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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE MANINDER S. BHATTI**

ON THE 22nd OF FEBRUARY, 2024

WRIT PETITION No. 672 of 2023

BETWEEN:-

**M/S VINDHYACHAL DISTILLERIES PVT. OFFICE AT
E2/34 ARERA COLONY BHOPAL MADHYA PRADESH
THROUGH ITS MANAGING DIRECTOR SHRI SANJEEV
KHANNA S/O LATE SHRI VIJAY KUMAR KHANNA AGE
ABOUT 60 YEARS 1-A AMRAKUNJ WALMI ROAD CHUNA
BHATTI BHOPAL (MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI SUMIT NEMA - SENIOR COUNSEL ASSISTED BY SHRI AYUSH
GUPTA - ADVOCATE)***

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH ITS
PRINCIPAL SECRETARY COMMERCIAL TAX
DEPARTMENT MANTRALAYA ROOM 210
VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. EXCISE COMMISSIONER OFFICE OF THE EXCISE
COMMISSIONER COMPOSITE REVENUE
BUILDING, 4TH FLOOR, NEEDAM ROAD, NAKA
CHANDRAWADNI, LASHKAR, GWALIOR
(MADHYA PRADESH)**
- 3. DEPARTMENT OF INDUSTRIAL POLICY AND
INVESTMENT PROMOTION (DIPIP),
GOVERNMENT OF MADHYA PRADESH THROUGH
ITS PRINCIPAL SECRETARY 2ND FLOOR,
VALLABH BHAWAN II, BHOPAL (MADHYA
PRADESH)**
- 4. MADHYA PRADESH INDUSTRIAL DEVELOPMENT
CORPORATION THROUGH ITS MANAGING
DIRECTOR 21, ARERA HILLS, BHOPAL (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI SWAPNIL GANGULI - DEPUTY ADVOCATE GENERAL)

.....
This petition coming on for admission this day, the court passed the following:

ORDER

This petition has been filed by the petitioner while praying for the following reliefs:-

"i) To quash the direction/order dated 8/10/2021 passed by the Commercial Tax Department;

ii) To direct the Respondents to accept the claims of the petitioner with respect to grant of consent for setting up Molecular Sieve Dehydration Column for manufacture of ethanol at its existing distillery;

iii) To quash the impugned order dated 07/02/2023 as passed by Respondent No. 2, for being illegal, arbitrary and bad in law;

iv) To direct the Respondents to implement the beneficent Special Financial Assistance for Ethanol and Bio-Fuel Production Scheme of the state government in true letter and spirit;

v) To direct the Respondents to abide by Article 14 of the Constitution and not discriminate between the petitioner and the similarly placed distillery/distilleries whose similar claims have been allowed with respect to the Scheme of Special Financial Assistance for Ethanol and Bio-Fuel Production;

vi) To restrain the Respondents from passing any further adverse order(s) against the petitioner till the pendency of this Writ Petition;

vii) To issue any other writ or order or direction in the interest of justice and in furtherance of or to secure any other objective or purpose which the Hon'ble Court deems fit and proper in the facts and circumstances of the case.

viii) To allow the petition with costs."

2. The facts, as elaborated in the petition, reveal that the petitioner is holder of D-1 license, which is issued in terms of the provisions of M.P. Excise Act, 1915 (hereinafter to be referred to as the Act of 1915). The license in prescribed Form D-1 is granted to manufacture spirit in Distillery. The Ministry of Petroleum and Natural Gas, Government of India bestowed its consideration regarding use of Ethanol as a petroleum product for the purposes of transportation and accordingly, *Roadmap for Ethanol blending in India 2020-25* was prepared by the Expert Committee, in which various measures were suggested for the purposes of Ethanol blending in petrol. The Union as well as the State Government of Madhya Pradesh have introduced schemes for blending of Ethanol with the petrol by providing financial assistance to Distilleries to manufacture Ethanol, to be eventually blended with petrol. In terms of the said scheme, approval in principle was accorded by the Central Government and consequently, the petitioner applied before the State Government after investing colossal amount for the purposes in that regard. The other statutory approvals were also obtained but vide impugned order dated 7.2.2023 (Annexure P-21), the Excise Commissioner has rejected the application of the petitioner dated 18.4.2022 submitted for installation of Molecular Sieve Dehydration Column (MSDH), which is intended to be used for manufacture of Ethanol. Assailing the order dated 7.2.2023 (Annexure P-21), this petition has been filed. The petitioner is also seeking quashment of another order dated 8.10.2021 (Annexure P-11), which stipulated that within the premises of Distillery Unit, there shall not be any permission to manufacture and storage of Ethanol.

3. Learned Senior Counsel for the petitioner contends that though the petition was initially filed while seeking benefits under the schemes, which have been brought on record as Annexure P-3 floated by the Central Government and also the scheme contained in Annexure P-8 floated by the Government of Madhya Pradesh, however, as the schemes floated by the Governments were to remain in currency for a limited period and as the said period is already over, the petitioner is confining his relief so far as the same relates to relief prayed for in Paragraph 7(ii) of the writ petition. It is contended by learned Senior Counsel that though other relief clauses as mentioned in Paragraph 7 of the writ petition pertain to the direction as regards providing financial assistance for Ethanol and Bio-Fuel Production in terms of the scheme floated by the Central as well as State Government, however, by efflux of time as the schemes are no more in force, thus the petitioner while waiving benefits under the Scheme, is making prayer for a direction to the respondents to accept the claim of the petitioner with respect to grant of consent for setting up Molecular Sieve Dehydration Column (MSDH) for manufacture of Ethanol at its existing Distillery. It is further contended that as on date, there is no policy either by the Central Government or by the State Government which prohibits manufacture of Ethanol within the premises of a Distillery, which is being run by a D-1 license holder; therefore, in absence of any policy or executive instructions, such a permission cannot be declined. It is the further contention of learned senior counsel that there is no prohibition even in the statutory provision as regards the same, else the Central as well as the State Government would not have floated the schemes providing financial assistance for the purpose of installation of Unit for manufacture as well as storage of Ethanol within the premises of a Distillery Unit.

4. It is further contended that the Department of Commercial Tax, M.P., on its own, ventured upon to interpret the provisions of Section 2(17) of the Act of 1915, which provides for definition of 'spirit' and also interpreted the provision of Section 2(13) of the Act of 1915, which stipulates the definition of 'liquor' and ultimately concluded that there cannot be a permission to manufacture Ethanol within the Distillery premises. Therefore, the order dated 8.10.2021 issued by the Department of Commercial Tax did not have any statutory support nor the same reflected any statutory prohibition. It is contended that the Excise Commissioner also proceeded almost on same assumption and rejected the application of the petitioner while observing that the Ethanol, which is used to mix the same with the petrol does not fall within the definition of 'liquor' and accordingly, no permission can be granted to manufacture Ethanol in the premises where Distillery is being run as per D-1 license. The Authority also considered the aspect that Ethanol, which is used under Ethanol Blended Petrol (EBP) Programme, is a petroleum product and is not palatable, therefore, the permission of the same within the Distillery premises would be in direct conflict with the provisions contained in the Act of 1915, as by no stretch of imagination, Ethanol can be brought within the definition of 'spirit', which means any liquor containing alcohol obtained by distillation whether it is denatured or not.

5. The respondents have even taken recourse to a complete *volte face* and has accorded similar permission to one of the Distillery, which is known as M/s Gulshan Polyols Limited, Borgaon, Tehsil Sausar, District Chhindwara and permission to manufacture and storage of Ethanol has been accorded. It is, therefore, contended by learned senior counsel that the present petition has

been subjected to discrimination and thereby there is violation of Article 14 and 19(1)(g) of the Constitution of India. Hence, the impugned actions so taken by the respondents are unsustainable. It is contended that as by lapse of time, the scheme is no more in existence, the petitioner's only prayer is for consideration of his application without extending any incentives or benefits, which were available under the schemes floated by the Central as well as the State Government of Madhya Pradesh. While placing reliance on the decision of the Apex Court in **Vam Organic Chemicals Limited & another Vs. State of Uttar Pradesh and others - (1997) 2 SCC 715**, it is submitted that the Apex Court has considered the difference between industrial alcohol, denatured spirit and potable liquor. The Apex Court further observed that Ethyl alcohol is rectified spirit of 95% v/v in strength. Rectified spirit is highly toxic and unfit for human consumption. When the rectified spirit is diluted with water, the same transforms into country liquor. Rectified spirit can be used for manufacture of various other chemicals. Rectified spirit is denatured by adding denaturants which make the spirit unpalatable and nauseating. Therefore, once it is denatured, it can be used only as industrial alcohol. Learned senior counsel contends that meaning thereby once the spirit is denatured, it is no more fit for human consumption and can be used as industrial alcohol and, therefore, taking into consideration, the said chemical process, the Central Government floated Ethanol Blended Petrol (EBP) Programme and in furtherance thereof had floated a scheme and in the scheme itself, the eligibility criterion were mentioned and as per Clause 1(vi) of the Scheme floated by the Central Government, which is contained in (Annexure P-3), it was specifically stipulated that the assistance under the scheme can be availed of by the entrepreneurs to install Molecular Sieve Dehydration Column (MCDH) to convert rectified spirit into

Ethanol in the existing Distilleries.

6. Learned Senior Counsel, therefore, contends that the scheme left no scintilla of doubt that even in the existing Distilleries, the permission was available to install Molecular Sieve Dehydration Column (MSDH) in order to convert rectified spirit into Ethanol. The Central Government nowhere fettered any restriction of installation of Molecular Sieve Dehydration Column (MSDH) in a Distillery Unit, on the contrary promoted the same and even provided the benefit of financial assistance as well. Thus, learned senior counsel contends that in such circumstances, the respondents be directed to reconsider the application moved by the petitioner for installation of Molecular Sieve Dehydration Column (MSDH) without extending any of the benefits or incentives, which were made available earlier under the scheme floated by the Central as well as State Government of Madhya Pradesh.

7. Per contra, learned Deputy Advocate General for the respondents submits that the present petition filed by the petitioner is based on misconceived notions. The petitioner is required to appreciate the object laid down under the provisions of the Act of 1915. It is contended that Section 62 of the Act of 1915 confers power upon the State Government to make Rules and accordingly in terms of Sub-Section 1 as well as Sub-Section 2 (d), (e), (f), (g), (h) of Section 62 of the Act of 1915, the Madhya Pradesh Distillery Rules, 1995 (hereinafter to be referred to as the Rules of 1995) have been framed. License is granted by the Government in terms of Rule 3 of the Rules of 1995 and license to manufacture spirit in a Distillery is granted in prescribed Form D-1 in terms of Rule 3(11) of the Rules of 1995 and as per the said provision, a license holder can only manufacture and store spirit and any other activity within the

Distillery premises is not permissible. Thus, it is submitted that taking into consideration the definition of spirit as well as liquor, which are provided under Sections 2(17) and 2(13) of the Act of 1915 respectively, there cannot be any permission to install Molecular Sieve Dehydration Column (MSDH) and this aspect was considered by the Excise Commissioner while rejecting the application filed by the petitioner vide order dated 7.2.2023 (Annexure P-21). Learned Deputy Advocate General has also supported the order dated 8.10.2021 (Annexure P-11), which was passed by the Department of Commercial Tax wherein, it was stipulated that only in the standalone Units the incentives under the scheme were available and not for Distillery Units. Accordingly, it is submitted that it is a policy decision of the State Government and such policy decisions cannot be interfered with. To bolster the aforesaid submissions, the counsel has placed reliance on **Mallikarjuna Rao and others Vs. State of Andhra Pradesh and others - (1990) 2 SCC 707; Executive Pilots Association and Another Vs. Air India Ltd. and others - 2023 SCC OnLine Del 3793; Duncan Industries Ltd and another Vs. Union of India - (2006) 3 SCC 129 and Ugar Sugar Works Ltd. Vs. Delhi Administration and others - (2001) 3 SCC 635.**

8. It is also contended that even the benefit to other similarly situated Unit i.e. M/s Gulshan Polyols Limited was granted under the misconception and also misconstruing the provisions of the scheme, which was floated by the State Government. The present petitioner, on the strength of permission which was granted to M/s Gulshan Polyols Limited, cannot claim negative equality. In support of this contention, reliance has been placed on the decision of the Apex Court in **State of Odisha and others Vs Anup Kumar Senapati and others - (2019) 19 SCC 626; Union of India and others Vs. M.K. Sarkar - (2010)**

2 SCC 59. Thus, it is submitted that the present petition deserves to be dismissed.

9. No other point is argued or pressed by the counsel for the parties.

10. Heard the submissions advanced on behalf of the parties and perused the record.

11. In order to deal with the controversy, it is first appropriate to deal with the definition of 'spirit' and 'liquor' as provided in Sections 2(17) and 2(13) respectively of the Act of 1915. Sections 2(13) and 2(17) are reproduced as under:-

2. Definitions. - in this Act, unless there is anything repugnant in the subject or context,-

"xxxxxxxxxxxxxxxxxxxxx

(13) "liquor" means intoxicating liquor, and includes spirits of wine, spirit, wine, tari, beer, all liquid consisting of or containing alcohol, and any substance which the State Government may, by notification, declare to be liquor for the purposes of this Act;

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(17) "spirit" means any liquor containing alcohol obtained by distillation whether it is denatured or not:"

12. A perusal of the aforesaid definitions reflects that the 'spirit' means any liquor containing alcohol obtained by distillation, whether it is denatured or not and the 'liquor' means intoxicating liquor, which includes spirits of wine, spirit, wine, tari, beer, all liquid consisting of or containing alcohol, and any substance which the State Government may, by notification, declare to be liquor for the purposes of this Act. Therefore, so far as the definition of liquor is concerned, the same suggests that any form of liquor, which is palatable and

fit for human consumption would fall within the definition of liquor, whereas the definition of spirit which has been provided in the Act of 2015 makes it crystal clear that the spirit means any liquor containing alcohol obtained by distillation, whether it is denatured or not. Therefore, even when the spirit is denatured, the same is also included in the definition of the spirit. The Apex Court in the case of **Vam Organic Chemicals Limited** (supra) considered the nature of spirit including its effect upon its rectification. The Apex Court in Paragraph 4 held as under:-

4. Before proceeding further, it will be proper to understand the difference between industrial alcohol, denatured spirit and potable liquor. Ethyl alcohol is rectified spirit of 95% v/v in strength. Rectified spirit is highly toxic and unfit for human consumption. However, rectified spirit diluted with water is country liquor. Rectified spirit, as it is, can be used for manufacture of various other products like chemicals etc. Rectified spirit, produced for industrial use is required by a notification issued under the Act to be denatured in order to prevent the spirit from being directed to human consumption. Rectified spirit is denatured by adding denaturants which make the spirit unpalatable and nauseating. As such rectified spirit can be converted to potable liquor but once denatured it can be used only as industrial alcohol. The process of denaturation described by the respondent is narrated by the High Court in the following words:

“Denaturation of rectified spirit is a highly technical process. Every drum/lot/batch has to be tested by the Chief Development Officer at the Excise Headquarters' Laboratory so as to ensure that the same is according to the prescribed specification before they are allowed to be used for denaturing the rectified

spirit. After they are properly tested, the denaturants have to be separately stored under lock and key of the officer-in-charge of the distillery, and measured quantities are pumped into denaturation vats at the time of denaturation. The process of mixing goes on for several hours. The resultant mixture is denatured spirit or specially denatured spirit, as the case may be. After denaturing, it is again tested to find out whether it has been properly denatured or not. The Excise Department is obliged to, and does maintain a laboratory for this purpose at the Headquarters of the Excise Commissioner. There is a Chief Development Officer, assisted by four Assistant Alcohol Technologists and a large number of supporting staff apart from apparatus and other equipment. Denaturation takes place under the close supervision of the Excise Officials in accordance with the provisions of Rule 785 of the U.P. Excise Manual, Volume I.”

13. To understand the controversy, it is to be kept in mind that the rectified 'spirit' is highly toxic and is unfit for human consumption and when rectified spirit is diluted with water, it transforms into country liquor and rectified spirit can be used for manufacture of the chemicals. To make the spirit denatured, denaturants are added and resultantly the changed product is neither palatable nor fit for human consumption.

14. 'Ethanol' is an organic compound and also called ethyl alcohol, grain alcohol, drinking alcohol or simply alcohol (as per Wikipedia). 'Ethanol' is naturally produced by the fermentation process of sugars by yeasts or via petrochemical processes such as ethylene hydration. It is used as a chemical solvent and in the synthesis of organic compounds, and as a fuel source as well. Therefore, taking into consideration, the aforesaid properties of 'Ethanol', a decision has been taken by the Central Government for Ethanol blending in

petrol as the same is less polluting fuel and also offers lower cost than petrol. Accordingly, keeping in view the future goals, the Government of India has issued a report of the expert committee providing for Roadmap for Ethanol blending.

15. Thus, there is no iota of doubt that Ethanol blending is a policy decision, which has been taken by the Central Government and in order to promote the same, the scheme contained in Annexure P-3 was floated and while floating the said scheme the Central Government, while stretching the field of coverage, even took a decision to permit the existing Distilleries to install Molecular Sieve Dehydration Column (MSDH) to convert rectified spirit into Ethanol. Thus, the scheme, which contains the decision taken by the Government, is no doubt a policy decision of the Central Government. The State Government also, in tune with the scheme floated by the Central Government, issued a scheme for promotion of Ethanol and Bio-fuel production and also provided various assistance, which are detailed in the scheme of the State Government, contained in Annexure P-8. The relevant clause in the Central Government scheme is Clause 1(vi), which is reproduced as under:-

"(1) Eligibility

assistance under the scheme shall be available to the entrepreneurs for:

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(vi) To install Molecular Sieve Dehydration (MSDH) Column to convert rectified spirit to ethanol in the existing distilleries.

xxxxxxx"

16. The State Government also inserted Clause 3.2 in its scheme, which is also reproduced as under:-

"3.2. Promote, facilitate and financially incentivize investment in fuel-grade standalone green field Ethanol manufacturing units as well as existing distilleries planning to expand in the area of ethanol production in Madhya Pradesh."

17. In view of above clauses of Schemes, this Court does not find any force in the submission of the State Government that there is a policy decision, which puts an embargo upon installation of Molecular Sieve Dehydration Column (MSDH) in existing Distilleries.

18. Thus, it can be safely inferred that there is no policy decision of the State Government which prohibits installation of Molecular Sieve Dehydration Column (MSDH) in the existing Distilleries. The order dated 7.2.2023 (Annexure P-21) cannot be given stamp of approval under the garb of a misconception that the same is a policy decision. The decision has been taken by the Excise Commissioner as per his own interpretation/understanding of the statutory provision and the same cannot be construed as a policy decision taken by the Government.

19. So far as the identical benefit to similarly situated Distillery i.e. M/s Gulshan Polyols Limited is concerned, the stand of the respondents that negative equality cannot be claimed by the petitioner, is also unsustainable. It is evident that permission to Unit was granted vide order dated 20.3.2020 and if the said Unit was not entitled for such permission and if the permission was granted under misconception, no documents have been brought on record to demonstrate that any action was taken by the State Government including the

Department of Commercial Tax or the Excise Commissioner in order to cancel the permission.

20. At this juncture, it is further profitable to take into consideration Form D-1, which is a license issued under Rule 3(1) of the Rules of 1995 to manufacture spirit in the Distilleries. The prescribed Form D is reproduced below for ready reference:-

FORM-D-1

[Under Rule 3(1)]

Licence to Manufacture spirits in the Distillery at.....

Under rule 3(11) of the Madhya Pradesh Distillery Rules, 1993 and in consideration of the payment of an annual licence fee of Rs..... the redceipt of which is hereby acknowledged, Licence is hereby granted to Resident of..... hereinafter called the licensee, to manufacture spirits in the distillery at from..... to..... subject to the following conditions:

1. *The licensee shall observe the provisions of the Madhya Pradesh Excise Act, 1915 rules made thereunder and conditions of this licence. He shall also follow all directions and instructions issued by State Government and Excise Commissioner.*

2. *The licensee may distill maximum bulk liter spirit in his distillery and shall not increase the capacity as per the provisions of the distillery without the prior permission of the State Government.*

3. *The licensee shall not except with the written permission of the Excise Commissioner and on such conditions as he may impose manufacture denatured spirit.*

4. *The licensee shall store denatured or special Denatured spirit in a separate room specially earmarked for the purpose.*

5. *On breach of any of the conditions of this licence or of the provisions of the Madhya Pradesh Excise Act, 1915 or of the rules made thereunder this licence may be cancelled by the Excise Commissioner.*

Granted this..... day of.....199.

.....
*Excise Commissioner,
Madhya Pradesh"*

21. A perusal of aforesaid Form D-1 reflects that the licensee shall store denatured or special Denatured spirit in a separate room specially earmarked for the purpose. Clause 4 makes it crystal clear that even denatured spirit can be stored within the Distillery Premises and is required to be stored separately at a place which is earmarked for the said purpose. The same clause 4 is provided in the prescribed licence D-1 as mentioned in communication dated 19.3.2020 (Annexure P-2), which was issued in respect of M/s Gulshan Polyols Limited and Distillery concerned was informed that it was required to ensure strict compliance of Clause 4 of D-1 licence.

22. Thus, aforesaid analysis reveals that in absence of any statutory restriction or policy decision, the application moved by the petitioner was rejected vide order dated 7.2.2023 (Annexure P-21) and the interpretation as put forth by the Department of Commercial Tax in order dated 8.10.2021 (Annexure P-11) and also by the Excise Commissioner in order dated 7.2.2023 (Annexure P-21), in the considered view of this Court, is unsustainable and does not hold the field in absence of any enabling provision.

23. It is settled proposition of law that Doctrine of legitimate expectation operates in the realm of public law and is considered as substantive and enforceable right in appropriate cases. The Apex Court in the case of **M.P. Oil Extraction v. State of M.P., (1997) 7 SCC 592** held as under:-

"44. The renewal clause in the impugned agreements executed in favour of the respondents does not also appear to be

unjust or improper. Whether protection by way of supply of sal seeds under the terms of agreement requires to be continued for a further period, is a matter for decision by the State Government and unless such decision is patently arbitrary, interference by the Court is not called for. In the facts of the case, the decision of the State Government to extend the protection for further period cannot be held to be per se irrational, arbitrary or capricious warranting judicial review of such policy decision. Therefore, the High Court has rightly rejected the appellant's contention about the invalidity of the renewal clause. The appellants failed in earlier attempts to challenge the validity of the agreement including the renewal clause. The subsequent challenge of the renewal clause, therefore, should not be entertained unless it can be clearly demonstrated that the fact situation has undergone such changes that the discretion in the matter of renewal of agreement should not be exercised by the State. It has been rightly contended by Dr Singhvi that the respondents legitimately expect that the renewal clause should be given effect to in usual manner and according to past practice unless there is any special reason not to adhere to such practice. The doctrine of "legitimate expectation" has been judicially recognised by this Court in a number of decisions. The doctrine of "legitimate expectation" operates in the domain of public law and in an appropriate case, constitutes a substantive and enforceable right."

24. In Union of India v. Hindustan Development Corpn. [(1993) 3 SCC 499] the Apex Court explained the nature and scope of the doctrine of "legitimate expectation" thus (SCC p. 540, para 28):-

"For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can

it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.”

25. The Apex Court in celebrated judgment of Food Corporation of India Vs. M/s Kamdhenu Cattle Feed Industries - (1993) 1 SCC 71 held as under:-

"8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have

been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

26. In view of the aforesaid law enunciated by the Apex Court, it is to be seen that there was a scheme floated by the Central as well as the State Government and acting upon the said scheme, the application was moved by the petitioner as undisputedly the petitioner was falling within the eligibility criteria as stipulated in various provisions in the scheme. The petitioner was expecting consideration of his application in terms of the schemes and made investments as well. Thus, in the present case, the Doctrine of legitimate expectation comes into play in view of peculiar facts and circumstances of the case.

27. Moreover, another Latin maxim "*Aequitas Sequitur Legem*" is also required to be taken note of in the present case, which means "equity follows the law". While acting upon the scheme so floated by the Governments, the present petitioner moved application for installation of Molecular Sieve Dehydration Column (MSDH). It is also apparent that the said application was not rejected on the ground that the present petitioner was not eligible under the scheme. On the contrary, the application was declined while referring the definition of spirit as mentioned in Section 2(17) of the Act of 1915. The petitioner having acted upon the provisions of the schemes made investment of Rs.14,30,000/- for setting up Molecular Sieve Dehydration Column (MSDH). Thus in view of the equity being in favour of the petitioner, the respondents are

duty bound to consider the claim of the petitioner without incentives or benefits under the scheme.

28. The judgment relied upon by the respondents are of no assistance to them as there is no contrary policy decision nor it is a case where negative equality is being claimed.

29. Resultantly, order dated 7.2.2023 (Annexure P-21) is quashed. The Excise Commissioner, Madhya Pradesh is directed to reconsider the application moved by the petitioner dated 18.4.2022 while treating the same having not been filed under the scheme contained in Annexure P-3 or the scheme contained in Annexure P-8 by the Central as well as the State Government and take a decision afresh.

30. It is clarified that the interpretation which prevailed upon the Excise Commissioner to reject the application shall not be taken recourse to again when the consideration is to be made in terms of this order, so as to ensure that the petitioner is not compelled to revisit this Court disputing the same grounds again. It is further clarified that the petitioner shall not be entitled for any benefits or incentives, which were to be granted by the Central Government in its scheme contained in Annexure P-3 or by the State Government in its scheme contained in Annexure P-8.

31. Let decision in terms of this order be taken by the Excise Commissioner within a period of 90 days from the date of production of certified copy of this order by passing a well reasoned and speaking order in accordance with law while affording opportunity of hearing to the petitioner and without being influenced with the order dated 8.10.2021 passed by the Commercial Tax Department (Annexure P-11).

32. Accordingly, the petition stands allowed in above terms.

(MANINDER S. BHATTI)
JUDGE

PB

