dated August 10, 1976 extending the concession to all the High Tension Industries except the 65 excluded by the State Government.

The State Government issued order dated August 23, 1985 specifying certain incentives available to the industries in the three backwards districts of the State. The concession of 25% tariff already granted by the Board was extended for two more years i.e. a total of five years.

The Board withdrew the concession of 25% rebate to the High

Tension Industries by its order dated December 8, 1987. The State Government also issued similar order dated July 27, 1989 withdrawing the rebate.

The respondent M/s. Sarada Ferro Alloys Ltd. (the Company) decided to establish an industry to produce Ferro Chrome. According to the company it obtained a small scale industry certificate on September 5, 1986. It further obtained 'no objection' certificate from Andhra Pradesh Pollution Board on November 12, 1986. The case of the company further is that it purchased 4.01 acres of land during the period September 1986 to May, 1989. The Board called upon the company by its letter dated December 9, 1987 to deposit Rs. 8, 40, 200 towards service-lines. the company entered into an agreement with the Board on August 21, 1989 for the supply of the electricity. It is the case of the company that it commenced production on regular basis on August 11, 1990. The company requested the Board by its letter dated June 29, 1991

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to extend concession of 25% rebate for a period of five years from the date it started production. The company based its demand on the State Government order dated August 23, 1985. The Board by its letter dated July 9, 1991 declined to give the concession to the company on the ground that the said concession had already been withdrawn by the Board by its order dated December 8, 1987.

The company challenged the communication of Board dated July 9, 1991 by way of a writ petition before the Andhra Pradesh High Court. The company further sought a declaration that it was entitled to 25% power rebate as declared by the State Government in its letter dated August 23, 1985. The learned Single Judge of the High Court by its judgment dated November 8, 1991 allowed the writ petition. The writ appeal preferred by the Board was dismissed by a Division bench of the High Court by its judgment dated February 7, 1992. This appeal by way of special leave is against the judgment of the High Court.

The High Court allowed the writ petition of the company on the sole ground that the respondent-company having acted upon the representation made by the Board and the State Government, the doctrine of promissory estoppel was attracted and as such the Board and the State Government were bound to grant 25% rebate for a period of five years. The Division Bench of the High Court based its conclusions on the reasoning which is reproduced hereunder:-

"The material now before us clearly shows that by 30.6.87 the company had incurred an expenditure of Rs. 11,07,328 towards purchase of land and other expenditure including civil works. Even if we take 8.12.87 as the relevant date it cannot be disputed that by that date considerable expenditure was already incurred by the petitioner for setting up the industry and this was done on the basis of the promise held out by the Government in G.O. Ms. No. 375 dated 23.8.85 and the consequential B.P. Ms. No. 689 dated 17.9.75, B.P. Ms. No. 691 dated 10.8.76 and B.P. Ms. No. 152 dated 13.2.78. Whichever date was taken into account, either 27.7.89 or 8.12.87, there is no valid reason for the Electricity Board to withdraw the concessions earlier granted. As we have found on facts that the first respondent had acted on the promise held out by the Government and the Electricity Board,

both of them are bound by that promise."

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We have given our thoughtful consideration to the reasoning and the conclusions reached by the High Court. We are of the view that the High Court was not justified in applying the doctrine of promissory estoppel to the facts and circumstances of this case. This Court in *Union of India v. Godfrey Phillips India Ltd.*, [1985] 4 SCC 369 explained the principles of promissory estoppel in the following words-

"The true principal of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties."

We may now examine the promise or representation said to have been made by the appellant and acted upon by the company. The operative part of the order dated July 13, 1976 issued by Board is as under

"The revised power tariff notified by the A.P. State Electricity Board with effect from 20.10.1975 offers a rebate of 25% on demand and energy charges for specified H.T. consumers as an incentive to new industries for the first three years from the date of their going into production (emphasis supplied)."

The High Court has primarily based its conclusions on the Government letter dated August 23, 1985. The relevant part of the said order is as under:-

"Power :- At present the Andhra Pradesh State Electricity Board offers 25% tariff concession for the first three years for certain industries. This concession would be extended for two more years i.e. a total of five years. Twenty-five

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per cent concession tariff would be met for the additional 2 years from out of the Industries budget."

It is clear from the Government order reproduced above that the Government extended the concession already granted by the Board for three years for a further period of two years. We have, therefore, to see what is the promise or the representation held out to the company in the order of the Board dated July 13, 1976 reproduced above.

We are of the view that the promise or representation made by the Board in its letter dated July 13, 1976, if any, was directly linked with the date of commencement of production by the company. It is not disputed that the respondent-company commenced production on commercial scale on August 11, 1990. The incentive was withdrawn by the Board on December 8, 1987 and by the Government on July 27, 1989. Whichever date is taken into account the company was not entitled to the incentive as it had not commenced production

on or before either of these two dates. Even if it is assumed that a promise or representation was made by the Board in its letter dated July 13, 1976, the doctrine of promissory estoppel is not attracted in this case as the company failed to act upon the said representation. We do not agree with the assumption entertained by the High Court that once the company started the process of setting up an industry and had incurred expenditure, the Board was bound to keep its incentive open for the company till it started production. We are of the view that only those industries were entitled to the benefit of the incentive who fulfilled the requirements during the period the incentive was operative.

Mr. Shanti Bhushan, learned counsel for the appellant has further contended that the orders dated July 13, 1976 and December 8, 1987 were issued by the Board in its statutory power under Section 49 of the Act. According to him these orders being statutory there can be no promissory estoppel against the Board. He further contended that there were no directions by the State Government under Section 78A of the Act. The view we have taken on the question of promissory estoppel it is not necessary to go into these additional grounds urged by Mr. Shanti Bhushan.

We allow the appeal and set aside the judgment dated November 8,

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1991 of the learned Single Judge and dated February 7, 1992 of the Division Bench of the High Court in writ appeal. The writ petition filed by the respondent-company in the High Court is dismissed. We leave the parties to bear their own costs.

T.N.A.

Appeal allowed.

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