

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

TUESDAY, THE 10TH DAY OF JANUARY 2023 / 20TH POUSHA, 1944

WP (C) NO. 16882 OF 2019

PETITIONER/S:

VASU COCO RESORTS PRIVATE LIMITED,
VASUNDHARA SAROVAR PREMIERE RESORT, VP
II/326B, VAYALAR, CHERTHALA, ALAPUZHA-688536, REPRESENTED
BY ITS ACCOUTS MANAGER, SRI.SURESH KUMAR, AGED 52
YEARS, SON OF NARYANAN EMBRANDHRI.

BY ADVS.
P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR

RESPONDENT/S:

- 1 THE STATE OF KERALA,
REPRESENTED BY ITS GOVERNMENT OF KERALA,
TOURISM DEPARTMENT, SECRETARIAT, 2ND FLOOR,
ANNEX II, SECRETARIAT, STATUE, THIRUVANANTHAPURAM-695001.
- 2 THE DIRECTOR,
DEPARTMENT OF TOURISM, PARK AVENUE, OPP.MUSEUMS COMPOUND,
THIRUVANANTHAPURAM-695001.
- 3 KERALA STATE ELECTRICITY BOARD LTD,
REPRESENTED BY ITS MANAGING DIRECTOR, VYDUHTI BHAVANAM,
THIRUVANANTHAPURAM-695004.

BY ADVS.
GOVERNMENT PLEADER JUSTIN JACOB
G.KEERTHIVAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
2.12.2022, THE COURT ON 10.1.2023 DELIVERED THE FOLLOWING:

JUDGMENT

Petitioner company since 2013 is running a five star hotel in Vayalar in Alappuzha District established, as a part of Tourism Promotion and, obtained High Tension electric connection from the Kerala State Electricity Board. The Government of Kerala vide order dated 26-09-2000 G.O.(MS)No. 537/2000/GAD Thiruvananthapuram, declared certain benefits to industrial units like Five Star Hotel as a part of promoting "Tourism" industry one of which was concession in electricity charges. As a result of the aforementioned order dated 26-09-2000 G.O. (MS)No. 537/2000/GAD Thiruvananthapuram produced herein as Ext.P1, the first respondent, State Government undertook to pay the difference between the commercial tariff and industrial tariff as subsidy and the same order was adopted by the Kerala State Electricity Board vide Order No. 106/2001[Plg.Com 923/86] commercial cell dated 12-01-2001.

2. Taking into account of the said promise by the first respondent, petitioner established the Five Star Hotel unit and being an industry coming within the ambit of the Ext.P1 order, a claim for tariff concession for five years starting from 11-12-2013 to 10-12-2018 for the electricity consumed by them at the rate offered

as in the government order Ext.P1, by which the first respondent is liable to pay the entire amount to the third respondent Kerala State Electricity Board Ltd, was submitted. Repeated demands were made by the petitioner for the disbursal of the amount but of no avail. Thereafter, invoked jurisdiction of this Hon'ble Court through writ petition W.P.(C) No. 22526 of 2018 demanding the disbursal of the amount and this Hon'ble court, after considering that first respondent did not dispute the entitlement of the petitioner to the benefits under the impugned Government order therein, but since a large such applications are pending before them and budgetary allocations could not be done owing to large amount, directed the first respondent, State Government of Kerala to issue appropriate orders either sanctioning the amounts claimed by them or inform them as to why such amounts cannot be paid within six weeks thereon so that the petitioner can take his legal recourse forward as per entitlement, vide Judgement dated 07-02-2019 Ext.P2. Prior to the aforementioned writ petition, the petitioner had remitted the regular tariff in order to maintain the electricity connection.

3. While the judgment was alive, the first respondent herein, State Government of Kerala came up with an order on 21-02-2019 S.U (OLD) No. 75/2019/Tourism Date, Thiruvananthapuram, 21/02/2019 Ext.P3, withdrawing the concession/subsidy granted as

per order Ext.P1. The subsidy from 31/3/2015 was stopped for the reason that the government contemplated to implement special project to encourage the capital investment in the south Malabar districts, which are comparatively backward regarding the investment, and also proposed to give tax concession to big tourism projects. As the proposal is under active consideration of the Government of Kerala, the order Ext.P1 with effect from 31-03-2015 was withdrawn.

4. The first respondent on the basis of Ext.P3 order directed the second respondent the Director of Department of Tourism to prepare and forward suitable proposal for sanctioning the electricity subsidy due to the petitioner till 31-03-2015 vide letter No.B2/336/2018/Tour, Thiruvananthapuram, dated 01-04-2019 Ext.P4.

5. The petitioner, aggrieved by the order Ext.P3 whereby benefit of concessions made available to the petitioner was taken away approached this Hon'ble Court with the following prayers:-

1. To issue a writ of certiorari calling for the records leading to Exhibit.P.3 order issued by the first respondent, No. S.O.(S) No. 75/2019/Tourism, dated 21-02-2019 and quash the same;

2. To issue a writ, direction or order in the nature of mandamus or such other appropriate writ, direction or order directing the first respondent to disburse to the petitioner the electricity tariff concession eligible as per Exhibit.P.1 order forthwith;

3. To issue a writ, direction or order in the nature of mandamus or such other appropriate writ, direction or order

directing the first respondent to disburse/pay to the petitioner interest at the rate of 9% (nine percent) for the said delayed payment of amount due as per Exhibit.P.1 order till actual disbursement;

6. The case of the petitioner is that the stand taken by the first respondent is not in accordance with law, for the action of taking away the benefits of concessions promised by order Ext.P1 by promulgating a subsequent order Ext.P3 is inappropriate as all administrative orders are to be considered prospectively and not retrospectively.

7. Claim for the reimbursement of the subsidy as promised as under Ext.P1 for the period 11-12-2013 to November 2018 as evident from the additional exhibits brought on record by the petitioner vide certificates issued by the Kerala State Electricity Board Ltd are as follows;

The subsidy amount due from 11/12/2013 to 05/2014 is Rs. 19,31,552/- vide Ext.P5 dated 15-01-2016.

The subsidy amount due from 06/2014 to 11/2014 is Rs. 15,92,595/- vide Ext.P6 dated 15-01-2016.

The subsidy amount due from 12/2014 to 05/2015 is Rs. 16,20,385/- vide Ext.P7 dated 15-01-2016.

The subsidy amount due from 06/2015 to 11/2015 is Rs. 14,50,856/- vide Ext.P8 dated 15-01-2016.

The subsidy amount due from 12/2015 to 05/2016 is Rs. 14,53,507/- vide Ext.P9 dated 16-02-2017.

The subsidy amount due from 06/2016 to 11/2016 is Rs. 14,83,178/- vide Ext.P10 dated 16-02-2017.

The subsidy amount due from 12/2016 to 05/2017 is Rs. 15,96,121/- vide Ext.P11 dated 09-02-2018.

The subsidy amount due from 06/2017 to 11/2017 is Rs. 13,22,022/- vide Ext.P12 dated 09-02-2018

The subsidy amount due from 12/2017 to 05/2018 is Rs. 13,95,086/- vide Ext.P13 dated 15-02-2019.

The subsidy amount due from 06/2018 to 11/2018 is Rs. 11,21,902/- vide Ext.P14 dated 15-02-2019.

8. Hence the petitioner, through the writ petition seeks to quash Ext.P3 order and a direction to the first respondent, State Government of Kerala to disburse the electricity tariff concession eligible as per order Ext.P1 which amounts to a total of Rs. **14,967,204/-**.

9. Learned counsel for the petitioner submitted that the subsequent order of the State Government would not efface the earlier order to be taken retrospectively as all administrative orders are ordinarily considered prospective in nature. In support of the aforementioned contention, has sought reliance on **Kusumam Hotels (P) Ltd. vs. KSEB, (2008) 13 SCC 213 [2008 (3) KLT 276]** wherein the Supreme Court while considering similar proposition held that the impugned Government order denying concession must be held to have a prospective operation and not retrospective as it would save from being vulnerable to the challenge of being hit by Article 14 of the Constitution.

10. Learned counsel for the second respondent submitted a statement on their behalf assessing the viability of the order Exts. P1 and P3 and further submitted that the petitioner has no legal right to claim the subsidy with interest for the belated period. It was a prerequisite for applying for the subsidy tariff for it was mandatorily required to remit the electricity charges for claiming

subsidy. However the counsel for the second respondent sought this Hon'ble court's direction to provide subsidy to the petitioner only in due turn, after obtaining sufficient funds from the Government by seeking budgetary allocations or to locate funds through re-appropriation towards clearing up the pending subsidy amount upto 31-03-2015 subject to documents produced by the petitioner.

11. In the counter filed by the respondent, it was asserted that though the Government of Kerala, in the year 1986, declared tourism as an industry. It was made clear that those engaged in tourism promotional activities would automatically be eligible for the concessions/incentives as applicable for the industrial sector from time to time. However thereafter the Government vide order dated 26.9.2000, allowed the electricity tariff concession to specified tourism projects and also issued guidelines whereby the electric tariff concession/subsidy are allowable to classified hotels but the institutions like motels, amusement parks, recreation centers and institutions teaching surfing approved by State Government, restaurants approved by classification committee of Government of India Rope ways at tourist centers etc, as a matter of Government polity, has to facilitate tourism promotional activities in the state. It was made clear that the tariff concession will be made available to the units and was limited only for the first five years

from the date of effective certification by the department of tourism. Tourism units were required to have undertaken expansion and modernization after five years of availing concessional tariff for the further period of 5 years. In 2017 to avoid additional financial commitments, Government had taken a decision to take away with the current subsidies in line with the new tourism policy. The order Ext.P3 was issued after revoking the new electricity subsidy scheme and withdrawal of the concession granted earlier with effect from 31.3.2015. The petitioner has no legal right to claim the subsidy with interest for the belated period. In paragraph 10, it was averred that petitioner can be provided subsidy only in due turn, after obtaining sufficient fund from the Government.

12. The issue in the instant case is “whether the impugned order passed by the first respondent Ext.P3 shall be “prospectively or retrospectively construed” and “whether the petitioner shall be allowed to get reimbursement of the subsidy amount from the first respondent as promised under order Ext.P1”.

13. Government vide order dated 26.9.2000, Ext.P1 extended the promise of granting the subsidy to the persons under the following category in clause 2(a). The same reads as under:

2(a) The following types of units will be eligible for electricity tariff concession.

I. Classified Hotels (1 to 5 star, 5 star deluxe, heritage etc.)

II. Motels approved by Department of Tourism, Government of

Kerala.

III. Restaurants (approved by Classification Committee of Government of India)

IV. Amusement parks and Recreation centres approved by Department of Tourism, Government of Kerala.

V. Ropeways at tourist centres vi) Institutions teaching surfing, gliding, trekking and similar activities, which promote tourism, approved by department of Tourism, Government of Kerala viii.

Ayurveda centres with tourism potential approved by Department of Tourism, Government of Kerala. Viii. Heritage homes approved by Department of Tourism, Government of Kerala under Grihastali scheme.

14. The said promise was withdrawn vide impugned order dated 21.2.2019, Ext.P3. The relevant portion of the same reads as under:

“Department of Tourism-The Subsidy of electricity for being granted for the industrial units in the tourism has been stepped. Department of Tourism(B) S.U (OLD) No: 75/2019/Tourism Date Thiruvanthapuram,21/02/2019

Reference 1. Su(P) NO 224/1986/ PAD Date 11/07/1986

2. Su(p) No 14/1988 PAD Date 12/08/1998 3. Su(KAI) No 30/1997 PADDate25/08/1997

4. SU (p)363/1998/ PAD Date 02/06/1998 5. SU(KAI) 537/2000PADDate26/09/2000

6.Su(p) 408/2002PAD Date 09/12/2002 7.Su(p)157/2003/ PAD Date 10/03/2003 8. Su (KAI)284/2005/tourism Date 03/08/2005

9.State tourism Policy 2017

10.Letter No PC 6822/2009 Tourism Director dated 11/01/2019

ORDER

An order was issued as per reference (1) for the development of tourism sector, which declares the tourism as an industry, specify different units functioning in tourism sector and specify the measures for availing subsidies for this units. On the basis of this, order was issued as per reference (3) and (4) by taking measures for availing subsidies on electricity. As per the declaration regarding the new tourism policy of the government.

An order is issued to stop the electricity subsidy from 31/3/2015 in situation when the government is considering to implement special project to encourage the capital investment in the south Malabar dist which are comparatively backward regarding the investment and, to create tax holidays to encourage Large

Tourism Project in Kannur, Kasaragod Kozhikode and Malapuram district.”

15. The law with regard to the promissory estoppel has been deliberated by the Supreme court in the judgment **Kusumam Hotels (P) Ltd. (supra)**. In paragraphs 17 and 29, it was held as under:

17. It is now a well settled principle of law that the doctrine of promissory estoppel applies to the State. It is also not in dispute that all administrative orders ordinarily are to be considered prospective in nature. When a policy decision is required to be given a retrospective operation, it must be stated so expressly or by necessary implication. The authority issuing such direction must have power to do so. The Board, having acted pursuant to the decision of the State, could not have taken a decision which would be violative of such statutory directions.

15.5.1999 was fixed as the cut off date by the Board. It, by itself, could not have done so. But the State for issuing the GO dated 26.9.2000 could have fixed the said cut off date on its own. We although do not agree that by granting retrospectivity to the said order, the entirety of the Government Order should be set aside the same or per se would be held to be unreasonable, but what we mean to say is that it could be given effect to only from the date of the order, i.e., prospectively and not from an anterior date, i.e., retrospectively.

29. We, therefore, are of the opinion that the impugned GO dated 26.9.2000 must be held to have a prospective operation and not a retrospective operation. That view would save it from being vulnerable to the challenge of being hit by Article 14 of the Constitution of India.

The contents of Ext.P3 do not reveal any retroactive operation. Vide communication dated 1.4.2019, Ext.P4, of the Joint Secretary, Government, petitioner was informed that the subsidy scheme was canceled with effect from 31.3.2015 and Director Tourism was

directed to prepare and forward suitable proposal for sanctioning the electricity subsidy amount due to the hotel up to 31.3.2015 in accordance with the position in the existing list. The intention of the Government was to attract the persons like that of the petitioner in Alappuzha district and give the financial benefits. Principle of promissory estoppel arises while extending the promise if steps have been taken where the benefit cannot be taken away after expiry of number of years. There is no bar for the Government to stop the concession or benefit of subsidy prospectively for the units which have already raised to construction with a project considering the factor of subsidy. In case such subsidy is not paid to such persons, the affected parties would be liable to pay the charges along with interest for no rhyme and reasons. Even Ext.P3 was neither published in any gazette nor uploaded on the website. Accordingly, the impugned order Ext.P3 dated 21.2.2019 is quashed. Writ of mandamus is issued directing the respondent to disburse the electric tariff concession to the petitioner eligible as per Ext.P1 along with the interest @ 6% within a period of two months from the date of receipt of a certified copy of this judgment.

Sd/-

sab

**AMIT RAWAL
JUDGE**

APPENDIX OF WP(C) 16882/2019

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE PHOTOSTAT COPY OF THE GO(MS) NO 537/2000/GAD, THIRUVANANTHAPURAM, DATED 26.9.2000 ISSUED BY THE FIRST RESPONDENT
- EXHIBIT P2 TRUE PHOTOSTAT COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC NO 22526 OF 2018, DATED 7.2.2019
- EXHIBIT P3 TRUE PHOTOSTAT COPY OF THE ORDER OF THE FIRST RESPONDENT, NO SO(S) NO 75/2019 TOURISM, THIRUVANANTHAPURAM, DATED 21.2.2019
- EXHIBIT P4 TRUE PHOTOSTAT COPY OF THE LETTER SENT BY THE FIRST RESPONDENT TO THIS PETITIONER, NO 82/336/2018/TOUR, THIRUVANANTHAPURAM DATED 1.4.2019
- EXHIBIT P5 TRUE PHOTOCOPY OF THE CERTIFICATE ISSUED BY THE 3RD RESPONDENT, DATED 15/01/2016.
- EXHIBIT P6 TRUE PHOTOCOPY OF THE CERTIFICATE ISSUED BY THE 3RD RESPONDENT, DATED 15/01/2016.
- EXHIBIT P7 TRUE PHOTOCOPY OF THE CERTIFICATE ISSUED BY THE 3RD RESPONDENT, DATED 15/01/2016.
- EXHIBIT P8 TRUE PHOTOCOPY OF THE CERTIFICATE ISSUED BY THE 3RD RESPONDENT, DATED 15/01/2016.
- EXHIBIT P9 TRUE PHOTOCOPY OF THE CERTIFICATE ISSUED BY THE 3RD RESPONDENT, DATED 16/02/2017.
- EXHIBIT P10 TRUE PHOTOCOPY OF THE CERTIFICATE ISSUED BY THE 3RD RESPONDENT, DATED 16/02/2017.
- EXHIBIT P11 TRUE PHOTOCOPY OF THE CERTIFICATE ISSUED BY THE 3RD RESPONDENT, DATED 09/02/2018.
- EXHIBIT P12 TRUE PHOTOCOPY OF THE CERTIFICATE ISSUED BY THE 3RD RESPONDENT, DATED 09/02/2018.
- EXHIBIT P13 TRUE PHOTOCOPY OF THE CERTIFICATE ISSUED BY THE 3RD RESPONDENT, DATED 15/02/2019.
- EXHIBIT P14 TRUE PHOTOCOPY OF THE CERTIFICATE ISSUED BY THE 3RD RESPONDENT, DATED 15/02/2019.