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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13.01.2022

+ W.P.(C) 6916/2020

SHAKTI INDUSTRIES Petitioner
Through Mr. Parikshit Mahipal, Adv.

versus

UNION OF INDIA Respondent
Through Mr. Amit Mahajan, Adv.

**CORAM:
HON'BLE MS. JUSTICE REKHA PALLI**

REKHA PALLI, J (ORAL)

1. The present petition under Article 226 of the Constitution of India seeks quashing of the communication dated 04.02.2020 issued by the respondent/Ministry of Food Processing Industries (hereinafter referred to as 'the MOFPI'), whereby the petitioner's prayer for release of the second instalment of grant-in-aid under the Scheme for Technology Upgradation/ Establishment/ Modernization (hereinafter referred to as 'TUEM Scheme'), was rejected. Consequently, the petitioner, also seeks a direction to the respondent, to forthwith release the balance amount payable towards the second instalment under the TUEM Scheme for grant-in-aid.

2. On 10.04.2007, the MOFPI launched the TUEM Scheme, with a view to advance the technology used in the industry by reducing the wastage of agricultural and horticultural produce, for the purpose of assisting

entrepreneurs to set up food processing units. All eligible food processing units under various sectors were to be provided financial assistance of 25% of the cost of the plant, machinery and technical civil works, subject to a ceiling of Rs 50.00 lakh in general areas and of 33.33%, in difficult and North-Eastern areas with a ceiling of Rs 75.00 lakh.

3. As per the guidelines, issued under the TUEM Scheme, the Banks/Financial Institutions were assigned the responsibility of receiving the application of grants-in-aid, calculating the grant payable under the guidelines, uploading the online requisition of the grant through the E-portal, verifying the documents required to be submitted by the firm and then forwarding these documents to the MOFPI through the Nodal Bank of the applicant. Under the TUEM Scheme, the grants-in-aid were also to be released to the concerned Bank, which was then responsible for the disbursement of the grant to the beneficiaries.

4. The petitioner, a registered partnership firm involved in the business of producing Khachighani Mustard oil, being eligible applied under the TUEM Scheme on 20.01.2009. The said application for grant-in-aid of Rs 24,53,000/- for the purpose of carrying out expansion work, was sanctioned and approved on 09.04.2009. This amount was payable in two instalments, and based on the petitioner's application, the first instalment of Rs 12,26,500/- was released in the favour of the petitioner on 16.02.2017.

5. The petitioner then, armed with a utilization certificate dated 27.03.2017, in respect of the first instalment as per the terms of the TUEM Scheme applied for the second instalment, through its nodal bank (Punjab National Bank) on 28.03.2017. After a period of one year, on 27.03.2018, the respondent communicated certain deficiencies in the petitioner's

application, to the petitioner's bank, with a direction to rectify the same within a period of 45 days. The bank, after seeking certain clarifications from the petitioner, vide its letter dated 15.11.2018, submitted its reply to the respondents after rectification of the deficiencies. However, since the amount of the second instalment was not released, the petitioner made representations to the respondent on 27.07.2019, 12.08.2019, 29.08.2019, 10.09.2019 but received no response thereto.

6. Finally the petitioner sent a legal notice on 20.12.2019, in response where to the impugned communication, rejecting the petitioner's prayer, was issued. The petitioner was informed that since the TUEM Scheme already stood closed w.e.f. from 01.04.2012 its request could not be processed any further at this stage. It is in these circumstances that the writ petition came to be filed.

7. In support of the petition, learned counsel for the petitioner, submits, that once the petitioner's application for 'grant-in-aid' for setting up a food processing unit, was approved on 09.04.2009 i.e. much before the TUEM Scheme was closed, the petitioner's prayer for release of the second instalment could not be rejected on the ground that the TUEM Scheme stood closed. The petitioner had, in fact, barely after one month of the release of the first instalment, applied for the amount payable under the second instalment, and therefore even if there was some delay on the part of its nodal bank, in clarifying the issues raised by the respondent on 27.03.2018, the petitioner's claim could not be rejected.

8. Furthermore, the respondent having itself released the amount towards the first instalment on 16.02.2017, it could not have refused to process the petitioner's application for the second instalment, on the ground

that it was submitted after the closure of the said TUEM Scheme on 01.04.2012. He, further submits, that the petitioner had, after approval of its application under the TUEM Scheme for sanctioning grant-in-aid, expanded its Mustard Oil unit and therefore, the respondent could not refuse to release the amount already sanctioned in its favour, merely on the ground of purported delay. He therefore, prays that the writ petition be allowed, and the respondent be directed to forthwith release the amount payable towards the second instalment.

9. Upon notice being issued, a counter affidavit has been filed, wherein the respondent has merely stated that the TUEM Scheme, which was initially launched on 10.04.2007 was subsumed with another scheme namely 'National Mission on Food Processing' with effect from 01.04.2012, which scheme also came to an end in the year 2015, whereafter, only committed liabilities, if found in order, were being disposed of. It has further been averred, that since there were deficiencies in the petitioner's applications received through its nodal bank, on 28.03.2017, the petitioner's bank was, on 27.03.2018, directed to remove the deficiencies and furnish the requisite documents within a period of 45 days, so that the petitioner's request for release of the second instalment could be considered in accordance with the TUEM Scheme. The petitioner, however, slept over the same and its bank furnished the necessary clarification only on 15.11.2018, i.e. after a period of almost 8 months, at which point the respondent was no longer obliged to consider the petitioner's claim.

10. Mr. Mahajan, learned counsel for the respondent, while reiterating the stand taken by the respondent in the counter affidavit, submits that once the TUEM Scheme had already come to an end, the respondent had no

obligation to consider the petitioner's claim at such a belated stage. He, therefore, contends that the impugned communication rejecting the petitioner's claim was rightly passed and the present writ petition is liable to be dismissed.

11. Having considered the submissions of learned counsel for the parties, I find absolutely no merit in the respondent's plea. Once it is the respondent's own stand that despite the TUEM Scheme having come to an end on 01.04.2012, the respondent required the petitioner to submit the necessary documents on 27.03.2018, it is evident that the respondent was well aware that merely because the aforesaid TUEM Scheme was no longer in operation, the beneficiaries like the petitioner, who had already been registered thereunder could not be deprived of their entitlement in terms of the TUEM Scheme. Even otherwise, once the respondent, after having received the request for release of the second instalment on 27.03.2017, itself took one year, to communicate the deficiencies to the petitioner's bank on 27.03.2018, cannot now be allowed to claim that the response from the petitioner, having been received belatedly, on 15.11.2018, no cognizance was required to be taken thereof.

12. It also has to be kept in mind, that the TUEM Scheme was beneficial in nature, and therefore has to be interpreted in a purposive manner and keeping in mind the objective behind the scheme, which was to promote small scale industries by granting them financial assistance. To dismiss a legitimate claim, simply on the account of a technicality, would cause grave and irreparable harm, not only to the petitioner but also the faith of general public in these welfare schemes. In this regard reference may be made to the observations of the Apex Court in paragraphs 8 and 9 of *Bannari Amman*

Sugars Ltd. v. CTO 2004 SCC OnLine SC 146, the same are reproduced as under:

“8. A person may have a "legitimate expectation" of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the court to apply for judicial review. It is generally agreed that "legitimate expectation" gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then the decision-maker should justify the denial of such expectation by showing some overriding public interest.

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

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

13. In the present case, neither has the respondent been able to point out any overriding larger public interest to deny the petitioner the amount it was entitled to receive as grant-in-aid nor was there, in my view, any inordinate delay on the part of the petitioner so as to deprive it of the second instalment under the TUEM Scheme. It is an admitted fact, that the petitioner has spent the amount received as the first instalment to make certain changes, in the nature of expansion, to its Oil Mill, in furtherance of the terms of the TUEM Scheme. I, may also note, that the TUEM Scheme was been issued with the objective of development and upgradation of certain food processing industries and the respondent's refusal to release the amount of the second instalment will be contrary to the said objective.

14. For the aforesaid reasons, the impugned communication, being wholly unsustainable is, quashed. The respondent is directed to consider the petitioner's claim on its own merits and pass a reasoned and speaking order, within a period of four weeks. In case, the respondent needs any further documents from the petitioner, necessary information in this regard will be

communicated to the petitioner as also to the learned counsel for the petitioner, who will then expeditiously submit all documents as may be required, and in case, found to be in order, the amount will be released expeditiously. Needless to state the petitioner's claim will not be rejected solely on the ground of delay.

15. The petition is, accordingly, allowed in the aforesaid terms.

JANUARY 13, 2022

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REKHA PALLI, J

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