

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

OWP No. 1518/2012

IA No. 1/2012

*Reserved on: 12.09.2023*

*Pronounced on: 19.09.2023*

Hotel Ashai Srinagar & Ors.

...Petitioner(s)

Through: Mr. Altaf Haqani, Sr. Advocate.

**V/s**

STATE OF J AND K AND ORS.

...Respondent(s)

Through: Mr. Ilyas Laway, GA, for R 1 -3.

Mr. T.M.Shamsi, DSGI, for R-4.

Ms. Izzat Fatima, Advocate, for R-5

**Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE**

**JUDGMENT**

- 1.** The instant Petition has been filed by the petitioners jointly, who claim to be the owners of various hotels/guest-houses in the UT of Jammu and Kashmir. According to learned counsel for the petitioners, all the petitioners' hotels are duly registered with the competent authority i.e., Directorate of Tourism, Government of Jammu and Kashmir, under the provisions of Jammu and Kashmir Registration of Tourist Trade Act, and with a view to substantiate their claim, the petitioners have placed on record respective certificates of registration.
- 2.** The specific case, which has been projected by the petitioners, is that the tourism constitutes backbone of the hotel industry in the UT of J&K in general and Valley of Kashmir in particular. The hotel industry was exposed and subjected to fatal setback due to

the eruption of unprecedented state of turmoil in the Valley of Kashmir since 1990. It has been further pleaded that consequent to the setback caused to the hotel sector due to militancy, the hotel owners in the Kashmir valley were put to peril and the hotel owners, like the petitioners, were put to enumerable hardships and difficulties in the nature of recurring loss of income, overburdening of financial liabilities like loans, establishment and maintenance expenses and thus, in this back drop the hotel industry has suffered a lot. To combat the consequences of prolonged turmoil, Government of India has promulgated several schemes for revival of various infrastructural projects and with a view to achieve the said object by the Government to create employment for revival of tourism in the Valley of Kashmir, a special package was sanctioned by the Ministry of Tourism vide Notification bearing No. 13(18)/2003-MRD dated 08.09.2003. Through the medium of the aforesaid notification issued by Government of India, various guidelines were laid down and the package was made effective from the said date.

- 3.** From the perusal of the policy mentioned supra, the expenditure was ordered to be debited by the State Government (now UT) as Grant-in-Aid to the account of Government of India.
- 4.** Learned counsel appearing for the petitioners relying upon the aforesaid policy and the guidelines, submits that the package for rehabilitation by way of soft loan of Rs.50,000/- per room, for renovation and refurbishing 50% of the rooms of A, B, C and D category hotels (except Five Star Hotels) was prescribed. The

policy and guidelines further provides that the Banks would provide loans to the hotels and Guest Houses and the Ministry of Tourism, Government of India, would provide subsidy so that the hotel/guest-house owners get the loan at 4% interest. The guidelines further explicitly provide that the benefit would be available at the rate of Rs.50,000/- loan amount per room for upto 50% of the capacity of the hotels/guest-houses and the subsidy would be limited to difference between the principal loan released at 4%. Learned counsel further submits that the case of the petitioners is covered by the aforesaid policy, and thus, are eligible to seek the benefit coming in the category as per the norms. The further case of the petitioners, is that the notification/guidelines provide that the eligible parties would approach the concerned Bank, which shall process the case for sanction of loan for renovation and refurbishment of the rooms and that the parties would be eligible to claim interest subsidy for loans. The policy further provides that the interest would be subsidized by the Government of India so that the loans are available to the eligible hotels/guest-houses at 4%.

- 5.** With a view to process the cases of the various hotels/guest-houses a Coordination Committee was also constituted with Secretary Tourism, Government of J&K as its Chairman and the State level representatives of the Bank as its members, and the said Committee was required to approve the cases eligible for the benefit under the said Scheme. It was incumbent on the part of the Banks to sanction the loans and pursuant thereto, the cases were

required to be placed before the said Committee constituted in this regard and the said Committee was required to submit its recommendations to the Department of Tourism, Government of India, for the release of funds in each case.

- 6.** In terms of the notification/guidelines mentioned supra, funds were required to be released to the Banks based on interest burden worked out by the Banks so that the eligible hotels would bear interest to the extent of 4%. As per the policy, the amount was to be released by the Government of India to the erstwhile State Government (presently UT) which was to be deposited to the Banks in advance, so that the same could be credited to the loan accounts of the beneficiaries with the interest earned by deposits to be used for the scheme.
- 7.** The specific case, which has been advanced by the learned counsel for the petitioners, is that the petitioners being fully eligible in terms of the aforesaid scheme were granted soft loans at Rs.50,000/- per room upto 50% of the capacity of the respective hotels/guesthouses, the details of which are enumerated as:-

Particulars	Category	Room strength	Date of release of soft loan by the Banks	Amount of loan (Rs. in lacs)
Petitioner No.1	Guest House	22	2004	5.00
Petitioner No.2	A	27	-do-	6.75
Petitioner No.3	A	21	-do-	5.50
Petitioner No.4	A	27	-do-	6.75
Petitioner No.5	A	68	-do-	17.00

- 8.** Learned counsel further submits that the respondents 1 to 3 referred the case of each of the petitioners to different Banks/Institutions for the purpose of process and release of soft

loan strictly in conformity with the scheme. Further case of the petitioners is that while sanctioning and releasing the soft loan component as per the procedure envisaged under the scheme, the lending Banks have worked out the tenure of loan/repayment schedule fixing the same for a period of ten years including moratorium period of nine months, thereby worked out the monthly interest component of 4% to be borne out by the petitioners on the principal amount of loan release/outstanding by taking into consideration the amount of interest subsidy to be released by the Government of India to the lending Banks directly. According to the learned counsel for the petitioners, all the petitioners have been sanctioned the soft loans by the respective Banks well within the cut-off date, strictly in conformity of the scheme and each one of them have deposited the entire amount of 4% interest with the respective Banks, as per the schedule/amount fixed by the Bank. Specific case of the petitioner is that none of the petitioners are in arrears towards liquidation of the amount of 4% interest element.

- 9.** Learned counsel appearing for the petitioners further submits that although the amount has been released by the Government of India for meeting the interest subsidy amount of each of the petitioners, yet the said amount has been diverted to other purposes, which were not at all covered by the scheme.
- 10.** With a view to fortify the claim, the petitioners have obtained the relevant information from the respondents under RTI Act, which reveals that against the amount of Rs.1600.00 lacs, only an amount

of Rs.186.34 lacs have been appropriated for revival of the hotels/guest-houses. Learned counsel further submits that the information with respect to the total amount of interest subsidy released by the Government of India towards revival of hotels/guest-houses under the scheme, has deliberately been withheld and not provided to the petitioners under RTI Act. The specific case, which has been advanced by learned counsel for the petitioners, is that the petitioners even approached the respondents individually and also through their Union for transfer of the balance amount of interest subsidy to the respective Banks in terms of the scheme but without any tangible results. Further case of the petitioners is that since the petitioners were faced with financial liability viz-a-viz the Banks coupled with its multiplication due to application of periodical interest have been reasonably apprehending the action likely to be taken by the lending Banks for recovery and thus, exposing them to manifest loss and injury.

**11.** Learned counsel for the petitioners vehemently argued that the failure on the part of the respondents to release the interest amount in favour of the petitioners through their respective lending Institutions/Banks is violative of the guidelines provided in the said scheme. Learned counsel further submits that the petitioners have been lured by the formulation of the said scheme to seek benefit and failure on the part of the respondents to act in conformity with the said scheme is violative of the law of promissory estoppel. Learned counsel further submits that they have not acted under law upon the promises rendered by the

respondents as per the scheme and due to the inaction on the part of the respondents, petitioners have suffered to recurring loss. Respondents, as such, are under legal obligation not to resile from their liability to release the interest amount to the petitioners through their Banks/lending institutions. According to the learned counsel for the petitioners the public authorities are required to act honestly and *bonafidely*.

**12.** Feeling aggrieved of the inaction on the part of the respondents instant petition has been filed with a direction as sought against the respondents in the nature of mandamus to release the entire amount of interest subsidy in favour of the petitioners through their respective soft loan accounts maintained with their respective Banks, strictly in accordance with the scheme which has been formulated by the Government of India for revival of the hotels/guest-houses, with further direction restraining the respondents not to initiate any action for recovery of soft loans.

**13.** Reply has been filed on behalf of the respondents 1 to 3, in which it has been specifically admitted in Para-5 that the Ministry of Tourism, Government of India, has provided Central Financial Assistance of Rs.1600.00 lacs to Directorate of Tourism Kashmir for implementation of special package for tourism industry. The respondents have also tried to distinguish the petitioner No.1 and other petitioners by pleading that the case of the petitioner No.1 falls in the category of Guest House and the case of the other petitioners falls in the category of hotels of different categories. The further stand of respondents 1 to 3 taken in the reply affidavit

is that since the balance amount has not been released by the Central Government and this precisely is the reason that the amount could not be liquidated but the respondents in the reply affidavit did not dispute entitlement of the petitioners for the said benefit as envisaged under the said scheme. Specific stand taken by the respondents 1 to 3 in the reply is that the funds have been utilized only for the purpose released for and no diversion, as alleged by the petitioners, has been made.

**14.** Learned counsel for the respondents has referred to the policy/guidelines which have been formulated for rehabilitation of tourism industry in the Kashmir Valley with particular reference to Clause-iii of the Column relating to implementation details, which provides that the Co-ordination Committee would be set up with Secretary Tourism, Government of Jammu and Kashmir as Chairman and State Level representatives of the Banks, which Committee would approve the cases which would be eligible for the benefit under the scheme. He further submits that all the cases were required to be placed before the Committee after the Banks have sanctioned the loans and it was incumbent upon the Committee to submit its recommendation to the Department of Tourism, Government of India, for release of funds, and thus, according to learned counsel, the erstwhile State Government was acting as facilitator on behalf of the Government of India to carry out the objects of the said scheme.

**15.** Mr. T.M.Shamsi, learned DSGI, appearing for respondent No.4, submits that he relied upon the policy framed by the Government



of India in this regard. He further submits that it was incumbent on the part of the erstwhile State Government to have placed indent before the Union of India for the amount to be released in favour of the lawful claimants as per the scheme and subject to placement of the indent, the amount has not been sanctioned by the Government of India.

**16.** Respondent No.5 has also filed reply, in which it has referred to the said scheme under which loan has been sanctioned. In the said reply affidavit, respondent No.5 has reproduced the guidelines of the said scheme. Respondent no.5 in the reply affidavit has specifically stated that since December 2008, no interest subsidy had been paid by the concerned Department despite regularly being claimed from them on quarterly basis and the said interest subsidy has been claimed upto June 2012. Further stand of respondent No.5 is that since no funds were received by the Bank in advance and the interest subsidy claims were submitted on quarterly basis for reimbursement for credit in the respective loan accounts resulting into a huge amount of subsidy amounting to Rs.14.41 crores unpaid to the Bank with the said Department upto June 2012 and not having been paid since December 2008.

**17.** Reply has not been filed on behalf of respondent No.6 nor there is any representation on behalf of the said respondent No.6.

**18.** Heard learned counsel for the parties at length and perused the record.

**19.** With the consent of learned counsel for the parties, the instant petition is taken up for final disposal at this stage.

**20.** The instant case revolves around the promises made by the Government to the petitioners, which, however, were not fulfilled, resulting in enumerable hardships and difficulties to them, in the nature of recurring loss of income, overburdening of financial liabilities, like loans, establishment and maintenance expenses. The true “principle of promissory estoppel” is where one party has by his words or conduct made to the other a clear and unequivocal promise 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 is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it. It is not necessary, in order to attract the applicability of the doctrine of promissory estoppel that the promisee acting in reliance of the promise, should suffer any detriment. The only thing necessary is that the promisee should have altered his position in reliance of the promise.

**21.** The jurisdiction of the High Court while exercising the powers under Article 226 of the Constitution of India is not restricted only to the review of the administrative actions and executive decisions of the State but also extends to the applicability of the "doctrine of promissory estoppels" of which the whole object is to see that the Government sticks to its promise and abides by it. I am supported by the law laid down in this regard in case titled *Tapri Oil Industries and Anr. etc. v. State of Maharashtra and Ors., AIR 1984 Bom. 161*, wherein the Court held that:-

*"The jurisdiction of the High Court under Article 226 of the Constitution is not restricted only to the review of the administrative actions and executive decisions of the State and in the light of the extended applicability of the doctrine of promissory estoppel of which the whole object is to see that the Government strikes to its promise and abides by it."*

Further, the Court held that:-

*"The law may, therefore, now be taken to be sensed as a result of this decision (Anglo Afghan Agencies Case) that where the Government makes a promise knowing or intending that it would be acted on by the promisee and in fact the promisee acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government."*

**22.** The Apex Court in case titled *Union of India and Ors. v. Godfrey*

*Philips India Ltd., (1985) 4 SCC 369*, has held as under:-

*"There can, therefore, be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel."*

*"The doctrine of promissory estoppel represents a principle evolved by equity to avoid injustice and though commonly named promissory estoppel; it is neither in a realm of contract nor in the realm of estoppel."*

**23.** In *Motilal Padampat Sugar Mills Co. (P) Ltd. Vs. State of U.P*

*and Ors.* reported as *1979(2) SCC 409*. the Court observed as

under:-

*"The true principle of promissory estoppel is that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relationship 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 is made and it is infact so acted upon by the other party, the promise 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, and this would be so irrespective whether there is any pre-existing relationship between the parties or not.”*

Further the Court has observed that :-

*“In applying this doctrine to the Government, no distinction can be made between the exercise of a sovereign or governmental function and a trading or business activity of the Government. Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it.”*

**24.** In another judgment rendered in ***Gujarat State Financial Vs.***

***Lotus Hotels Pvt. Ltd.,*** reported as

***AIR 1983 SC 848,*** the Apex Court has observed as:-

*“..If appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the respondent. In such a situation, the Court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty...”*

**25.** To sum up, the underlying principle is that in matters of disputes relating to promissory estoppel with the State and its instrumentalities there is no absolute bar to exercise the writ jurisdiction and the High Court should take a holistic view and

