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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.21670 of 2025 & W.P.(C) No.37811 of 2021

(In the matter of an application under Article 226 & 227 of the Constitution of India)

In W.P.(C) No.21670 of 2025

Swosti Premium Ltd., Jaydev Vihar, Bhubaneswar, represented through its General Manager and another … **Petitioner**

-versus-

State of Odisha, represented through its Chief Secretary and others … **Opposite Parties**

Advocate(s) appeared in this case:-

For Petitioner	:	Mr.G.Mukherji, Sr.Advocate Mr.A.Behera, Advocate
For Opposite Parties	:	T.K.Dash, AGA

In W.P.(C) No.37811 of 2021

Hotel and Restaurant Association of Odisha, Bhubaneswar, represented through its Executive Secretary and another … **Petitioner**

-versus-

State of Odisha, represented through its Chief Secretary and others … **Opposite Parties**

Advocate(s) appeared in this case:-

For Petitioner	:	Mr.G.Mukherji, Sr.Advocate Mr.A.Behera, Advocate
For Opposite Parties	:	T.K.Dash, AGA

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

Date of Hearing	:	**24th March, 2026**
Date of Judgment	:	**21st May, 2026**

B.P. Routray, J.

1. Both the writ petitions, one filed by Swosti Premium Ltd., and other by Hotel and Restaurant Association of Odisha, are directed with common prayer to quash the order of Chief Secretary, Odisha dated 26th October 2021 along with different clauses of the Odisha Tourism Policy, 2016 read with operational guidelines issued thereof on 5th June 2017 and as such are involving common issues for decision. In addition to this, Swosti Premium Ltd. has further prayed to quash the order of the Director of Tourism rejecting his prayer to grant such incentives. The common issues involved in both the writ petitions are to the effect that, whether the migrated industrial units could be included to receive such benefits/incentives under the Odisha Tourism Policy, 2016 and the operational guidelines issued thereof. The crux of the issue is relating to insertion of a migration clause in the Odisha Tourism Policy, 2016 based on certain clauses mentioned in the Odisha Industrial Policy Resolution, 2015.

2. The Industrial Policy Resolution, 2015 (IPR 2015) was issued by the Government of Odisha covering different industrial sectors including concern of present Petitioners, i.e. Tourism and Hospitality Sector. The objective of IPR 2015 was to promote industrial development for setting up a business climate conducive to accelerate investment in industries and infrastructure projects and its prime objectives include, specifically, promotion of sectors in priority category such as Information Technology (IT) / Information Technology Enabled Services (ITES) / Electronic System Designing and Manufacturing (ESDM), Biotechnology, Agro, Marine and Food Processing, Tourism, Textiles and Apparel and automotive industries which offer strong images to employment generation and exports.

3. The main purpose was to maximize employment generation and enhance employability through industry oriented skill development and to encourage establishment of environment friendly and less polluting industries. For ready reference, the objectives of IPR 2015 as mentioned at Clause-2 of said resolution are reproduced below:

> "2.3 To specifically promote sectors in the priority category such as Information Technology (IT)/Information Technology Enabled Services (ITES)/Electronic System Designing and Manufacturing (ESDM), Biotechnology, Agro, Marine and Food

Processing, Tourism, Textiles and Apparel and automotive industries, which offer strong images to employment generation and exports."

4. It is required to be mentioned here that priority sectors as per the definition and interpretation clause given in IPR 2015, means industrial units which fall within such categories that include tourism and hospitality. It is further defined in IPR 2015, the new industrial units, expansion of existing industrial units and migrated industrial units. Such definition contained at Clause 15 of the IPR 2015 reads as under:

> "8. "Expansion/Modernization/Diversification" of an existing industrial unit means additional investment of at least 50% of the un-depreciated book value of plant and machinery of the said unit made in acquisition of additional plant and machinery and technology for such E/W/D duly appraised and approved by DIC/RIC/SISI/NSIC/NCDC/OCAC/STPI/ IPICOL/ Public Financial Institutions. In case of "Expansion" the additional investment as above must result in at least 50% addition in production capacity. In case of "Diversification" the additional investment as above must result in production of at least one additional product.
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> xx.. xx.. xx..
>
> 15) "New Industrial Unit" means an industrial unit where fixed capital investment has commenced on or after the effective date and which goes in to production within three years for MSMEs and five years for Large units from the date

of starting of first fixed capital investment. New investment after the effective date on existing land towards building and plant and machinery and which goes in to production within three and five years for MSME and Large units respectively from the date of starting of first fixed capital investment will be considered as a new industrial unit.

16. "Migrated Industrial Unit" means an industrial unit which has commenced fixed capital investment but not gone into production before the effective date and will have the option to be treated as New Industrial Unit under this IPR provided that it goes into production within three years for MSMEs and five years for Large Industries from the effective date and it will surrender and or refund the incentives availed, if any under earlier IPRs, Provided also that such option shall be exercised in the prescribed form provided in the Operational Guidelines and submitted within 180 days from the "Effective Date". Once the option is exercised, it shall be final and irrevocable."

5. The Miscellaneous Clause in IPR 2015 is also required to be noted here and the same is reproduced below:

"14. MISCELLANEOUS

a) The policy lays down the base fiscal and non-fiscal incentives available to any industry set up across the State.
b) Government of Odisha has notified a separate policy- Orissa MSME Development Policy 2009- which provides fiscal and non-fiscal incentives to MSME units.
c) Various sector specific policies have been and will be notified by Government of Odisha from time to time. In such cases, while the allocation of land will be governed by this IPR, the industrial unit can choose to avail a

particular incentive under either this policy or the sectoral policy.

d) Any Act or policy of Government of Odisha along with its rules and procedures thereunder dealing with promotion of investments in the State that is conflicting with this policy, its rules and procedures shall be suitably amended to the extent required to bring conformity with this policy within one year of notification of this policy.

e) The incentives on taxes such as VAT, Entry Tax, Central Sales Tax (CST) and Entertainment Tax will be applicable till the notification of GST by Governed of India, Post notification of GST, Industries Department will suitably modify this policy.

f) The State Government may at any time amend any provision of this policy

g) A special package of incentives over the above what has been enumerated in this Policy document may be considered for new industrial projects in certain sectors or certain locations on a case to case basis by a high level committee to be constituted under the Chairmanship of Chief Secretary taking into account the benefits to the State. The Cabinet would consider such proposals duly recommended by the high level committee.

h) All the industrial units are expected to adhere to the provisions of the Apprentice Policy 1973 as a measure of their contribution to skill development.

i) Doubts relating to interpretation of any term and/or dispute relating to the operation of any provision under this IPR shall be referred to the Industries Department for clarification/resolution. The decision of Government in this regard shall be final and binding on all concerned."

6. Subsequently, the State Government of Odisha announced Odisha Tourism Policy, 2016 at Annexure-15. The objective of such policy is to promote sustainable and green tourism along with preservation, enrichment and promotion of unique cultural heritage of Odisha and its natural environment with a view to achieve inclusive development for addressing developmental functions in Private Public Partnership (PPP) mode and for creation of employment opportunities bringing socio-economic benefits to the community. The details of such objectives are narrated below:-

> **4. The Objectives:**
>
> a. To promote Sustainable and Green Tourism with a view to create employment opportunities and to bring about socio-economic benefits to the community.
>
> b. To preserve, enrich and promote Odisha's unique cultural heritage, natural resources and environment with a view to achieve inclusive development; addressing the regulatory and tourism promotion/ development functions in Private Public Partnership (PPP) mode at all levels in an effective and well coordinated manner.
>
> c. To promote Odisha as one step destination to experience its great history, culture, society and natural beauty so as to boost foreign and domestic tourist arrival in the State.
>
> d. To promote circuit tourism in association with the States of the Eastern Zone of the country to facilitate easy arrival and movement of the tourist.

e. To upgrade skill and professionalism and promote employment opportunities in tourism sector.

f. To promote digital tourism.

g. To promote responsible tourism and develop tourism products in an environment friendly manner.

h. To promote barrier free tourism.

i. To promote (1) Beach Tourism, (2) Eco Tourism, (3) Buddhist Tourism, (4) Heritage Tourism, (5) Religious Tourism, (6) Knowledge Tourism, (7) Medical Tourism, (8) Travel Tourism, (9) Caravan Tourism, (10) Wellness Tourism, (11) Cruise Tourism, (12) Sand Art Tourism, (13) Adventure Tourism, in a mission mode.

7. Odisha Tourism Policy, 2016 applies to a new tourism unit, which means a tourism unit set up and commences commercial operation during the partition period of the policy. It also includes an existing tourism unit undergoing expansion more than 50% of its existing capabilities after the effective date. In this regard Clause-6.3, 6.4 and 6.6 of the Odisha Tourism Policy, 2016 enumerate as above.

8. The grievance of the Petitioners is that absence of inclusion of migration clause in the Odisha Tourism Policy, 2016 leads to violation the purported representation of the State Government under Clause 14(c) and 14(d) of IPR 2015, and thereby attracts the doctrine of legitimate expectation in favour of the Petitioners to get such incentives/benefits as extended to the new 'Industrial Units' and expansion of 'Existing Industrial Units' under said policy. According to the description narrated by the Petitioners, IPR 2015 is to be considered as the mother policy and Odisha Tourism Policy, 2016 being a sector specific policy cannot be in conflicting terms with IPR 2015 and must be in conformity with the same. Such inaction on the part of the State Government to exclude migrated 'Industrial Units' from the applicability of Odisha Tourism Policy, 2016 is in violation of the object and prescription of IPR 2015.

9. It is true and admitted on the part of the Petitioner in W.P.(C) No.21670 of 2025, i.e. Swosti Premium Ltd., does not come within the description and definition of 'New Industrial Unit' and expansion of existing 'Industrial Unit' as per Odisha Tourism Policy, 2016. Thus its' general grievance along with HRAO (the other petitioner) is for inclusion of the migrated 'Industrial Units' in the Odisha Tourism Policy, 2016 and the operational guidelines prescribed thereof on 5th June 2017.

10. As per Clause-14(c) of IPR, 2015 various sectors specific policies have been and will be notified by the Government of Odisha from time to time and the 'Industrial Unit' may chose to avail a particular incentive either under IPR 2015 or under such sectoral policy. Further, as per Clause-14(d), any act or policy of Government of Odisha along with its rules and procedures there-under dealing with promotion of investments in the State that is conflicting with IPR 2015, its rules and procedures shall be suitably amended to the extent required to bring conformity with IPR 2015. These are two clauses of IPR 2015 taken to the advantage of the Petitioners to submit that exclusion of clause 'Migrated Industrial Unit' is in conflict with IPR 2015 and violation of the principles thereof.

11. Said submission as advanced on behalf of the Petitioners is not found quite convincing. It is for the reason that, exclusion of 'Migrated Industrial Unit' from the purview of Odisha Tourism Policy, 2016 may not be construed as conflicting to the principles or terms of policy in IPR 2015 though it may be opined to some extent that it is not conformity with the adopted terms of IPR 2015. IPR 2015 includes three categories of 'Industrial Units' Viz. New Industrial Unit, Migrated Industrial Unit and expansion/modernization/ diversification of an existing 'Industrial Unit'. The word 'conflicting' as used in Clause-14(d) of IPR 2015 has a restricted application which denotes that the rules and procedures under a sector specific policy dealing with promotion and investment should not run contrary to the principles regarding rules and procedures for promotion of investments in the State. Non-inclusion or exclusion of particular category of 'Industrial Unit' in the sectoral policy from those included in IPR 2015 thus cannot be said as conflicting with the rules and procedures of IPR 2015. For example, had it been a case of expansion of the 'Industrial Unit' less than 50% as specified in IPR 2015 as a condition of eligibility, it would have been an effect of conflict with IPR 2015. In the given case at hand, it is a matter of exclusion of a particular category of industrial unit from the Odisha Tourism Policy, 2016 which was drafted as per the advice of the Tourism Advisory Committee. It is pertinent to mention here that, objective of both the policies does not run in conflict with each other nor any such rule or procedure of Odisha Tourism Policy 2016 would be said as repugnant to the objective of IPR 2015.

12. The second contention of the Petitioners to treat IPR 2015 as the mother policy of Odisha Tourism Policy, 2016 has no legislative sanctity. Both IPR 2015 and Odisha Tourism Policy, 2016 are the resolutions formulated by the Government of Odisha having the approval of Cabinet. Both the policies are the Cabinet approved resolutions and therefore nothing is there not to distinguish them to be treated differently, according to the arguments advanced on behalf of the Petitioners.

13. So far as the expectation of the Petitioners to get such incentives/ benefits under Odisha Tourism Policy, 2016 is concerned, the same is not supported by any such express promise or practice under the existing policy for any relevant time. It is admitted that Odisha Tourism Policy, 2013 does not contain any such provision or clause to incentivize 'Migrated Industrial Units' during validity of said policy. This aspect is never disputed and the Petitioner does not claim about existence of any such policy term in Odisha Tourism Policy, 2013 to favour 'Migrated Industrial Units'. As a settled principle the doctrine of legitimate expectation applies where there is an express promise given by a public authority, or because of the existence of a regular practice which a claimant can reasonably expect to continue, and such expectation must be within the limits of reasonableness. Any situation of change in policy or where the position is altered in public interest the question of legitimate expectation does not survive. In ***State of Bihar and Ors. Vs. Suprabhat Steel Limited and Ors., (1999) 1 SCC 31***, the Hon'ble Supreme Court has observed that, *" .. .. the industrial incentive policy* *is issued by the State Government after such policy is approved by the Cabinet itself. The issuance of the notification under Section 7 of the Bihar Finance Act is by the State Government in the Finance Department which notification is issued to carry out the objectives and the policy decisions taken in the Industrial Policy itself. In this view of the matter, any notification issued by the Government order in exercise of power under Section 7 of the Bihar Finance Act, if is found to be repugnant to the Industrial Policy declared in a Government Resolution, then the said notification must be held to be bad to that extent".*

14. In ***Food Corporation of India v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71,*** Hon'ble Apex Court have held at paragraph 8 as follows:-

> "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."

15. In ***Tej Prakash Pathak & others vs- Rajasthan High Court & Others, (2025) 2 SCC 1,*** it has been explained as follows:-

26. However, the doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse factors, concerns, and interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a bona fide decision of public authorities which denies legitimate expectation provided such a decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation.

27. Courts have to determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a balancing exercise, courts have to often grapple with the issues of burden and standard of proof required to dislodge the claim of legitimate expectation. [*Sivanandan C.T. case*, (2024) 3 SCC 799, para 37]

16. In ***Madras City Wine Merchants' Association and Anr. Vs. State of T.N. and Anr., (1994) 5 SCC 509***, the Hon'ble Supreme Court has observed as follows:-

> **19.** Legitimate expectation is a weak and sober right as ordained by a statute. When the Government decides to introduce fair play by way of auction facilitating all eligible persons to contest on equal terms, certainly one cannot contend that he is entitled for a lease merely on the basis of a pending application. The right being not legal, apart from being non-existent, it can certainly not be enforceable. The principle of law on these aspects, as settled decades ago in *State of T.N.* v. *Hind Stone* [*State of T.N.* v. *Hind Stone*, (1981) 2 SCC 205] , is being reiterated from time to time. (*Monnet Ispat & Energy* [*Monnet Ispat & Energy Ltd.* v. *Union of India*, (2012) 11 SCC 1] , SCC pp. 106 & 110, paras 183 & 188)
>
> *Principles of legitimate expectation*
>
> > *183. As there are parallels between the doctrines of promissory estoppel and legitimate expectation because both these doctrines are founded on the concept of fairness and arise out of natural justice, it is appropriate that the principles of legitimate expectation are also noticed here only to appreciate the case of the appellants founded on the basis of the doctrines of promissory estoppel and legitimate expectation.*
> >
> > *188.* It is not necessary to multiply the decisions of this Court. Suffice it to observe that the following principles in relation to the doctrine of legitimate expectation are now well established:
> >
> > *188.3. Where the decision of an authority is founded in public interest as per executive policy or law, the court*

would be reluctant to interfere with such decision by invoking the doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.

188.4. The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertable expectation. Such expectation should be justifiable, legitimate and protectable.

188.5. The protection of legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit."

20.*Kerala State Beverages (M&M) Corpn. Ltd.* v. *P.P. Suresh* [*Kerala State Beverages (M&M) Corpn. Ltd.* v. *P.P. Suresh*, (2019) 9 SCC 710 : (2019) 2 SCC (L&S) 821] : (SCC pp. 719-20, paras 14-20)

"B. *Legitimate expectation*

14. The main argument on behalf of the respondents was that the Government was bound by its promise and could not have resiled from it. They had an indefeasible legitimate expectation of continued employment, stemming from the Government Order dated 20-2-2002 which could not have been withdrawn. It was further submitted on behalf of the respondents that they were not given an opportunity before the benefit that was promised, was taken away. To appreciate this contention of the respondents, it is necessary to understand the concept of legitimate expectation.

15. The principle of legitimate expectation has been recognised by this Court in *Union of India* v. *Hindustan Development Corpn.*[*Union of India* v. *Hindustan Development Corpn.*, (1993) 3 SCC 499] If the promise made by an authority is clear, unequivocal and unambiguous, a person can claim that the authority in all fairness should not act contrary to the promise.

16. M. Jagannadha Rao, J. elaborately elucidated on legitimate expectation inPunjab Communications Ltd. v.

Union of India [*Punjab Communications Ltd.* v. *Union of India*, (1999) 4 SCC 727] . *He referred* (at SCC pp. 741-42, para 27) *to the judgment inCouncil of Civil Service Unions* v. *Minister for the Civil Service* [*Council of Civil Service Unions* v. *Minister for the Civil Service*, 1985 AC 374 : (1984) 3 WLR 1174 (HL)] *in which Lord Diplock had observed that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which* : (*Punjab Communications case* [*Punjab Communications Ltd.* v. *Union of India*, (1999) 4 SCC 727] , SCC p. 742, para 27)

27. … (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or

(*ii*) *he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.* '(AC p. 408)

17. Rao, J. observed in this case, that the *procedural* part of legitimate expectation relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The *substantive* part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit, that it will be continued and not be substantially varied, then the same could be enforced.

18. It has been held by R.V. Raveendran, J. inRam Pravesh Singh v. *State of Bihar* [*Ram Pravesh Singh* v. *State of Bihar*, (2006) 8 SCC 381 : 2006 SCC (L&S) 1986] *that legitimate expectation is not a legal right. Not being a right, it is not enforceable as such*. It may entitle an expectant : (SCC p. 391, para 15)

'*15*. … (*a*) to an opportunity to show cause before the expectation is dashed; or

(*b*) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practice.'

Substantive Legitimate Expectation

19. An expectation entertained by a person may not be found to be legitimate due to the existence of some countervailing consideration of policy or law. [H.W.R.

Wade & C.F. Forsyth : *Administrative Law* (Eleventh Edn., Oxford University Press, 2014).] *Administrative policies may change with changing circumstances, including changes in the political complexion of Governments. The liberty to make such changes is something that is inherent in our constitutional form of Government*. [*Hughes* v. *Deptt. of Health & Social Security*, 1985 AC 776, 788 : (1985) 2 WLR 866 (HL).]

20. The decision-makers 'freedom to change the policy in public interest cannot be fettered by applying the principle of substantive legitimate expectation. [*Findlay, In re*, 1985 AC 318 : (1984) 3 WLR 1159 (HL).] *So long as the Government does not act in an arbitrary or in an unreasonable manner, the change in policy does not call for interference by judicial review on the ground of a legitimate expectation of an individual or a group of individuals being defeated*."

17. In ***State of Rajasthan & Ors. Vs. Sharwan Kumar Kumawat & Ors., (2023) 20 SCC 747,*** the Hon'ble Supreme Court has stated that legitimate expectation is a weak and sober right as ordained by a statute. There it has been held as follows:-

48**.** In *Union of India* v. *Hindustan Development Corpn.* [(1993) 3 SCC 499 : JT (1993) 3 SC 15, 50-51] this Court observed thus: (SCC pp. 540-41, para 29)

"It has to be noticed that the concept of legitimate expectation in administrative law has now, undoubtedly, gained sufficient importance. It is stated that 'legitimate expectation 'is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action and this creation takes its place beside such principles as the rules of natural justice, unreasonableness, the fiduciary duty of local authorities and 'in future, perhaps, the principle of proportionality'. A passage in *Administrative Law*, 6th Edn., by H.W.R. Wade page 424 reads thus:

These are revealing decisions. They show that the courts now expect government departments to honour their published statements or else to treat the citizen with the fullest personal consideration. Unfairness in the form of unreasonableness here comes close to unfairness in the form of violation of natural justice, and the doctrine of legitimate expectation can operate in both contexts. It is obvious, furthermore, that this principle of substantive, as opposed to procedural, fairness may undermine some of the established rules about estoppel and misleading advice, which tend to operate unfairly. Lord Scarman has stated emphatically that unfairness in the purported exercise of a power can amount to an abuse or excess of power, and this seems likely to develop into an important general doctrine.'

Another passage at page 522 in the above book reads thus:

"It was in fact for the purpose of restricting the right to be heard that 'legitimate expectation 'was introduced into the law. It made its first appearance in a case where alien students of 'scientology 'were refused extension of their entry permits as an act of policy by the Home Secretary, who had announced that no discretionary benefits would be granted to this sect. The Court of Appeal held that they had no legitimate expectation of extension beyond the permitted time, and so no right to a hearing, though revocation of their permits within that time would have been contrary to legitimate expectation. Official statements of policy, therefore, may cancel legitimate expectation, just as they may create it, as seen above. In a different context where car-hire drivers had habitually offended against airport bye-laws, with many convictions and unpaid fines, it was held that they had no legitimate expectation of being heard before being banned by the airport authority.

There is some ambiguity in the dicta about legitimate expectation, which may mean either expectation of a fair hearing or expectation of the licence or other benefit which is being sought. But the result is the same in either case; absence of legitimate *expectation will absolve the public authority from affording a hearing*.

Again, at pages 56-57 it is observed thus: (SCC p. 547, para 33)

"A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to

> such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. *If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision*. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors."

Again at pages 57-58 it is observed thus: (SCC pp. 548-49, para 35)

> "Legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the governmental activities. They shift and change so fast that the start of our list would be obsolete before we reached the middle. By and large they arise in cases of promotions which are in normal course expected, though not guaranteed by way of a statutory right, in cases of contracts, distribution of largess by the Government and in somewhat similar situations. For instance discretionary grant of licences, permits or the like, carry with it a reasonable expectation, though not a legal right to renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. *But there again the court has to see whether it was done as a policy or in the public interest either by way of GO, rule or by way of a legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power*. Therefore the limitation is extremely confined and if the according of natural justice does not condition the exercise of the power, the concept of legitimate expectation can have no role to play and the court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without

any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. For instance if an authority who has full discretion to grant a licence prefers an existing licence-holder to a new applicant, the decision cannot be interfered with on the ground of legitimate expectation entertained by the new applicant applying the principles of natural justice. It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. In other words such a legal obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it.

As observed in *Attorney General for New South Wales case* [*Attorney General for New South Wales* v. *Quin*, (1990) 64 Aust LJR 327] :

"To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law.

If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles."

From the above it is clear that legitimate expectation may arise-

(*a*) if there is an express promise given by a public authority; or

(*b*) because of the existence of a regular practice which the

claimant can reasonably expect to continue;

(*c*) Such an expectation must be reasonable.

However, if there is a change in policy or in public interest the position is altered by a rule or legislation, no question of legitimate expectation would arise.

18. The facts as narrated in the instant case not do not reveal any such promise or existence of regular practice to give rise a legitimate expectation on the part of the Petitioners to get the benefits/ incentives in their favour. This was not availed or extended in the previous tourism policy of the year 2013 nor is it in present policy. What is stated in IPR 2015 to include tourism sector in Clause 2.3 is in a general form and that apart, Petitioners case is not to be considered in terms of IPR 2015 excluding the tourism policy, 2016. It is further seen that the Petitioner had the choice to opt between IPR 2015 and Odisha Tourism Policy, 2016 as per the condition stipulated in both the policies. Keeping in view the objective and applicability of Odisha Tourism Policy, 2016, the expectation of the Petitioners to get such benefits as 'Migrated Industrial Units' under IPR 2015 cannot be considered as legitimate on their part either by way of practice or promise. The expectation of the Petitioners to pluck the benefits for Migrated Industrial Units implanting the same within the purview of Odisha Tourism Policy, 2016 would thus not considered as reasonable.

19. In the given case at hand, the claim of both the Petitioners have been rejected vide the direction of Director of Tourism and the Chief Secretary to Government of Odisha respectively. The order of the Chief Secretary dated 26th October 2021, commonly impugned in both the writ petitions, is seen to be a reasoned one declining to extend the benefits to Migrated Industrial Units as per the Odisha Tourism Policy, 2016. On the anvil of discussions made above, the reasons stated in the impugned order of the Chief Secretary do not found to be unreasonable warranting interference of this Court to grant the relief in favour of the Petitioners. Nonetheless, it is found from said impugned order of the Chief Secretary that the Finance Department of State Government has opined to insert perspective migration in the policy and therefore, this Court is of the opinion that in the event, such migration clause is included perspectively in the policy to include "Migrated Industrial Units" to avail such incentives/ benefits, it is open for the State Authority to do so for extending benefits to such 'Migrated Industrial Units'.

20. Accordingly, both the writ petitions are disposed of.

(B.P. Routray)
Judge

C.R.Biswal, A.R.-cum-Sr.Seretary
S.Das