A STATE OF MADHYA PRADESH AND ORS.

v.

ORIENT PAPER MILLS LTD.

DECEMBER 7, 1989

B [M.M. PUNCHHI AND S. RANGANATHAN, JJ.]

Administrative Law: Promissory estoppel—Industrialists generating power through their own new generating sets—Assurance given by Government—Electricity duty exemption—Effect of.

C *Constitution of India, 1950: Article 136—Interference with factual findings—Only in exceptional cases.*

Madhya Pradesh Electricity Duty Act, 1949: Section 3-B—Electricity duty—Exemption—Notification—High Court granting relief without ordering issuance of notification—Whether amounts to transD gression.

In its industrial policy, the State Government declared on 1.8.1961 that where power has to be generated by industrialists themselves, exemption from electricity duty would be granted for a period of five years from the date of plant goes into production, and E that the concession would be applicable only to new generating sets installed during the Third Plan period.

The Respondent indicated to the Government on 3.5.1955 that about 5000 K.W. of electricity would be required by it to run its paper plant and that it would by itself make arrangements for obtaining the F necessary generating equipment. It also applied for import licence for the import of a production plant as also a power plant to run it. The import licence was granted and the Respondent started negotiation with the foreign supplier. Since the price had gone up it was rather impossible for the Respondent to import both the production plant and the power plant, and if the power plant was not purchased along with the G production plant, it would make the project unsound. Hence the Respondent was in two minds whether to have the power plant or not. Meanwhile, the above said industrial policy was announced and the Respondent on installation of the power plant was able to start its production w.e.f. 16.2.1965.

H **Thereafter to formalise the matter, the Respondent corresponded**

with the appellant for the grant of the requisite exemption, which was rejected, and the Respondent approached the High Court by way of a petition under Articles 226 and 227 of the Constitution of India. The High Court held that the Petitioner was entitled to invoke the doctrine of promissory estoppel in order to claim exemption from payment of electricity duty for a periof of five years from 16.2.1965 in terms of the assurance of the State Government dated 1.8.1961. A B

Against this order of the High Court the State has come in appeal by Special Leave.

On behalf of the appellant-State it was urged that there was no occasion to invoke the doctrine of promissory estoppel, since the Respondent had not in any manner acted on the assurance of the Government to its own prejudice but on its own it was taking steps to set up a generating plant much before the industrial policy was announced. C

Dismissing the appeal, this Court, D

HELD: 1. Whether the respondent was of one mind right from the beginning to set up a power plant, with or without the assurance of the State Government dated 1.8.1961, as asserted by the State, is neither borne out nor is the view of the High Court arrived at from the record. On the contrary, the view taken is that the respondent's indecision in that regard ended and it became decisive on the announcement of the assurance dated 1.8.1961. Such view of the High Court was a possible view to be taken on the material placed before it and the inference drawn therefrom could be that the respondent had acted on the basis of the assurance. [441E-F] E

2. This Court ordinarily does not interfere with factual findings arrived at by the High Court and this case has not been shown to be an exception. The view taken by the High Court was unexceptional warranting it to be left uninterferred with. [441F] F

3. Without commanding the State Government to issue such a Notification, the High Court has granted relief to the respondent to which there was no bar. Accordingly no provision of Madhya Pradesh Electricity Duty Act, 1949 or any other law can be said to have been transgressed. [442A] G

CIVIL APPELLATE JURSIDICTION: Civil Appeal No 498 of 1975. H

A From the Judgment and Order dated 31.7.1974 of the Madhya Pradesh High Court in Misc. Petition No. 316 of 1973.

Prithvi Raj, Satish K. Agnihotri and Ashok Singh for the Appellants.

B Shankar Ghosh, Vivek Gambhir and Parveen Kumar for the Respondent.

The Judgment of the Court was delivered by

PUNCHHI, J. This is an appeal by special leave against the judgment and order of the High Court of Madhya Pradesh at Jabalpur C whereby the petition under Articles 226 and 227 of the Constitution of India preferred by Orient Paper Mills Ltd., the sole respondent herein, was allowed and sequally the order dated 15.3.1973 of the State Government declining to grant the respondent exemption from payment of electricity duty for the period from 16.2.1965 to 15.2.1970 D and pursuant demand notices dated 20.3.1973 and 3.4.1973 were quashed. The aggreived State of Madhya Pradesh and its concerned Officers are the appellants challenging the same

The respondent had neea to go to the High Court to have an assurance dated 1.8.1961 regarding exemption from payment of elect- E ricity duty given by the State of Madhya Pradesh in its declared industrial policy observed, which may well be reproduced here at the outset:

> "Where power has to be generated by industrialists themselves, exemption from electricity duty shall be granted for a period of five years from the date of plant F goes into production. The concession shall be applicable only to new generating sets installed during the Third Plan period."

Factually it was not disputed before the High Court, that the case of the respondent squarely fall within the scope of the assurance repro- G duced above since the industrial plant of the respondent had gone into production w.e.f. 16.2.1965, the generating set put up was new, and had been installed during the Third Plan period. To formalise the matter, the respondent had corresponded with the Government for the grant of the requisite exemption. Since the same was rejected and demands for payment of electricity duty created, the High Court was H requested to issue suitable writs, directions and orders cancelling the

aforesaid orders and demand notices and granting exemption from payment of electricity duty in respect of electricity self-generated by the respondent during the said period of five years, and also commanding the State to carry out the assurance and promises made in the said industrial policy dated 1.8.1961 extracted above and then requiring the State to issue a Notification under Section 3-B of the Madhya Pradesh Electricity Duty Act, 1949 granting exemption or exception to the respondent from payment of electricity duty and other allied consequential reliefs.

Before the High Court voluminous documentary evidence was given by the parties in support of their respective pleadings. The High Court, on consideration of the entire material placed before it, spelled out a promissory estoppel in favour of the respondent and concluded as follows:

> "To conclude, we are of opinion that the petitioner is entitled to invoke the doctrine of promissory estoppel in order to claim exemption from payment of electricity duty for a period of five years from 16.2.1965 to 15.2.1970 in terms of the assurance of the State Government, dated 1.8.1961. Of course, as indicated earlier it is not for us to issue any writ directing the State Government to grant the petitioner exemption in terms of S. 3-A (vii) or Section 3-B of the M.P. Electricity Duty (Amendment) Act, 1949. But in view of the unambiguous and unequivocal assurance given by the State Governmet on 1.8.1961 we can certainly quash the order of the State Government, dated 15.3.1973 as also the demand notices, dated 20.3.1973 (Petitioner's Annexure-48) and dated 3.4.1973 (Petitioner's Annexure 50) and leave the matter at that. It would be for the Government to work out its own course of action on that basis."

Mr. Prithvi Raj, learned counsel for the appellant urged that on the facts and circumstances of the case there was no occasion to invoke the doctrine of promissory estoppel. It was asserted that though the industrial policy was published by the State Government on 1.8.1961 containing the assurance extracted above, the respondent had not in any manner acted thereon to its own prejudice, but nad rather on its own been taking steps to set up a generating plant much before the industrial policy was announced and had factually set up the generating plant as per its earlier resolve. The facts highlighted were that the

A respondent Paper Mill, had been set up at Amlai in Vindhya Pradesh, when a Part-C State under the administration of the Central Government. It had in its application dated 3.5.1955 to the Government indicated that about 5000 K.W. electricity would be required by it to run its paper plant and it would by itself make arrangements for obtaining the necessary generating equipment. It appears that the State Government had at that time its own project in view for installing a power plant. On that basis some correspondence ensued between the respondent and the State Government with regard to its annual requirement of electricity. That exercise was abandoned for some reasons which are not relevant here. Thereafter the respondent applied for import licence for the import of a production plant as also a power plant to run it. The respondent was granted an import licence on the strength of which it started negotiation with an American supplier. While negotiations were in process the American supplier increased the price. It became impossible for the respondent to import the production plant and the power plant within the funds allotted to it by the World Bank and in these circumstances, the American suppliers advised the appellant to drop procurement of the power plant. At the same time the American supplier warned the respondent that if the power plant was not purchased along with the production plant, it would make the project unsound and it would not be able to fulfil its guarantees as desired by the respondent. The respondent in these circumstances became of two minds, whether to have the power plant or not. When it was in that state of mind, the industrial policy was announced by the Government on 1.8.1961. Thereafter, on 21.8.1961, the respondent applied to the Government of India for sanction of permission to import 3.5 million dollar worth goods more than the sanctioned amount. Finally, the respondent with the consent of the Government of India and with the aid of the World Bank was able to import the production plant and the power plant and after its installation was able to go on production w.e.f. 16.2.1965.

The course of the events set out earlier were not disputed as such by the appellants before the High Court but it was maintained as now before us, that the respondent would have on its own gone on to instal the power plant even without the announcement of the industrial policy dated 1.8.1961. Additionally, it was maintained, in the like manner, that the respondent had not acted to its prejudice on the basis of the aforesaid assurance dated 1.8.1961 and so that doctrine of promissory estoppel was not invokable. The defence of the State thus raised was rejected by the High Court in the following words:

"We have already dealt with that aspect earlier and we have already held that the petitioner's action in setting up a power plant was postponed on account of certain circumstances and ultimately on the advise of the manufacturers who refused to continue the guarantee, the petitioner decided to set up its own power plant. In the meantime, the assurance of the State Government, dated 1.8.1961 had already been given and the petitioner's action in making a final decision to set up its own power plant can be directly connected with the State Government's assurance dated 1.8.1961. No sooner the petitioner took the final decision in that behalf, it applied to the State Government for grant of an exemption, although that application was premature, because the petitioner's paper mill had not started functioning. As such, the petitioner would certainly be entitled to claim exemption in terms of the assurance of the State Government dated 1.8.1961 with effect from the date the paper mill started functioning, namely, 16.2.1965 and the exemption would last for a period of five years upto 15.2.1970."

Whether the respondent was of one mind right from the beginning to set up a power plant, with or without the assurance of the State Government dated 1.8.1961, as asserted by the State, is neither borne out nor is the view of the High Court arrived at from the record. Rather, on the contrary, the view taken is that the respondent's indecision in that regard ended and it became decisive on the announcement of the assurance dated 1.8.1961. Such view of the High Court was a possible view to be taken on the material placed before it and the inference drawn therefrom could be that the respondent had acted on the basis of the assurance. The effort here to re-do the exercise in this regard must inevitably fail, for this Court ordinarily does not interfere with factual findings arrived at by the High Court and this case has not been shown to us to be an exception. In this situation, the view taken by the High Court was unexceptional warranting it to be left uninterferred with.

Some attempt was made by learned counsel for the appellant to contend that the doctrine of promissory estoppel could not be pressed into service to command the State Government under Section 3-A (vii) (before its amendment) and Section 3-B of the Madhya Pradesh Electricity Duty Act, 1949 (as amended) to issue a Notification exempting the respondent from payment of electricity duty. The

A answer to this argument is available in the conclusion arrived at by the High Court extracted above. Without commanding the State Government to issue such a Notification, it has granted relief to the respondent to which there was no bar. Accordingly, no provision of Madhya Pradesh Electricity Duty Act, 1949 or any other law can be said to have been transgressed. We thus reject this argument too.

B

Thus for the foregoing reasons this appeal fails and is hereby dismissed. No costs.

G.N. Appeal dismissed