JAMMU AND KASHMIR HIGH COURT

Malhotra and Sons

Vs.

Union of India

Writ Petn. No. 274 of 1973

(Adarsh Sein Anand, J.)

27.10.1975

ORDER

Dr. Adarsh Sein Anand, J.

1. Malhotra and Sons and four other firms which are engaged in the business of exporting walnuts in kernel as well as in shell form from the State of Jammu and Kashmir to different countries have filed this writ petition under Section 103 of the Constitution of Jammu and Kashmir read with Article 226 of the Constitution of India seeking quashing of letter No. 12 (4)/73-EAC dated 27-9-1973 of the Ministry of Commerce, New Delhi, whereby the respondents to the petition have withdrawn the cash assistance scheme issued by the Government of India on 2nd February, 1973. The petitioners also seek a writ of mandamus for a direction to the respondents to implement the representations held out by the Government of India in their cash assistance scheme dated 2nd February, 1973.

2. The facts as given out in the writ petition are :

> That the Union of India, in February 1973, formulated a scheme for providing incentives to registered exporters in walnut, kernel as well as in shell, with a view to increase export and to augment the foreign exchange earnings for the country. According to the Scheme the registered exporters of the aforesaid commodities were to be given cash assistance against exports of walnut, kernel as well as shell, at the rate of 5 per cent of the f. o. b. value on exports made during the period from 1-10-1972 to 30th September, 1975; in addition to the above 5 per cent cash assistance an additional cash assistance of 21/2 per cent. of the f.o.b. value was also to be allowed to the individual registered exporter on exports made during the period from 1-10-1972 to 30th September, 1973, provided the f. o. b. value of the exports during the aforesaid period exceeded by at least 10 per cent. the f. o. b. value of the exports during the immediately preceding 12 months period i. e. 1-10-71 to 30-9-72. This additional 21/2% cash assistance of the f. o. b. value was also, similarly, to be given for the period from 1-10-73 to 30-9-74 provided the f. o. b. value of

exports during that period exceeded by at least 10 per cent. the f. o. b. value of the exports during the immediately preceding twelve months period. On the same basis the same additional assistance of 21/2 per cent was admissible during the period from 1-10-1974 to 30-9-1975, provided the exports during that period exceeded by at least 10 per cent. the f. o. b. value of their exports during the 12 months immediately preceding, 1-10-1974. The petitioners have maintained that the petitioner firms had legitimate basis to benefit from the aforesaid scheme and relying upon the scheme and representations contained therein about the cash assistance they invested considerable sum of money and expanded their domestic business so that they could improve their performance and qualify for the cash assistance promised in the scheme. According to the petitioners the cash assistance scheme and the representation contained therein had considerable influence on the local market calculations which showed an upward trend of price of commodities aforesaid. The petitioners state that because of the incentive contained in the scheme they improved their exports between 1-10-1972 to 30-9-1973 and qualified themselves for cash assistance under the scheme and which assistance they actually received.

The petitioners have given details of various amounts which have been received by them by way of cash assistance for the period ending 30-9-1973, claiming that the petitioner firms had a reasonable basis to conclude that the incentive of cash assistance as envisaged in the aforesaid scheme would continue for the entire period mentioned in the scheme and that the respondents would fulfil their part of the promises upto the end of September 1975. The grievance of the petitioners is that after the petitioners altered their position, the respondents have unilaterally withdrawn the cash assistance scheme in relation to exports of walnut kernel and in shell and the petitioners, who had all along acted on the scheme have been gravely prejudiced. The petitioners have challenged the withdrawal of the cash assistance scheme by letter dated 27-9-1973, primarily on the ground that the respondents could not unilaterally withdraw the cash assistance scheme when the petitioners had acted on it and the Government of India was bound to keep up its promise and to comply with its representation held out to the petitioner firms in the cash assistance scheme. It is maintained that since the petitioners had altered their position to their prejudice relying on the cash assistance scheme, the Government is estopped from going back on that representation. It ha also been averred that an equity has been created in favor of the petitioner firms and against the respondents by virtue of the promises made in the scheme which are enforeable at law on the basis of doctrine of equitable estoppel. The petitioners also filed supplementary affidavits on 23rd May, 1974, by which they placed on record the statements of exports made by them during the period of October 1973 onwards and the period preceding October 1973 with a view to show that they had qualified for receiving the cash assistance.

3. Reply to the petition was filed on the affidavit of Shri S.N. Gupta, Joint Director (Export Promotion) in the Ministry of Commerce, Government of India on behalf of respondent No. 1. Preliminary objections were taken to the effect that no legal or fundamental rights of the petitioners had been infringed, and the writ was not maintainable. It was also maintained in the reply affidavit that the cash assistance scheme is in the nature of a concession and the same cannot be enforced by way of the writ petition. It was also stated as a preliminary objection that the petitioners had failed to show any actual loss alleged to have been sustained by them due to withdrawal of the cash assistance scheme, and since the petitioners had raised disputed question

of facts the petition was not maintainable. Another preliminary objection taken was that no estoppel can be pleaded against the Government, and it is not bound by such an estoppel. On merits, while admitting that the scheme had been issued by the Government of India, it was explained that the same was issued to offset the losses which the respondents were going to suffer because of the unfavourable conditions in the world market. The case of the respondents, as is clear from the written statement, is that the scheme was not intended to be an additional source of profit for the exporters. It is stated that somewhere in July-August 1973, it came to the notice of the Government that because of world wide shortage of ediblenuts there was a considerable spurt in the international prices for walnuts resulting in considerable increase in unit value realisation on exports, and since the price of walnut in kernels and in shell, in the world market had shot up considerably (figures were given in the affidavit in support of this assertion) it was felt by the Government that there was no longer any likelihood of any loss being incurred on the export of walnuts from India necessitating the continuance of the scheme of cash assistance. It has been maintained in the reply affidavit that the most cardinal principle governing the grant of cash assistance in such cases is whether continuance of such assistance is necessary to offset the losses which the exporter would otherwise incur. What is implied is that the scheme was introduced only to offset the losses in exporting walnut when the market trend was unfavourable. It is maintained that in view of the rise in the price of walnut kernel and shell in the world market the Government, in its sovereign, public and governmental capacity, withdrew the concession contained in the scheme with effect from 1-10-1973 by order dated 26-9-1973, after due notice to the concerned. It is also the case of the respondents, in the reply affidavit, that on account of the financial stringencies in the country, the continuance of cash assistance to exporters, specially when the price of commodities in the world market shot up thereby positively showing that the exporters would not be put to any loss, would have been unjust to the other sections of the society, for whose welfare the public money thus saved could be utilized. Such continuance, it is maintained, would have been against the principles of social justice which has come to be accepted as a just principle by the courts. It was denied that the petitioners have suffered any actual loss in the trade directly as a result of the withdrawal of the cash assistance scheme. It was also stated in the reply affidavit that due opportunity was given to the exporters, through their association M/s. Upper India Exporters Association, to represent their case for continuance of cash assistance and the scheme was withdrawn after the period of filing the representation had expired. Since no meaningful representation was made it was deemed proper to withdraw the cash assistance from the beginning of the new session. The scheme withdrawn by order of the Government of India dated 26th September, 1973, was for the period 1-10-1973, onwards. It was also stated in the reply affidavit that since the cash assistance scheme is in the nature of a concession, which was entirely in the discretion of the Government it could be extended or withdrawn at any time and the petitioner cannot be allowed to make any grievance of it in a writ petition. It was denied that the petitioners have adversely suffered in view of the withdrawal of the scheme.

4. Mr. Mehta, the learned counsel for the petitioners, has reiterated the grounds contained in the writ petition and has vehemently argued that since the petitioners had acted on the assurance given by the Government in the cash incentive scheme, the Government was bound by its own word, like any other ordinary citizen, to honour the assurance so given when the undertaking has been acted upon by the petitioners. It has been urged that the scheme does not contain any indication of the circumstances under which it could be modified or withdrawn and, therefore, the Government has no jurisdiction to withdraw it. It is further stressed by Mr. Mehta, the learned

counsel for the petitioners that the doctrine of equitable estopple was clearly attracted in the case and the Government was bound to continue the cash assistance Scheme. Reliance has been placed in support of the submissions by the learned counsel for the petitioners on AIR 1968 Supreme Court 718 and AIR 1971 Supreme Court 1021. Reliance is also placed on a single bench authority of the Punjab and Haryana High Court reported as 1975 Pun LR 557.

5. On the force of the above said authorities, the learned counsel for the petitioners has submitted that on the facts and circumstances of the case, the doctrine of equitable estoppel is attracted, and the Government of India, is bound to honour its commitment and give effect to the assurance given by it in the cash assistance scheme. It has also been urged that since the scheme was withdrawn unilaterally, the withdrawal was in any case violative of the rules of natural justice and on that ground alone the withdrawal of the scheme deserved to be set aside. Dealing with the preliminary objections it has been stated by the learned counsel for the petitioners that they merit no consideration in view of the authorities cited above. It is maintained that the scheme is not in the nature of a concession, and as such, there is no force in the preliminary objections that the scheme could not be enforced by means of a writ petition. The basis of the writ petition, it is argued, is the application of doctrine of equitable estoppel. The learned counsel has further argued that the case did not involve any disputed question of facts, and that by means of the writ petition the petitioners were only seeking a direction that the Government should honour the undertaking given, which is a matter essentially of maintaining the public standards. The reply to the other preliminary objection, it is urged is contained in the arguments in support of the petition.

6. In reply Mr. A.D. Singh, the learned Deputy Advocate General has vehemently argued that in the view of the preliminary objections the petition needs to be dismissed. It is argued that the effect of granting the writ petition would be that a direction would have to be given to the Government to show indulgence to the petitioner in the matter of granting concessions and in view of the settled law by their Lordships of the Supreme Court in AIR 1967 Supreme Court 993 the grant of concession cannot be enforced by means of a writ petition. It is also urged that the doctrine of equitable estoppel cannot apply to Government when discharging its governmental functions. The petition, it is further argued, involves the determination of disputed question of facts as to whether or not any loss has been suffered by the petitioners and as such, writ petition is not the proper remedy for the petitioner. On merits it is stated that a soverign authority like the State has to look after the interest of millions of people and because of the prevailing economic conditions the State cannot be held bound by its own policies for all times to come. It has been vehemently argued that when the interest of public comes into play the doctrine of estoppel cannot operate to the prejudice of the interest of the community at large. The learned Deputy Advocate General has also argued that the petitioners have not proved any actual loss suffered by them and in the absence of any such detriment having been proved on the record, no relief can be granted to the petitioners in the writ petition. It has also been contended by the learned Deputy Advocate General, that the law laid down in AIR 1968 Supreme Court 718 and AIR 1971 Supreme Court 1021, has been expressly narrowed down by their Lordships of the Supreme Court in their subsequent judgments reported in 1973 (2) SCC 713; 1973 (2) SCC 650 (656) and 1975 (1) SCC 21. The learned Deputy Advocate General has submitted that the authority reported in 1975 Pun LR 557, has not taken into consideration, the later judgments of their Lordships of the Supreme Court and that since in that case it had not been pleaded that there cannot be an estoppel against the Government, that authority was clearly distinguishable and

would not afford any assistance to the petitioners.

7. I have had the advantage of hearing the elaborate arguments addressed by the learned counsel for the parties and have also given my considered thought to the facts and circumstances of the case.

8. The material facts in the case are not very much in dispute. The principal point in controversy between the parties is, as to whether the Government of India is bound by the assurance and representations made by it in the scheme and promulgated by it in February 1973. The case of the petitioners in a nut shell, as canvassed by the learned counsel for the petitioners Mr. Mehta, is that the Government of India was bound to carry out the representations and assurances made by it to the petitioners is the scheme on the basis of doctrine of equitable or promissory estoppel.

9. The term "promissory estoppel" or an "equitable estoppel" is the development of the recent times and this new type of estoppel appears to be something beyond the ordinary rule of estoppel as envisaged under Section 115 of the Evidence Act. Their Lordships of the Supreme Court considered the question of "promissory" estoppel or "doctrine of equitable estoppel" in the case of *Union of India v. M/s. Anglo Afghan Agencies Ltd*[1]*.,* In that case, the Textile Commissioner published a scheme called the Export Promotion Scheme providing incentives to exporters of woollen goods. The scheme had been extended in relation to exporters of woollen goods to Afghanistan. The representation contained in the export promotion scheme was to the effect that the exporters would be entitled to import raw material of the total amount equal to 100 per cent. of the f.o.b. value of the exports made by them. Relying on the terms and representations contained in the scheme, M/s. Anglo Afghan Agencies exported certain goods to Afghanistan and claimed import-entitlement certificates for the f.o.b. value of the woollen goods exported to Afghanistan. While granting the Import Entitlement Certificate, the Textile Commissioner imposed certain cuts, and did not grant the import entitlement certificate for the full amount of the f. o. b. value of the goods exported. This was clearly against the representation contained in the Export promotion Scheme. The representations made by M/s. Anglo Afghan Agencies to the Central Government against the cut imposed failed and a writ petition under Article

[1] AIR 1968 SC 718

226 of the Constitution of India was filed by them in the Punjab and Haryana High Court. The High Court granted the writ and set aside the order of the Textile Commissioner and the Central Government imposing a cut in the Entitlement Certificate, and issued a direction to the Central Government to issue import Entitlement Certificate for the full f. o. b. value of the goods exported. The State went in appeal to the Supreme Court. In appeal, the judgment of the Punjab and Haryana High Court was up-held and it was observed by their Lordships of the Supreme Court that the claim of M/s. Anglo Afghan Agencies was appropriately founded on the equity which arose in their favour as a result of the representations made on behalf of the Union of India in the scheme, and their Lordships laid down that the Government is bound to carry out the promises made by it. Their Lordships repelled the argument that in the absence of any formal contract the Government was not bound to carry out its representations and observed that even if the promise may not be recorded in the form of any formal contract as required by Article 299 of the Constitution of India, the Government was bound to carry out its promises, acting on the faith of which the citizen had altered his position to his detriment. In essence, their Lordships of the Supreme Court held that the Government cannot escape by saying that estoppels do not bind it, and that the Government was bound under the circumstances, by the doctrine of promissory

estoppel. While dealing with the Anglo Afghan case their Lordships of the Supreme Court placed reliance on the following passage from a judgment given by Lord Denning in the King's Bench in *Robertson v. Minister of Pensions*[2],

> "The Crown cannot escape by saying that estoppels do not bind the crown, for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action. That doctrine was propounded by Rowlatt J. in 1921-3 KB 500 but it was unnecessary for the decision because in the statement there was not a promise which was intended to be binding but only an expression of intention. Rowlatt, J., seems to have been influenced by the cases on the right of the crown to dismiss its servants at pleasure, but those cases must now all be read in the light of the judgment of *Lord Atkin in Reilly v. The King*[3],
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> .....
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> In my opinion the defense of executive necessity is of limited scope. It only avails the Crown where there is an implied term to that effect or that is the true meaning of the contract."

and on its basis their Lordships of the Supreme Court held that the Government was bound by estoppel. However dealing with the merits of the Anglo Afghan case their Lordships observed :

> "Reduction in the amount of import certificate may be justified on the ground of misconduct of the exporter in relation to the goods exported, or on special considerations such as difficult foreign exchange position or other matters which have a bearing on the general interests of the state. In the present case

[2](1949) 1 KB 227

[3]1934 AC 176 at 179

> the scheme provides for grant of import entitlement of the value, and not upto the value of the goods exported. The Textile Commissioner was, therefore, in the ordinary course required to grant import certificate for the full value of the goods exported, he could only reduce that amount after enquiry contemplated by clause 10 of the Scheme"

(Emphasis mine).

The principle enunciated in the Anglo-Afghan case was subsequently approved by their Lordships, in *Century Spinning and Manufacturing Co. Ltd. v. The Ulhasnagar Municipal Council*[4], wherein it was held that a public body was not exempt from the liability to carry out its obligations arising out of representation made by it, relying upon which the citizen has altered his position to his detriment.

10. Again, in *Turner Morrison and Co. Ltd. v. Hungerford Investment Trust Ltd*[5]., the principle enunciated in Anglo Afghan case AIR 1968 Supreme Court 718 (supra) and approved in the Century Spinning case AIR 1971 Supreme Court 1021 (supra) came up for consideration before their Lordships when it was reiterated by the learned Judges that a new class of estoppel i. e.

"promissory estoppel" has come to be recognized by the Courts in India as well as in England. Their Lordships laid down the guideline for the application of the doctrine by observing that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and was meant to be acted upon accordingly, then once the party has taken him at his word and acted on it, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship, as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported i point of law by any consideration, but only by his word. In this case, of course, their Lordships were concerned with the application of the doctrine between two individuals and the applicability of the doctrine when one party is the State was not considered. The case of the petitioners is essentially based on the law laid down in the above authorities.

11. Of late, there has been a considerable amount of re-thinking in the light of the present socio-economic set up in the country regarding application of the doctrine of promissory or equitable estoppel. The doctrine of equitable estoppel or promissory estoppel in its application to the Government enunciated and approved by their Lordships of the Supreme Court in the authorities quoted above, has undergone some radical changes. Generally speaking, the rethinking about the application of doctrine of Estoppel has been to the effect that the State is not subject to the application of the doctrine of estoppel to the same extent as is an individual or a private corporation, for otherwise, it might render the State helpless to assert its powers while discharging its governmental functions. In *M. Ramanathan Pillai v. State of Kerala*[6], Ray C. J. speaking for the court held, as a general rule, that the doctrine of estopple will not be applied against the State in its governmental, public or sovereign capacity. An exception, however, it was stated arises in the application of estoppel to

[4] AIR 1971 SC 1021 [6](1973) 2 SCC 650 (656)
[5] AIR 1972 SC 1311

the State where it is necessary to prevent fraud or manifest injustice. Their Lordships quoted with approval paragraph 123 appearing at page 783 of the American Jurisprudence 2d, viz. "Generally a State is not subject to an estoppel to the same extent as is an individual or a private corporation. Otherwise it might be rendered helpless to assert its powers in Government. Therefore, as a general rule the doctrine of estoppel will not be applied against the States in its governmental, public or sovereign capacity. An exception, however, arises in the application of estoppel to the State where it is necessary to prevent fraud or manifest injustice." Their Lordships then laid down that "the courts exclude the operation of the doctrine of estoppel, when it is found that the authority against whom estoppel is pleadead has owed a duty to the public against whom the estoppel cannot fairly operate."

12. Once again the extent of the application of the doctrine of promissory or equitable estoppel in so far as its application to the State is concerned, came up for consideration before their Lordships of the Supreme Court in the *State of Kerala v. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd*[7]*.,* In this case, certain owners of vast extents of private Forests, aggrieved by deprivation, without compensation of their ownership, under the Kerala Private Forests (Vesting and Assignment) Act 1971, challenged its vires under Article 226 of the Constitution of India on the ground that it was violative of the fundamental rights under Articles 14, 19 and 31 of the Constitution of India. The attack was upheld by the High Court and the statute was declared ultra vires. The defeated State took the appeal to the Supreme Court and sought to sustain the

constitutionality of the law. Paleker, J. delivering the Judgment for the majority observed :

> "Mr. Menon who appeared for the respondent in Civil Appeal No. 1398/72 put forward a plea of equitable estoppel peculiar to his client company. It appears that the company established itself in Kerala for the production of rayon cloth pulp on an understanding that the Government would bind itself to supply the raw material. Later Government was unable to supply the material and by an agreement undertook not to legislate for the acquisition of private forests for a period of 60 years if the Company purchased forest lands for the purpose of its supply for raw materials. Accordingly, the Company purchased 30,000 acres of private forests from the Nilambhurt Kovila Khannan estate for Rs. 75/- lakhs, and, therefore, it was argued that, so far as the company is concerned, the agreement not to legislate should operate as equitable estoppel against the State. We do not see how an agreement of the Government can preclude legislation on the subject. The High Court has rightly pointed out that the surrender by the Government of its legislative powers to be used for public good cannot avail the company or operate against the Government as equitable estoppel. "

13. From a discussion of the above cited authorities which are latest in point of time it clearly emerges that the doctrine of estoppel in its application to the State has undergone some radical rethinking since the judgment in Anglo Afghan case AIR 1968 Supreme Court 718 and the Century Spinning case AIR 1971 Supreme Court 1021 (supra). Indeed, the judgments in the Anglo Afghan case and Century Spinning

[7](1973) 2 SCC 713

case (supra) have not been overruled by their Lordships, but the scope of the application of the doctrine of estoppel has certainly been narrowed down. Now, the doctrine of equitable or promissory estoppel would have no application to the public, governmental or sovereign action of the State except to prevent manifest injustice or fraud. The reason appears to be obvious.

14. It is well known that the sovereign authority like the State has to look after the interest of millions of people and in the present socio economic set up of the country, it cannot be bound down by an assurance for all times to come where the interest of public comes into conflict with the assurance once given. As at present advised, I think that the doctrine of estoppel cannot operate against the State to the detriment of public at large so as to favor only a few in the society. O course, the courts would apply the doctrine of estoppel to the State also when it is necessary to prevent fraud or manifest injustice. In all the cases which I have referred to above emphasis has been laid on the need of the people and the State generally and, therefore, the Government cannot be made a prisoner of its own policy statements for all times to come. Even in the Anglo Afghan case AIR 1968 Supreme Court 718 (supra) it was specifically pointed out that the Government cannot withdraw the incentive arbitrarily and it was not said that there can never be the withdrawal of the incentive. Moreover, in that case the disbursement of public funds was not involved which could have clashed with the interest of the public at large generally and this aspect was not considered. The main plank on which that case was decided was the judgment of Denning, J., in Robertson case (1949) 1 KB 227 (supra). That case came up for consideration subsequently in the House of Lords, in *Howell v. Falmouth Roat Construction Co*[8]*.,* and Lord Simen specifically disapproved the law laid down in Robertson case. Thus, the basis on which

the Anglo Afghan case was decided was knocked down by the House of Lords and their Lordships of the Supreme Court in *Assistant Custodian Evacuee Property v. Brij Krishore Agarwal*[9], approved the view taken by the House of Lords in Howell's case and disapproved the view of Denning, J. in Robertson's case which was the main case relied upon in Anglo Afghan case. In this view of the matter, it is apparent that there has been reconsideration about the extent of the applicability of the doctrine of equitable or promissory estoppel in so far as the State is concerned when if performs governmental, public or sovereign functions. In such cases the doctrine would not apply when it clashes with the interest of the public at large, except where it is necessary to prevent fraud or manifest injustice and to that extent, in my opinion, the doctrine enunciated in the Anglo Afghan case AIR 1968 Supreme Court 718 (supra) and the Century Spinning case AIR 1971 Supreme Court 1021 (supra) has been narrowed down by their Lordships by their subsequent pronouncements referred to above in the judgment. So far as the judgment of Punjab and Haryana High Court in *Amrit Banaspati Co. Ltd. v. State of Punjab*[10], is concerned that authority is clearly distinguishable and not at all applicable to the facts of the present case. Apart from the fact that Muni Lal Verma, J., of the Punjab and Haryana High Court has not considered the subsequent authorities of the Supreme Court (presumably the same were not brought to the notice of his Lordship) no argument seems to have been raised in the Punjab and Haryana High Court on behalf of the State to this effect that there cannot be an estoppel against the Government

[8]1951 AC 837 [10]1975 Pun LR 557

[9](1975) 1 SCC 21

while functioning in the public, governmental or sovereign capacity as has been canvassed before me, and no decision on that point was, therefore, given. In view of what I have said above with respect to his Lordship Varma, J., I cannot persuade myself to follow the law laid down in Amrit Banaspati Co. Ltd. case 1975 Pun LR 557 (supra) which in my opinion, runs counter to the authoritative pronouncement of their Lordships of the Supreme Court to which reference has been given above.

15. Coming now to the facts of the present case and the application of the doctrine of equitable or promissory estoppel, I find it difficult to hold that the Government is bound by the assurance given by it in the scheme published in February 1973 for all times to come. There is no allegation of any fraud practised by the State nor do I find any manifest injustice to have been done to the petitioner and I do not see how the Government can be made a prisoner of its own policy statement for all times. If the Government after a review of its policy decision finds that modification or alteration is required, in the earlier policy in the interest of the public at large, the Government cannot be debarred from reviewing that policy. From the perusal of the writ petition and the reply affidavit it is quite evident that when it promulgated the scheme, the Government was of the view that the exporters of walnut kernels as well as in shell form were likely to incur losses in the international market in view of the unfavourable rates then prevailing in the international market. The motive for promulgating the scheme appeared to be to promote the export of walnuts to earn foreign exchange, badly needed, and the desire to offset the loss which the exporters were likely to incur. No exporter could be expected to export walnuts only to incur losses and so it was deemed necessary to offset their losses so that they could export and earn the foreign exchange required for the benefit of the State generally. The scheme was not promulgated to be a source of extra profit for the exporters. At the time when the scheme was withdrawn by the Government there was no scope of any loss to be suffered by the exporters of walnut with effect from July-August, 1973, when because of the worldwide shortage of edible

nuts, there was a considerable spurt in the prices of walnuts in the international market resulting in considerable increase in the unit value realisation on exports of walnuts. Since, the promulgation of the scheme in 1973 was only actuated by the desire to offset the loss, which exporters were likely to suffer on being induced to export and earn the foreign exchange, which it is well known is very badly needed for the various projects undertaken by the State, the withdrawal of the scheme on finding that the exporters were not likely to suffer any losses due to the favourable position in the international market cannot but be held justified. Ours is not a country with unlimited financial resources and the courts of law cannot ignor this fact. The utilisation of the meagre financial resources by the Government therefore, has to be left to the judgment of the Government which is the best Judge of the need of its people. The courts will only bind the Government by its promises to prevent manifest injustice or fraud and will not make the Government a slave of its policy for all times to come when the Government acts in its governmental, public or sovereign capacity. In its commercial activity the position would, of course, be different. In the present set up of the country, when finances are required for starting and completing various projects in the interest of the public at large, the Government cannot be held bound by a representation made by it, when the need for continuance of the representation is no longer there.

The Government in my opinion, must be given a free hand to determine the priorities when on the one hand there are the hungry millions for the larger benefit of whom the money is required by the State, and on the other hand are the affluent few who wish to bind the Government by its promise to make additional profits. The Government must be left free to determine the priority. In the circumstances of the present case, the withdrawal of the scheme to my mind cannot but he held justified. The petitioners in the instant case do not run the risk of incurring any losses as per the reply affidavit filed by the defendants, which assertion of the respondents remains unrebutted by any rejoinder. The withdrawal of the scheme will, therefore, not result in any injustice, much less manifest injustice to the petitioners nor would the withdrawal perpetuate any fraud so far as the petitioners are concerned. The action of the Government in withdrawing the scheme was definitely in exercise of its governmental and public function and hence justified. Moreover, in Anglo Afghan case AIR 1968 Supreme Court 718 (supra) and Century Spinning case AIR 1971 Supreme Court 1021 (supra) on which the petitioner relies, mainly the emphasis was laid on the fact that since the petitioners in those cases had acted to their detriment (the extent of detriment being established) relying upon the assurances made by the Government in those cases, the State should be held bound to remove the prejudice caused to the petitioners. In the present case I do not find any actual loss to have been suffered by the petitioners by the withdrawal of the scheme except, of course, the loss of extra profit. The applicability of the law laid down in the above cited two cases to the instant case is not warranted. That apart, in Anglo Afghan case (supra) itself, it was laid down that the concession granted by the scheme could be withdrawn provided it was not arbitrary. In the instant case the withdrawal of the scheme is not arbitrary at all. Notice had been given for the withdrawal of the scheme before its withdrawal. Notice was given to the representative body of the exporters of walnut and such a notice would be valid in the eye of law especially when the petitioners in the present case came to know about the withdrawal of the scheme and opposed the withdrawal of the scheme. Even if no notice was specifically given but the petitioners somehow or the other acquired the knowledge that the Government had under contemplation that withdrawal of the scheme and the petitioners opposed such withdrawal, it would be sufficient compliance with the rules of natural justice especially when the withdrawal of the scheme is not actuated by any malice on the part of the Government. The petitioners have attempted to show that the withdrawal of the scheme caused them prejudice by giving various

figures in the annexures attached with the supplementary affidavits. These figures, cannot advance the case of the petitioners because there is not an iota of evidence to show that the petitioners have suffered any actual loss subsequent to the withdrawal of the scheme which may necessitate the issuance of a direction to the Government to compensate them for the loss suffered. As already observed above the "loss" which the petitioners seem to have suffered is the denial of additional profit. In the reply affidavit it has been specifically mentioned that no loss has been suffered by the petitioners, and therefore, whether or not the petitioners have suffered any loss and to what extent becomes essentially a disputed question of fact, and I am afraid, the writ jurisdiction of this court cannot be invoked to determine a disputed question of fact. In case the petitioners can establish that they have actually suffered some loss, the proper remedy for them is not the writ petition but to file a civil suit for damages. That is a matter for the petitioners to consider and by this observation of mine I should not be understood to mean that the petitioners have established any case of having suffered some damage. I have only observed as above, since the claim of the petitioners for damages is disputed and even the contention that they have suffered any loss is disputed, the suit would be more proper remedy for the determination of such disputed question of facts than a writ petition. I have not thought it fit to dispose of the writ petition only on the basis of the preliminary objections as I found that the question involved in the case is likely to arise time and again and therefore, I have dealt with the merits of the case. I have, therefore, refrained from giving any findings on the preliminary objections except to the extent they were covered in the discussions of the merits of the case.

16. In view of the above discussion I would hold that the doctrine of promissory or equitable estoppel has no application to the State when the State is acting in its public, governmental or sovereign capacity except when it is necessary to apply the doctrine to prevent fraud or manifest injustice and would therefore, dismiss the writ petition. In the peculiar circumstances of the case there will be no order as to costs. Petition dismissed.

Petition dismissed.