REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2297 OF 2011

M/s. K.B. Tea Product Pvt. Ltd. & Anr. …Appellants

Versus

Commercial Tax Officer,
Siliguri & Ors. …Respondents

WITH

CIVIL APPEAL NO. 2301 OF 2011

CIVIL APPEAL NO. 2305 OF 2011

CIVIL APPEAL NO. 2298 OF 2011

CIVIL APPEAL NO. 2300 OF 2011

CIVIL APPEAL NO. 2299 OF 2011

CIVIL APPEAL NO. 2302 OF 2011

CIVIL APPEAL NO. 2303 OF 2011

CIVIL APPEAL NO. 2304 OF 2011

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Calcutta at Calcutta in respective writ petitions by which the Division Bench of the High Court has dismissed the said writ petitions preferred by the appellants herein – original writ petitioners, the original writ petitioners have preferred the present appeals.

2. As common question of law and facts arise in this set of appeals, all these appeals are being decided and disposed of together by this common judgment and order. For the sake of convenience, Civil Appeal No. 2297 of 2011 arising out of impugned judgment and order passed by the High Court in Writ Petition No. 479 of 2006 be treated as the lead matter. The facts leading to the present appeal in nutshell are as under:-

2.1 That Section 2(dd) of the erstwhile Bengal Finance (Sales Tax) Act, 1941 (hereinafter referred to as "Act, 1941") defined the term "manufacture" and "blending of any goods" was included within the said definition. That

the Act, 1941 came to be replaced by the West Bengal Sales Tax Act, 1994 (hereinafter referred to as the “Act, 1994”) and in the month of April, 1998, the definition of “manufacture” provided under section 2(17) of the Act, 1994 was amended and as a result of which, "blending of any goods" was omitted from the definition of “manufacture” but “blending of tea” continued to be included in the said definition.

2.2 By virtue of the amendment made in the definition of “manufacture” provided under section 2(17) of the Act, 1994, tax holiday was granted to new small scale industrial units for a specified period under section 39 of the Act, 1994 read with section 17(3)(a)(xi) of the Act, 1994 with Rule 52 of the West Bengal Sales Tax Rules, 1995 (hereinafter referred to as “Rules, 1995”).

2.3 Subsequently, the State Scheme of Incentives for Cottage and Small-Scale Industries, 1993 (1993 Scheme) was amended by the Governor of West Bengal in the year 1999, thereby, implementing the West Bengal Incentive Scheme, 1999 (hereinafter referred to as “1999 Scheme”), effective for a period of five years, i.e., from 01.04.1999 till 31.03.2004, for the purpose of providing incentives and

promotion of the large, medium and small-scale industrial units in the State of West Bengal.

2.4 As per the provisions of the 1999 Scheme, the new industrial units which were established after complying with all the requirements provided under the 1999 Scheme were given an exemption from payment of sales tax for a specified period upon the purchase of raw materials required for carrying the manufacturing activity in said units.

2.5 It is the case on behalf of the appellants that relying upon the said Scheme and the amendment made in the definition of “manufacture” under section 2(17) of the Act, 1994, at the relevant time, the appellants had set up a new small scale industrial unit for the purpose of carrying on the business of manufacturing blended tea.

2.6 As per the provisions of the 1999 Scheme, the small-scale industrial units to claim exemption from payment of sales tax, were required to get themselves registered as small-scale industrial unit and obtain an eligibility certificate from the Sales Tax Department as per Section 39 read with Rule 55 of the Rules, 1995. The Deputy Commissioner granted the eligibility certificate to the appellants for a period of seven years from the date of

first sale of the manufactured product. The appellants enjoyed the benefit of exemption from payment of sales tax as provided under Section 2(17) and Section 39 of the Act, 1994 for a period of two years till Section 2(17) came to be amended by the West Bengal Finance Act, 2001. Section 2(17) of the Act, 1994 came to be amended by the West Bengal Finance Act, 2001 w.e.f. 01.08.2001, whereby the words “blending of tea” were omitted from the definition of “manufacture” provided under section 2(17) of the Act,1994. Consequently, the exemption from payment of sales tax, which was granted to the appellants came to be stopped and even the eligibility certificate was required to be modified.

2.7 The aforesaid action / order was challenged before the Tribunal first and thereafter before the High Court. The Tribunal dismissed the application, which has been confirmed by the High Court by the impugned judgment and order. The impugned judgment and order passed by the High Court is the subject matter of present appeals, claiming the exemption from payment of sale tax as per earlier 1999 Scheme.

3. Ms. Kavita Jha, learned counsel has appeared on behalf of the appellants and Ms. Madhumita

Bhattacharjee, learned counsel has appeared on behalf of the respondents - State.

4. Learned counsel appearing on behalf of the appellants had made the following submissions:-

4.1 That the appellants had been allured by the State of West Bengal Government to set up new industrial unit in expectation of getting benefit of tax for a period on fulfilment of certain requirements and once on the basis of such requirements such industrial unit is given such benefit, subsequently, by way of amendment such right cannot be taken away.

4.2 That the State authority has in a blanket manner simply removed the word “blending of tea” from the definition of “manufacture” under Section 2(17) of the Act, 1994 without taking into account the fact that the appellants had received eligibility certificate for a period of seven years and had already availed the benefit of the scheme for a particular period. The appellants’ rights were crystalised from the day eligibility certificate had been granted under the Act, 1994 and the only justifiable manner in which the State could have rescinded this benefit was to show overarching public interest. In the

present case as well, no overarching public interest has been demonstrated by the respondents in order to justify the amendment made to Section 2(17).

4.3 That the doctrine of legitimate expectation can be invoked where the amendment under the provision of law is not made in consonance with public interest. It is submitted that in the present case, the respondents have failed to showcase any public interest in rescinding the benefits.

4.4 It is submitted that since in this case, the appellants were denied benefit on account of amendment made in the definition of “manufacture” under Section 2(17) of the Act, 1994 which is an arbitrary move by the State without showing any accompanying public interest involved. Therefore, any decision taken in an arbitrary manner contradicts the principle of legitimate expectation, if taken without specifically showing the public interest involved in the matter.

4.5 It is submitted that the State action in this case, fails to meet the test of reason and relevance, as no explanation has been given by the State for rescinding the benefits.

4.6 It is further submitted that the appellants had altered their position to avail the benefit under the Scheme and incurred additional cost such of almost Rs. 18,12,967/- and procured loan for almost Rs. 65,00,000/- in the K.B. Tea Products Pvt. Ltd. and since, the appellants had made substantial expenses for availing the benefits under the Scheme, the State cannot take away such benefits unless some overriding public interest is involved. The said act done by the State is unfair and abuse of power against the appellants. Reliance is placed on the following decisions:

> **Manuelsons Hotels Private Limited Vs. State of Kerala & Ors., (2016) 6 SCC 766; MRF Ltd., Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax & Ors., (2006) 8 SCC 702** and **Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh & Ors., (1979) 2 SCC 409.**

4.7 Learned counsel appearing on behalf of the appellants has also relied upon the decision of this Court in the case of **State of Jharkhand & Ors. Vs. Brahmputra Metallics Ltd., Ranchi & Anr. [Civil Appeal Nos. 3860-3862 of 2020]** and in the case of **Dai-ichi Karkaria Ltd. Vs. Union of India & Ors., (2000) 4 SCC**

57 in support of the submission on the legitimate expectation**.**

4.8 Making above submissions and relying upon the above decisions, it is prayed to allow the present appeals.

5. Learned counsel appearing on behalf of the State while opposing the present appeals has vehemently submitted that in the facts and circumstances of the case, the appellants shall not be entitled to the exemption as claimed.

5.1 It is submitted that in the year 1999, the appellants were granted a certificate of eligibility for Tax Holiday under Section 39 of the Act, 1994 for a period of seven years from the date of first sale of the manufactured product, i.e., 18.05.1999, since at that point of time the definition of “manufacture” in Section 2(17) of the Act, 1994 included 'blending of tea'.

5.2 It is submitted that subsequently, the definition of “manufacture” under Section 2(17) of the Act, 1994 came to be amended by the West Bengal Finance Act, 2001 and “blending of tea” came to be omitted from the definition w.e.f. 01.08.2001. It is submitted that therefore, the appellant company ceased to be a manufacturer

under the Act, 1994 and, therefore, was ineligible to avail the benefit under Section 39 of the Act, 1994. It is submitted that therefore, the Commercial Tax Officer, Siliguri Charge sought to amend the Registration Certificate of the appellant company in terms of the amendment.

5.3 It is submitted that earlier the exemption was granted to the small-scale industrial units engaged in manufacturing activities. It is submitted that at the relevant time, pre-01.08.2001, and as per Section 2(17) of the Act, 1994, “blending of tea” was included in the definition of “manufacture”. It is submitted that therefore, being manufacturers, the appellants were allowed the exemption. It is submitted that however, thereafter, in view of the amendment to Section 2(17) of the Act, 1994 w.e.f. 01.08.2001, “blending of tea” was excluded from the definition of “manufacture” and, therefore, the appellants ceased to be the manufacturers. It is submitted that once the appellants ceased to be the manufacturers, the appellants shall not be entitled to the exemption as the exemption was available only to the small-scale industrial units engaged in manufacturing activities and to manufacturer under the Act, 1994.

5.4 It is submitted that when the legislature in its wisdom, excluded “tea blending” from the definition of “manufacture”, therefore, “tea blending” cannot be regarded as a manufacturing activity entitled to enjoy exemption as provided by Section 39 of the Act, 1994. It is submitted that the submission on behalf of the appellants on legitimate expectation and that by amending Section 2(17) “vested right” in favour of the appellants could not have been taken away, has no substance.

5.5 It is submitted that as rightly observed and held by the High Court, this is not a case of “vested right” but a case of “existing right”. It is submitted that therefore, the existing right can be taken away. It is submitted that there cannot be any legitimate expectation against a statute.

5.6 It is further submitted that to grant the exemption or not is a policy decision and nobody can claim the exemption as a matter of right. It is submitted that therefore, both the learned Tribunal as well as the High Court have rightly refused to grant the appellants any exemption from payment of sales tax which the appellants

were being granted prior to 01.08.2001 being the manufacturers of “tea blending”.

5.7 It is further submitted that this is not the case of retrospective operation, but it is a case of prospective withdrawal of an existing continuing right to get exemption of sales tax. It is submitted that when the legislature in its wisdom amended the definition of “manufacture” contained in Section 2(17) and the “tea blending” came to be excluded from the definition of “manufacture” and which resulted in withdrawing the exemption, which the appellants were availing prior to 01.08.2001 as manufacturer, being a policy decision, the same is not subject to judicial review. Reliance is placed on the decision of this Court in the case of **Directorate of Film Festivals & Ors. Vs. Gaurav Ashwin Jain & Ors., (2007) 4 SCC 737**.

5.8 Making above submissions, it is prayed to dismiss the present appeals.

6. Heard the learned counsel for the respective parties at length.

7. The short question, which is posed for the consideration of this Court is:

> "Whether despite Section 2(17) of the West Bengal Sales Tax Act, 1994 which came to be amended w.e.f. 01.08.2001 *vide* West Bengal Finance Act, 2001, omitting "tea blending" from the definition of "manufacture", still the appellants shall be entitled to the exemption from payment of sales tax?

8. The main submission on behalf of the appellants is that as prior to 01.08.2001, the appellants were availing the benefit of sales tax exemption, the said right could not have been taken away by virtue of amendment to Section 2(17) of the Act, 1994 on the ground of legitimate expectation as well as by promissory estoppel. Thus, it is the case on behalf of the appellants that as on 01.08.2001, under the Act, 1994, when Section 2(17) of the Act, 1994 came to be amended, the appellants had a "vested right" and therefore, the amendment to Section 2(17) of the Act, 1994 shall not affect such "vested right" of exemption from payment of sales tax, which the appellants were availing prior to 01.08.2001.

8.1 However, it is required to be noted that this is a case of claiming exemption from payment of sales tax. As per

the settled position of law, nobody can claim the exemption as a matter of right. The exemption is always on the fulfilment of the conditions for availing the exemption and the same can be withdrawn by the State. To grant the exemption and/or to continue and/or withdraw the exemption is always within the domain of the State Government and it falls within the policy decision and as per the settled position of law, unless withdrawal is found to be so arbitrary, the Court would be reluctant to interfere with such a policy decision.

8.2 In the present case, prior to 2001, as per Section 2(17) of the Act, 1994, the activity of “tea blending” was included in the definition of “manufacture”. Therefore, being in the activity of “tea blending”, the appellants were entitled to the exemption from payment of sales tax as manufacturers. It cannot be disputed that being the manufacturer in the activity of “tea blending” the appellants would have always been entitled to the exemption from payment of sales tax. Being a manufacturer, being in the activity of “tea blending”, the appellants were availing the sales tax exemption. However, thereafter, the definition of “manufacture” as contained in Section 2(17) of the Act, 1994 came to be amended w.e.f. 01.08.2001 *vide* West Bengal Finance

Act, 2001 and the activity of “tea blending” came to be excluded from the definition of “manufacture”. Consequently, the appellants ceased to be the manufacturers. Once the appellants ceased to be the manufacturers, the appellants shall not be entitled to the exemption from the payment of sales tax, which was available to the appellants as a manufacturer being in the activity of “tea blending”. Therefore, on and from 01.08.2001, “tea blending” activity ceased to be the manufacturing activity and the appellants ceased to be the manufacturers and therefore, on and from 01.08.2001, the appellants shall not be entitled to the exemption from payment of sales tax. Thus, the withdrawal of exemption from payment of sales tax would be prospective and not retrospective. So long as the appellants continue to be the manufacturers as per Section 2(17) of the Act, 1994 prevailing prior to 01.08.2001, the appellants can be said to be entitled to the benefit of exemption from payment of sales tax as manufacturers being in the activity of “tea blending”. The moment, “tea blending” activity ceases to be the manufacturing activity, on and from that day, the appellants shall not be entitled to the exemption from payment of sales tax.

8.3 Now, so far as the submission on behalf of the appellants on legitimate expectation and/or promissory estoppel and the submission on behalf of the appellants that the "vested right" cannot be taken away is concerned, the aforesaid has no substance. There cannot be any promissory estoppel against the statute as per the settled position of law. As rightly observed and held by the High Court, this is not a case of "vested right" but a case of "existing right", which can be varied or modified and/or withdrawn. In the present case, as per amendment in the definition contained in Section 2(17) of the Act, 1994 w.e.f. 01.08.2001 by which "tea blending" activity is excluded from the definition of "manufacture" and therefore, on and from that day itself, the appellants ceased to be the manufacturers and shall not be entitled to the benefit of exemption from payment of sales tax as was available to them as manufacturers.

8.4 At this stage, it is also required to be noted that as per Section 39 of the Act, 1994, under which the appellants are claiming the exemption from payment of sales tax, no tax shall be payable by a dealer for such period as may be prescribed in respect of his sales – goods manufactured by him. Therefore, the word

"manufacture" is very relevant and is a condition *sine qua non* to be satisfied. Therefore, the definition of "manufacture" is really relevant. Therefore, if a dealer ceased to be the manufacturer, he shall not be entitled to the benefit of exemption under Section 39. The relevant portion of Section 39 reads as under:-

> "**39. Tax holiday for new small-scale industrial units-** (1) Subject to such conditions and restrictions as may be prescribed, no tax shall be payable by a dealer for such period as may be prescribed in respect of his sales of goods manufactured by him in his newly set up small-scale industrial unit situated in the prescribed area, and in calculating his taxable turnover of sales under sub-section (3) of section 17, that part of his gross turnover of sales which represents the turnover of sales of such goods shall be deducted from his gross turnover of sales under sub-clause (viii) of clause (a) of sub-section (3) of that section.
>
> XXXXXXXXXXXXXXXX"

8.5 Under the circumstances, the decisions relied on behalf of the appellants referred to hereinabove, shall not be applicable to the facts of the case on hand.

9. In view of the above and for the reasons stated above, I am in complete agreement with the view taken by the learned Tribunal as well as the High Court that on and after 01.08.2001 and in view of the amendment to Section 2(17) of the Act, 1994, by which the definition of “manufacture” is amended and “tea blending” is excluded from the definition of “manufacture”, the appellants shall not be entitled to the exemption from payment of sales tax.

Under the circumstances, all these appeals fail and the same deserve to be dismissed and are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

…….J.
[M.R. SHAH]

NEW DELHI;
MAY12, 2023.

REPORTABLE

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CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2297 OF 2011

M/S K.B. TEA PRODUCT PVT. LTD. & ANR. ... APPELLANT(S)

VERSUS

COMMERCIAL TAX OFFICER, SILIGURI
& ORS. ... RESPONDENT(S)

With

Civil Appeal No. 2301 of 2011

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Civil Appeal No. 2304 of 2011

JUDGMENT

KRISHNA MURARI, J.

1. I have had the advantage of reading the judgment proposed by my esteemed brother, Hon'ble Mr. Justice M.R. Shah. However, I am unable to agree with the reasoning as well as the result arrived at by my esteemed brother, and thus separately pen down my conclusion.

2. In brief, Section 2(dd) of the erstwhile Bengal Finance (Sales Tax) Act, 1941 defined the term "manufacture", under the definition of which, "blending of any goods" was also included. The said act was then replaced by the West Bengal Sales Tax Act, 1994, under which, the definition of "manufacture" was changed, and the term "blending of

any goods" was omitted, however, "blending of tea" was still included under the definition of "manufacture". Further, by virtue of the said amendment, a tax holiday was granted to new small scale industrial units for a specified period.

3. Subsequent to the amendments, the State scheme of Incentives for Cottage and Small-Scale Industries, 1993 was amended, for the purpose of providing incentives and promotion of large, medium and small scale industrial units.

4. Subsequent to this tax holiday being granted, and on the basis of such tax holiday, the Appellants herein set up small-scale industrial units for the purpose of carrying on the business of manufacturing blended tea. After the setting up of the unit by the appellants, by way of an

amendment, the term “blending of tea” was omitted from the definition of “manufacture”, leading to the appellant’s exclusion from claiming the said tax holiday. It is against this exclusion and omission that the appellants have filed the present batch of civil appeals.

5. A detailed factual matrix of the present case at hand has been rendered by my esteemed brother in his opinion, and for the sake of brevity, I am not replicating the same herein.

ANALYSIS

6. Learned counsel appearing on behalf of both the parties were heard in great detail.

7. Through the present batch of civil appeals, two substantial questions of law have been raised, and for a

ready reference, the two issues are being mentioned hereunder:

I. Whether the appellants herein have a vested right in claiming exemption from payment of sales tax under the Act, since the vested right was accrued upon the appellants before the amendment was made under Section 2(170) of the Act?

II. Whether the doctrine of legitimate expectation is applicable in the present case since the appellants had set up their industrial units on the basis of the allurement of a tax holiday granted by the Government?

8. I am in agreement with the conclusion arrived at by my esteemed brother on the first

issue, and hence, my dissent is limited only to the second question posed before this Court.

RULE OF LAW

9. The doctrine of rule of law, as an ideal, denotes that a state must be governed, not by men, but by law. This concept finds its origins in the work of Aristotle, where he remarks that in a state that functions on the principles of justice and equality, rule of law must be supreme, and the state as an institution must not be subject to the whims and fancies of its ruler.

10. While the origins of rule of law date back to ancient Greece, the modern conception of rule of law, which is the bedrock for most democratic constitutions across the

world, finds its roots in the book “The Law of the Constitution” authored by professor A.V. Dicey.

11. Professor Dicey, in his conception of the doctrine of rule of law, while echoing the thoughts of Aristotle, states that all individuals and entities must be subject to law, and that no one, not even the government or its officials, are above the law. For such a functioning of the law, Dicey points out that the law must be clear, unambiguous, and must apply to all equally. To further such a conception and bring clarity on the same, Professor Dicey elucidated on three principles that characterize a smooth application of the law.

12. The first principle, which is most relevant to the context of the present case, is the ideal that the law is supreme, and no entity can be above it. A reading of this

principle would also mean that for law to be supreme, it must be applicable to all, it cannot be arbitrary, and nor can it take away anything conferred by it in an arbitrary manner. In simpler terms, for law to be supreme, it must be clear, and it must stay true to itself, without falling prey to other powers inside or outside of it.

13. This principle of rule of law, in the context of our nation, has found refuge within the basic structure of our constitution. In the case of ***Sub-Committee on Judicial Accountability vs. Union Of India and Ors.***[1], while expounding on the importance of the independence of the judiciary, a Constitution Bench of this Court held that rule of law is a part of the basic structure of the constitution of India, the relevant observations made in this regard are as under:

1 (1991) 4 SCC 699

> *"Before we discuss the merits of the arguments it is necessary to take a conspectus of the constitutional provisions concerning the judiciary and its independence. In interpreting the constitutional provisions in this area the Court should adopt a construction which strengthens the foundational features and the basic structure of the Constitution.* ***Rule of law is a basic feature of the Constitution which permeates the whole of the constitutional fabric and is an integral part of the constitutional structure****."*

14. It is from this principle of rule of law, does the doctrine of legitimate expectation flow. The doctrine of legitimate expectation, as described in detail below, is closely linked with, and is essential for the functioning of the rule of law. This is because both, the rule of law and legitimate expectation form the bedrock for fairness and predictability of the legal system. The doctrine of rule of law ensures that laws are applied equally and consistently, while the doctrine of legitimate expectation ensures that

public authorities act reasonably and consistently in their decision-making processes. Together, these principles promote transparency and accountability in government actions, and they help to maintain the trust of the people in the legal system.

DOCTRINE OF LEGITIMATE EXPECTATION

15. The doctrine of legitimate expectation, in simple terms, is a legal principle that arises when a public authority makes a promise or acts in a manner that leads an individual or a group to expect a particular outcome. This doctrine , which flows from the doctrine of rule of law, is based on the idea of fairness and consistency in the decision-making processes of public authorities.

16. When a legitimate expectation of a specific outcome is created by a public authority, the said public authority is required to take into account such expectation created by it when making a decision that affects the interests of the individual or group concerned. If the public authority fails to do so, the individual or group has a right to challenge the decision and seek a remedy, such as an order to enforce the legitimate expectation, as is the situation in the case at hand.

17. In Halsbury's Laws of England, Fourth Edition, Volume I(I) 151,the concept of legitimate expectation has been elucidated on, and for the sake of convenience, the same is being extracted herein:

> ***Legitimate expectations***. *A person may have a legitimate expectation of being treated in a certain way but an administrative authority even though he has no legal right in private law to*

receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The existence of a legitimate expectation may have a number of different consequences; it may give locus standi to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority proposes to defeat a person's legitimate expectation, it must afford" him an opportunity to make representations on the matter. The Courts also distinguish, for example in licensing cases, between original applications, applications to renew and revocations; a party who has been granted a licence may have a legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant.

18. The Courts of United Kingdom, while conceptualizing the doctrine of legitimate expectation, have adopted other

key aspects of judicial review such as Wednesbury unreasonableness in the case of ***R vs. Inland Revenue Commissioners, exparte M.F.K. Underwirting Agents Limited***[2] and abuse of power *in the case of* ***R. (Bancoult) vs. Secretary of State for Foreign and Commonwealth Affairs)***[3] to justify the existence and the protection of legitimate expectations.

19. The term legitimate expectation was first used in the case of ***Schmidt v Secretary of State for Home Affairs***[4] by the UK Courts. The doctrine however, was not applied to the facts therein. Subsequently, in the case of ***O'Reilly v Mackman***[5]**,** the doctrine of legitimate expectation was recognized as a ground for judicial review, allowing

2 [1982] AC 617

3 [1990] 1 WLR 1545

4 [1969] 2 WLR 337

5 [1983] 2 AC 237

individuals to challenge the legality of decisions on the grounds that the decision-maker "had acted out with the powers conferred upon it".

20. Further in the cases of ***Council of Civil Service Unions v Minister for the Civil Service***[6] and ***R v North and East Devon Health Authority, ex parte Coughlan***[7], the boundaries of the doctrine were further elaborated upon. Notwithstanding efforts of the Courts, some ambiguity as to when legitimate expectations arise persisted, and in response, Lord Justice of Appeal, John Laws proposed the aspiration of "good administration" as a justification for the protection of legitimate expectations in the case of ***Nadarajah v. Secretary of State for the Home Department***[8]**.**

6 [1984] 3 WLR 1174

7 [2001] Q.B. 213

8 [2005] EWCA Civ 1363

21. The doctrine of legitimate expectation was first introduced to Indian jurisprudence in the case of ***State Of Kerala & Ors. vs. K.G. Madhavan Pillai & Ors.***[9]. In the aforesaid case, the government had issued a sanction in favour of the respondent therein to open a new school and to upgrade certain already existing schools. However, subsequent to the abovementioned sanction, a new direction was given by the government to keep the said sanction in abeyance. This Court, while deciding the said issue, was of the opinion that the original sanction given by the government gave rise to a legitimate expectation in the minds of the respondents. This legitimate expectation was however breached by the subsequent direction for abeyance, and hence there was a violation of the principles of natural justice. The relevant observations in this regard from the said judgment are being reproduced hereunder:

9 (1988) 4 SCC 669

"...In other words once the Government approves an application for opening a new unaided school or a higher class in an existing unaided school and passes an order under Rule 2-A(5), then the successful applicant acquires a right of legitimate expectation to have his application further considered under Rules 9 and 11 for the issue of a sanction order under Rule 11 for opening a new school or upgrading an existing school. It is no doubt true, as pointed out by the Division Bench, that by the mere grant of an approval under Rule 2-A(5), an applicant will not acquire a right to open a new school or to upgrade an existing school but he certainly acquires a right enforceable in law to have his application taken to the next stage of consideration under Rule 11. The Division Bench was therefore, right in taking the view that the general power of rescindment available to the State Government under Section 20 of the Kerala General Clauses Act has to be determined in the light of the "subject matter, context and the effect of the relevant provisions of the statute".

22. In ***Navjyoti Coop. Group Housing Society & Ors. vs. Union Of India & Ors.***[10], the original policy for allotment of land to housing societies therein was based on the principle of seniority, and seniority under the said policy was decided on the basis of the date of registration. Subsequently, a change was made to the original policy, wherein the criteria for deciding seniority was changed from the date of registration to the date of approval of the final list. The said deviation from the original policy was challenged on the touchstone of legitimate expectation by the petitioners therein. This Court, while deciding on the said challenge, held that the original policy, as well as the past practice of allotting land, gave rise to a legitimate expectation to the parties therein of a predictable pattern of allotment, and the new change in policy broke such legitimate expectation. This interpretation by way of the

10 (1992) 4 SCC 477

abovementioned judgment, expanded the width of the doctrine of legitimate expectation further, and extended it to not just an explicit guarantee, but also to expectations arising out of past practice. The relevant observations of the said judgment, for a ready reference, are being reproduced hereunder:-

> *"It also appears to us that in any event the new policy decision as contained in the impugned memorandum of January 20, 1990 should not have been implemented without making such change in the existing criterion for allotment known to the Group Housing Societies if necessary by way of a public notice so that they might make proper representation to the concerned authorities for consideration of their viewpoints. Even assuming that in the absence of any explanation of the expression "first come first served" in Rule 6(vi) of Nazul Rules there was no statutory requirement to make allotment with reference to date of registration, it has been rightly held, as a matter of fact, by the High Court that prior to the new guideline contained in the memo of January 20, 1990 the principle for allotment had always been on the basis of date of*

registration and not the date of approval of the list of members. In the brochure issued in 1982 by the DDA even after Gazette notification of Nazul Rules on September 26, 1981 the policy of allotment on the basis of seniority in registration was clearly indicated. In the aforesaid facts, the Group Housing Societies were entitled to 'legitimate expectation' of following consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. The existence of 'legitimate expectation' may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public policy to justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a person's 'legitimate expectation' it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the discussions on 'legitimate expectation' at page 151 of Volume 1(1) of Halsbury's Laws of England, 4th edn. (re-issue). We may also refer to a decision of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER 935] . It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and

which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in registration by introducing a new guideline. On the contrary, Mr Jaitley the learned counsel has submitted that the DDA and/or Central Government do not intend to challenge the decision of the High Court and the impugned memorandum of January 20, 1990 has since been withdrawn. We therefore feel that in the facts of the case it was only desirable that before introducing or implementing any change in the guideline for allotment, an opportunity to make representations against the proposed change in the guideline should have been given to the registered Group Housing Societies, if necessary, by way of a public notice."

23. The doctrine of legitimate expectation was then further elaborated upon in the case of ***Food Corporation Of India vs. Kamdhenu Cattle Feed Industries***[11], wherein, this Court held that the duty of public authorities to act in a reasonable manner, entitles every person to have a legitimate expectation to be treated in such a reasonable manner. This legitimate expectation imposed on public authorities to act in a fair manner, as has been held, is imperative to ensure non-arbitrariness of state action. It was further held by this Court that while such a legitimate expectation might not by itself be an enforceable right, however, the failure to take into account such expectation may deem a decision of the public authority to be arbitrary. It is my opinion, that the above said decision rendered by this Court, remarkably weaves in the doctrine

11 (1993) 1 SCC 71

of rule of law, the doctrine of legitimate expectation, and the doctrine of arbitrariness together, and firmly roots the doctrine of legitimate expectation within Article 14 of the Constitution Of India. The relevant paragraphs of the said judgment are being reproduced hereunder:

> *"In our view, Shri A.K. Sen is right in the first part of his submission. However, in the present case, the respondent does not get any benefit there from. The High Court's decision is based on the only ground that once tenders have been invited and the highest bidder has come forward to comply with the conditions stipulated in the tender notice, it is not permissible to switch over to negotiation with all the tenderers and thereby reject the highest tender. According to the High Court, such a procedure is not countenanced by the rule of law. This is not the same as the submission of Shri Sen which is limited to permissibility of such a course only on cogent grounds indicated while deciding to switch over to the procedure of negotiation after receiving the tenders to satisfy the requirement of*

non-arbitrariness, a necessary concomitant of the rule of law. The proposition enunciated by the High Court which forms the sole basis of its decision is too wide to be acceptable and has to be limited in the manner indicated hereafter.

In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else

that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review."

24. Further, in the case of ***M.P.Oil Extraction & Anr. vs. State Of M.P. & Ors.***[12], this Court held that the doctrine of legitimate expectation operates in the sphere of public law and as such, is a substantive and enforceable right depending on the facts and circumstances of the case. The relevant paragraph from the said judgment is being extracted hereunder:-

"The renewal clause in the impugned agreements executed in favour of the respondents does not also appear to be

12 (1997) 7 SCC 592

unjust or improper. Whether protection by way of supply of sal seeds under the terms of agreement requires to be continued for a further period, is a matter for decision by the State Government and unless such decision is patently arbitrary, interference by the Court is not called for. In the facts of the case, the decision of the State Government to extend the protection for further period cannot be held to be per se irrational, arbitrary or capricious warranting judicial review of such policy decision. Therefore, the High Court has rightly rejected the appellant's contention about the invalidity of the renewal clause. The appellants failed in earlier attempts to challenge the validity of the agreement including the renewal clause. The subsequent challenge of the renewal clause, therefore, should not be entertained unless it can be clearly demonstrated that the fact situation has undergone such changes that the discretion in the matter of renewal of agreement should not be exercised by the State. It has been rightly contended by Dr Singhvi that the respondents legitimately expect that the renewal clause should be given effect to in usual manner and according to past practice unless there is any special reason not to adhere to such practice. The doctrine of "legitimate

> *expectation" has been judicially recognised by this Court in a number of decisions. The doctrine of "legitimate expectation" operates in the domain of public law and in an appropriate case, constitutes a substantive and enforceable right."*

25. While the abovementioned judgments discuss the breadth of applicability of the doctrine of legitimate expectations, however, such a right is not all encompassing, and as such has limitations placed on it. It is on these restrictions, as has been discussed in detail below, the respondent places their reliance on.

26. In the case of ***MRF Ltd. Kottayam vs. Assistant Commissioner Sales Tax & Ors.***[13], while analyzing the doctrine of legitimate expectation, this Court held that legitimate expectation, as a ground for challenge, can be done away with in circumstances wherein it has been

13 (2006) 8 SCC 702

demonstrated by the public authority that the withdrawal of the said expectation has been done on grounds of public interest. In simpler terms, this Court clarified that public interest takes precedence over a created legitimate expectation.

> *"The principle underlying legitimate expectation which is based on Article 14 and the rule of fairness has been re-stated by this Court in* ***Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer & Ors.***[14]*,. It was observed in paras 8 & 9:*
>
> *"A person may have a 'legitimate expectation' of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot*

14 (2005) 1 SCC 625

point to the existence of a substantive right to obtain the leave of the Court to apply for judicial review. It is generally agreed that 'legitimate expectation' gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then the decision maker should justify the denial of such expectation by showing some overriding public interest.

While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity

of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non- arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness."

[Emphasis supplied]

MRF made a huge investment in the State of Kerala under a promise held to it that it would be granted exemption from payment of sales tax for a period of seven years. It was granted the eligibility certificate. The exemption order had also been passed. It is not open to or permissible for the State Government to seek to deprive MRF of the benefit of tax exemption in respect of its substantial investment in expansion in respect of compound rubber when the State Government had enjoyed the benefit from the investment made by the MRF

in the form of industrial development in the State, contribution to labour and employment and also a huge benefit to the State exchequer in the form of the State's share, i.e. 40% of the Central Excise duty paid on compound rubber of Rs. 177 crores within the State of Kerala. The impugned action on the part of the State Government is highly unfair, unreasonable, arbitrary and, therefore, the same is violative of Article 14 of the Constitution of India. The action of the State cannot be permitted to operate if it is arbitrary or unreasonable. This Court in ***E.P. Royappa Vs. State of Tamil Nadu***[15]*, observed that where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. Equity that arises in favour of a party as a result of a representation made by the State is founded on the basic concept of "justice and fair play". The attempt to take away the said benefit of exemption with effect from 15.1.1998 and thereby deprive MRF of the benefit of exemption for more than 5 years out of a total period of 7 years, in our opinion, is highly arbitrary, unjust and unreasonable and deserves to be quashed. In any event the State Government has no power to make a retrospective amendment to SRO 1729/93 affecting rights already accrued to MRF there under."*

15 (1974) 4 SCC 3

27. Further, in the case of ***Howrah Municipal Corporation & Ors. vs. Ganges Rope Company Ltd. & Ors.***[16], it was held by this Court that no right can be claimed on the basis of legitimate expectation, when the said expectation is contrary to statutory provisions enforced in the public interest. Similarly, in the case of ***Madras City Wine Merchants Association & Anr. vs. State Of Tamil Nadu & Anr.***[17], It was held that the doctrine of legitimate expectation is rendered defunct in cases where the said expectation is rescinded by the public authority by way of a change in public policy because of public interest.

28. While a cursory reading of the abovementioned judgments on the limitations of the doctrine of legitimate expectation would show that the said doctrine would not

16 (2004) 1 SCC 663

17 (1994) 5 SCC 509

be available against policy or statutory change, a careful perusal of the same would show otherwise. The doctrine of legitimate expectation finds its home within the doctrine of rule of law and is a limb of Article 14 that fights against the contamination of arbitrary state action and misuse of power. In all the above mentioned judgments that discuss the limitations of legitimate expectation, what is most important, is the principle that public interest is supreme.

29. In such a circumstance, wherein all limitations on the doctrine of legitimate expectation rest on the touchstone of public interest, then, in cases where public interest itself is defeated by barring the applicability of legitimate expectation, the bar on the legitimate expectation must be removed. Further, it would also mean that for an amendment to claim a bar against legitimate expectation,

it must demonstrate that the said change in policy was constructed in public interest.

30. In simpler terms, on the basis of the abovementioned discussions, legitimate expectation can be inferred against a statute, provided that such a claim of legitimate expectation is in public interest, and for a statute to claim a bar against legitimate expectation, it must demonstrate that the shift in policy is for the advancement of public interest.

31. To elucidate on why such a blanket bar on the invocation of legitimate expectation against a statute is contrary to the rule of law, we must first take such an interpretation to its logical conclusion. If the aforesaid interpretation is adopted, then the state, by way of amendments, can entice persons and institutions to act in

a certain manner with the expectation of a certain outcome, and suddenly, without any demonstration of public interest, rescind the same. Such a scenario, if allowed to manifest into reality, would remove any and all certainty of the legal system, and directly become an antithesis to the rule of law. Further, if a blanket bar of the doctrine of legitimate expectation against a statute is to be allowed, no domestic or foreign investor would ever invest in local business and ventures, as any legitimate expectation by way of a statute would translate only to a façade, as such a benefit could be snatched away arbitrarily at any point in time. Hence, any contrary interpretation of the doctrine of legitimate expectation, would cause great havoc, and only cause detriment to the rights of individuals and the society at large.

32. Further, it must be borne in mind that the doctrine of legitimate expectation and the doctrine of promissory estoppel are two separate principles, and as such, the blanket ban on promissory estoppel against a statute cannot be applicable to the doctrine of legitimate expectation.

33. The doctrine of promissory estoppel and the doctrine of legitimate expectation, while they share a common root and a similar theme, by way of going through the rigours of common law, have developed into two distinct doctrines. The doctrine of promissory estoppel is a remedy in private law; however, the doctrine of legitimate expectation is a remedy in public law, and as stated above, is rooted in Article 14 of the Constitution of India.

34. Such a distinction between public law and private law becomes important, because once a law enters the public sphere, it affects the rights of the society, and thus becomes liable to a stricter level of scrutiny, and as such, becomes more susceptible to judicial review.

35. In light of the abovementioned discussions, and to bring clarity to the scope and limitations of the doctrine of legitimate expectations, I find it essential to chart out the following principles for the application of legitimate expectations:

I. **The expectation must be reasonable:** The expectation of the individual or group must be reasonable and not based on any arbitrary or irrational grounds. The expectation must be based on

an established practice or a clear promise made by the public authority.

II. <u>The expectation must be based on a clear representation</u>: The expectation must be based on a clear and unambiguous representation made by the public authority.

III. <u>The representation must be made by an authorized person:</u> The representation must be made by an authorized person or body within the public authority. The authority must have the power and competence to make such a representation.

IV. <u>The representation must be legitimate</u>: The representation made by the public authority must be legitimate and not against any law or policy. It must

also not be against any public interest or public policy.

V. <u>The public interest must be demonstrated:</u> If a legitimate expectation is being taken away by way of a modification to an existing policy on grounds of public interest, such public interest must be demonstrated by the said modification.

VI. <u>Public Interest must supersede change in policy:</u> In cases where a legitimate expectation is being taken away by way of a modification to policy, such modification must not be antithesis to public policy, and if such a modification runs counter to public interest, the remedy of legitimate expectation would become exercisable.

VII. <u>The expectation must be based on a legitimate interest</u>: The expectation must be based on a legitimate interest of the individual or group. It must not be based on any vested interest or personal gain.

VIII. <u>The expectation must be protected</u>: Once a legitimate expectation is created, it must be protected and not arbitrarily or capriciously withdrawn by the public authority. The public authority must provide a reasonable opportunity for the individual or group to be heard before any decision is taken to withdraw or modify the expectation.

<u>APPLICATION OF LEGITIMATE EXPECTATION IN THE PRESENT FACTUAL MATRIX</u>

36. A tax holiday was granted to new small scale industrial units involved in the manufacture of tea for a specified period of time under Section 39 of the Bengal Finance (Sales Tax) Act, 1941 (hereinafter referred to as the '1941 Act') read with Section 17(3)(1)(xi) of the said Act with Rule 52 of the West Bengal Sales Tax Rules, 1995.

37. It is important to note that at this period, statutorily, blending of tea was read under the definition of "manufacture", and as such, the tax holiday was also applicable to small scale industrial units involved in the blending of tea.

38. Subsequent to such a tax holiday being granted, the appellants herein, relying upon the assurance and faith made by the government, set up small scale industrial units, and got the necessary authorizations to certify them

as the same. However, by way of an amendment in the West Bengal Finance Act, 2001, the words “blending of tea” were omitted from the definition of “manufacture”, as a consequence of which, the appellants herein became ineligible to claim benefit under the tax holiday.

39. From an understanding of the facts, it can be clearly seen that the tax holiday, granted by way of an amendment to small scale industries involved in the manufacture and blending of tea, created a legitimate expectation in favour of the appellants herein. Such a legitimate expectation, created by way of an amendment, lured the appellants to pour their hard earned money into setting up small scale industrial units, under the assumption that the authority would hold true to its promise, act in a fair manner and abide by the decision made by it.

40. This legitimate expectation, created by the appropriate and competent authority, was broken when a subsequent amendment was brought in, wherein the words “blending of tea” was removed from the definition of “manufacture”. Such an amendment, by removing the said words, snatched away the legitimate expectation of a specific outcome, and ousted the appellants from claiming the tax holiday, to which they were promised by the original amendment. As can be seen, a reasonable legitimate expectation was created by the competent authority, which lured the appellants to act in a certain manner. Such a legitimate expectation was then snatched away, leaving the appellants without remedy, and in losses.

41. To justify such a shift in policy, and snatch away the legitimate expectation created in favour of the appellants,

the public authority must demonstrate the reasons for such a shift, and while giving its justifications, must take into consideration the rights of the affected persons, and why the snatching away of such rights is essential for the state to advance public interest.

42. In the present case at hand, while perusing through the subsequent amendment, it can be clearly seen that no such appropriate justification has been provided by the government. No appropriate reason for the enactment of the amendment, nor the considerations of the affected party have been discussed. In my opinion, a mere claim of change of policy is not sufficient to discharge the burden of proof vested in the government. The government must precisely show what the change of policy is, and why such a change of law is in furtherance of public policy, and the public good.

43. In light of the factual matrix herein and the abovementioned discussions, it can be clearly seen that a legitimate expectation was created by the public authority, and such an expectation, accrued in the favour of the appellants herein, was rescinded by the said authority without any demonstration of public interest. No appropriate explanation has been provided as to why a shift was made in Law, and why such a shift, in spite of the loss which would occur to the appellants and similarly situated persons, was necessary to advance public interest. In such a circumstance, the legitimate expectation created in the minds of the appellants, must be protected, and the benefits given originally must be made applicable to the appellants herein for the period promised by the respondent authority.

CONCLUSION

44. The doctrine of legitimate expectation, as has been mentioned above, is a facet of Article 14, and is essential to maintain the rule of law. Such a doctrine, which ensures predictability in the application of law, in its very essence, fights against the corrosion of the rule of law, and prevents arbitrary state action.

45. For a democratic state to function on the principles of equality and justice, the state must be ruled, not by its ruler, but by the law. In such a circumstance, to prevent such a contamination of the rule of law, the application of the doctrine of legitimate expectation becomes most important. If a state is allowed to make promises, and rescind the same without justification or explanation, it would lead to a situation wherein every action of the state

would be bereft of accountability, and every person governed by the laws of this country would live in a state of fear and unrest, causing a chilling effect on the civil liberties of the people.

46. Hence, I am of the opinion that in the present case at hand, the Authority must be held accountable to the legitimate expectation created by it, and therefore, a direction is liable to be issued to the respondents herein to extend the benefits of the original amendment to the appellants herein, till the expiry of such a benefit as per the original amendment. In light of the same, the present batch of civil appeals are allowed.

……..……..……,J
(KRISHNA MURARI)

NEW DELHI;
12TH MAY, 2023