IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WP(C).No. 1648 of 2015 (E)

PETITIONER :

THE KERALA HIGH TENSION AND EXTRA HIGH TENSION INDUSTRIAL ELECTRICITY CONSUMERS' ASSOCIATION,
PRODUCTIVITY HOUSE, JAWAHARLAL NEHRU ROAD,
KALAMASSERY-683 104,
REPRESENTED BY ITS SECRETARY - MR.P.ACHUTHANKUTTY

BY ADVS.SRI.JOSEPH KODIANTHARA (SR.)
SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS
SRI.NOBY THOMAS CYRIAC
SRI.ARSHAD HIDAYATULLAH

RESPONDENTS :

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1. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
POWER DEPARTMENT,
NORTH BLOCK,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. KERALA STATE ELECTRICITY BOARD LTD.,
REPRESENTED BY ITS SECRETARY,
VYDHYUTHI BHAVANAM, PATTOM,
THIRUVANANTHAPURAM - 695 004.

3. THE DIRECTOR OF INDUSTRIES & COMMERCE,
DIRECTORATE OF INDUSTRIES & COMMERCE,
GOVERNMENT OF KERALA, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM - 695 033.

4. CHIEF ELECTRICAL INSPECTOR,
OFFICE OF THE CHIEF ELECTRICAL INSPECTOR,
GOVERNMENT OF KERALA, HOUSING BOARD BUILDING,
SHANTI NAGAR, THIRUVANANTHAPURAM - 695 001.

R2 BY ADV. SRI.RAJU JOSEPH (SR.)
R2 BY ADV. SRI.K.T.PAULOSE, SC, KSEB
BY GOVERNMENT PLEADER SRI.V.K.RAFEEK
BY SRI.K.M.SATHYANATHA MENON,SC,KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 1648 of 2015 (E)

APPENDIX

PETITIONER'S EXHIBITS :-

EXT.P1 - TRUE COPY OF MEMORANDUM OF ASSOCIATION AND RULES AND REGULATIONS OF THE PETITIONER ASSOCIATION.
EXT.P2 - TRUE COPY OF ORDER DATED 21-5-1990 OF THE GOVERNMENT OF KERALA, INDUSTRIES (A) DEPARTMENT TRIVANDRUM.
EXT.P3 - TRUE COPY OF NOTIFICATION DATED 6-2-1992 ISSUED BY THE GOVERNMENT OF KERALA.
EXT.P4 - TRUE COPY OF ORDER DATED 26-10-1999 OF THE GOVERNMENT OF KERALA, POWER DEPARTMENT.
EXT.P5 - TRUE COPY OF JUDGMENT DATED 6-2-2014 OF THE HONOURABLE SUPREME COURT REPORTED IN S.V.A. STEEL RE-ROLLING MILLS LTD. AND OTHERS VS STATE OF KERALA AND OTHERS.
EXT.P6 - TRUE COPY OF LETTER DATED 17-3-2014 ISSUED BY THE PETITIONER TO THE GOVERNMENT.
EXT.P7 - TRUE COPY OF LETTER DATED 27-3-2014 ISSUED BY THE 3RD RESPONDENT TO THE 1ST RESPONDENT WITH COPY TO THE PETITIONER.
EXT.P8 - TRUE COPY OF LETTER DATED APRIL 2014 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.
EXT.P9 - TRUE COPY OF LETTER DATED 6-5-2014 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.
EXT.P10 SERIES - TRUE COPY OF LETTERS DATED 29-5-2014, 25-8-2014, 17-9-2014 AND 29-10-2014 ISSUED BY THE PETITIONER TO ALL THE RESPONDENTS.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRAN, J.

W.P.(C)No.1648 of 2015

Dated this the 26th day of October, 2015

JUDGMENT

The petitioner is an association of High Tension and Extra High Tension industrial consumers of electricity in the State of Kerala. The petitioner has approached this Court in this writ petition seeking a writ of mandamus commanding the 1st respondent State to implement and issue requisite orders granting the benefit of Ext.P5 judgment of the Apex Court in **S.V.A. Steel Re-rolling Mills Limited and others v. State of Kerala and others (2014 (4) SCC 186)** to the eligible members of the petitioner Association, and also a writ of mandamus commanding the 1st respondent State to take action on Exts.P6 and P10 representations submitted by the petitioner Association.

2. When this writ petition came up for consideration Sri.Raju Joseph, the learned Senior Counsel appearing for the Kerala State Electricity Board, the 2nd respondent herein, raised an objection regarding the maintainability of the writ petition, contending that the benefit of Ext.P5 judgment is available only to

those industries which had challenged the action of the 1st respondent State in extending the benefit of Exts.P2 and P3 Government Orders dated 21.5.1990 and 6.2.1992 only for the period during which electricity supply was reduced to less than 50%, vide Ext.P4 Government Order dated 26.10.1999. In view of the objection raised by the learned Senior Counsel for the 2nd respondent Board, the question of maintainability was heard as a preliminary issue.

3. By Ext.P2 Government order dated 21.5.1990, the Government granted certain incentives to new industries in the State, in the matter of power connection. By virtue of the policy declared under Ext.P2, the 1st respondent State had assured the industrial units to be set up in the State that electricity connection would be given to the projects which might be set up and such units would be exempted from power cut for a period of 5 years from the date of commencement of commercial production. Such new units were also given certain exemption in relation to payment of electricity duty for a period of five years. The 2nd respondent Board adopted Ext.P2 Government Order, vide a Board Order dated 19.6.1990. The 1st respondent State had thereafter passed Ext.P3

Government Order dated 6.2.1992, whereby the new industrial units were exempted for 5 years from payment of enhanced power tariff, which came into effect from 1.1.1992, on certain conditions enumerated in clauses (i) to (iv) of Para.1 of that Government Order. It was also provided in Ext.P3 that, the industrial units which set up their own captive power facilities will be exempted from payment of electricity duty to the extent to which they generate power for their own consumption. Ext.P3 provides further that the above concessions will also be available to the units which have started commercial production or set up captive generating units, as the case may be, between 23.9.1991 and 31.12.1991.

4. In spite of the assurance given by the 1st respondent State to the new units that they would not suffer any power cut, because of certain difficulties faced by the 2nd respondent Board with regard to supply of electricity to new units, there used to be power cuts which adversely affected the new units. In view of the said fact, to alleviate the difficulties of the new industrial units set up under the policy stated in Ext.P2, the 1st respondent State issued Ext.P4 Government order dated 26.10.1999, whereby it granted extension of period of assured power supply to the new units, which were

adversely affected because of the power cut of 50% or more. The said Government order was issued based on the request made by the petitioner Association in its representations submitted before the Government dated 28.6.1999 and 3.7.1999. By Ext.P4 order, the Government granted extension of the period of supply of power at Pre-92 tariff to the eligible industrial units covered under Ext.P3 Government Order dated 6.2.1992, which suffered power cut of 50% or more for such period when power cut of 50% or more was in force. It was also ordered that, the Industries Department in Government will reimburse the concessional amount in this regard to the 2nd respondent Board, for which the Board shall forward necessary proposals for reimbursement of the amount to the Government in the Industries Department.

5. Seeking extension of the period of supply of power at Pre-92 tariff to the eligible industrial units covered under Ext.P3 Government Order dated 6.2.1992, for such period when power cut below of 50% was in force, certain industrial units had approached this Court in W.P.(C)No.5795 of 2004 and connected cases. But those writ petitions were dismissed by a common judgment dated 24.2.2005, which was under challenge before the Apex Court in Civil

Appeal Nos.10103-106 of 2010 and connected cases. The said appeals were allowed by Ext.P5 judgment of the Apex Court, thereby setting aside the common judgment of this Court dated 24.2.2005 in W.P.(C)No.5795 of 2004 and connected cases, and the respondents therein were directed to calculate the period during which 100% power supply was not given to the appellants in those Civil Appeals and extend the period of incentive accordingly. The Apex Court has also ordered that, the calculation shall be made and consequential orders shall be passed within two months from the date of judgment.

6. On receipt of Ext.P5 judgment, the petitioner Association submitted Ext.P6 representation dated 17.3.2014 requesting the 1st respondent State to comply with the said judgment and come out with an appropriate Government Order extending the Pre-92 benefit even for days when supply of electricity was more than 50% but not 100% as assured under Exts.P2 and P3 Government Orders. The Government forwarded the said representation to the Director of Industries and Commerce, the 3rd respondent herein, vide Ext.P7 letter dated 27.3.2014, for information and necessary action. Later, the Chief Electrical Inspector, the 4th respondent herein, vide Ext.P8

letter has requested the petitioner Association to forward a certified copy of Ext.P5 judgment for examining the matter. Thereafter, the 4th respondent vide Ext.P9 letter dated 6.5.2014 informed the petitioner Association that, since the issue involved is a matter of policy decision, its representation has been forwarded to the Government and hence the petitioner may contact the Government to ascertain further developments. Due to the inaction on the part of the respondents, the petitioner Association submitted Ext.P10 series of representations dated 29.5.2014, 25.8.2014, 17.9.2014 and 27.10.2014, requesting them to take immediate steps to comply with Ext.P5 judgment of the Apex Court and thereafter, approached this Court in this writ petition seeking various reliefs.

7. Heard Sri.Arshad Hidayatullah and Sri.Joseph Kodianthara, the learned Senior Counsel appearing for the petitioner Association, Sri.Raju Joseph, the learned Senior Counsel appearing for the 2nd respondent Board and also Sri.V.K.Rafeek, the learned Senior Government Pleader appearing for the 1st respondent State.

8. Relying on Paras.28, 32, 33 of Ext.P5 judgment, the learned Senior Counsel for the Petitioner Association would contend that, the 1st respondent State and the 2nd respondent Board will have

extend the benefit flowing out of the said decision to all members of the Petitioner Association similarly situated to the industrial units which were parties before the Apex Court.

9. Per contra, the learned Senior Counsel for the 2nd respondent Board would contend, with reference to Paras.34 to 37 of Ext.P5 judgment that, the benefit flowing out of the said decision cannot be claimed by the industrial units other than those which were before the Apex Court. The other members of the petitioner Association, who are 'fence sitters', who have not chosen to challenge the action of the 1st respondent State in not extending the period of supply of power at Pre-92 tariff to the industrial units covered under Ext.P3 Government Order dated 6.2.1992, for such period when power cut below of 50% was in force, are not legally entitled to claim the benefit of Ext.P5 judgment of the Apex Court.

10. Paras.25, 28 and 31 to 37 of the judgment of the Apex Court read thus;

> **25.** The question, thus, arises as to how the adversely affected persons who had been assured by a promise with regard to continuous supply of electricity for five years can be fairly compensated.
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> xxx xxx xxx xxx

28. It is true that Section 22B of the Act enables the State Government to regulate the supply, distribution and consumption of electricity for the purpose of maintenance and supply of equitable distribution of energy but in our opinion, provisions of the said section are not much relevant for the reason that in the instant case, the respondent State had given an assurance with regard to uninterrupted supply of electricity and therefore, the respondents ought to have made provision for uninterrupted supply of electricity to the appellants and other similarly situated persons by regulating electricity supply in a proper manner.

xxx xxx xxx xxx

31. In the instant case, the respondent-State was conscious about the fact that there was a problem with regard to supply of electricity in the State of Kerala and possibly for that reason industries which depended much upon electricity as a source of power were not inclined to establish new industries in the State of Kerala. Before setting up an industry, the entrepreneur or the industrialist considers several factors and thereupon takes several decisions like place of business, capacity at which production should be made, type of raw - material, etc. After considering all these factors, a final decision is taken with regard to setting up of an industry. For a new entrepreneur, such a decision is of vital importance because if he fails in his estimates or in consideration of all the relevant factors, there are all chances that he would fail not only in his business but he would completely ruin himself. Thus, one can very well appreciate that the appellants must have thought about all relevant factors, including the incentives offered by the respondent-State and might have decided to set up their industries in the respondent-State. While deciding this case, this Court would invariably keep in mind the circumstances in which the appellants had set up their industries in the State of Kerala.

32. In view of the incentives and assurances given to the appellants along with others, who were desirous of setting up new industries, the appellants set up their new units which were much dependent upon continuous supply of electricity. One of the appellants is a Steel Re-rolling Mill. In Steel industry, when the industry is concerned with making of steel or re-rolling of steel, it requires lot of power and energy, and electricity being one of the important sources of power, the appellant was much dependent on continuous supply of electricity, which had been assured to it by the respondent-State.

33. If an assurance was given to the appellants and similarly situated persons that they would be given 100% electricity supply for five years, the respondents cannot wriggle out of their liability by making a policy to the effect that the benefit by way of incentive would be extended only if the electricity supply was reduced to less than 50% on a particular day. A steel industry, for example, which cannot function without electricity or power in any other form, would be put to enormous inconvenience and loss if the power supply is not continuous. So as to reactivate or to restart the machines or to start the process afresh, the industry has to spend something more then what it would have spent if the supply or power namely, electricity was uninterrupted. Stoppage of manufacturing process would mean losses under several heads. The labour employed has to be paid even when the employer does not get work from the labour force. Very often, so as to bring a required temperature for the purpose of carrying on certain processes, more fuel is to be injected so as to attain the condition which was prevailing prior to electricity supply being disconnected. Moreover, there would be several overhead expenses which one has to incur even if there is no production or stoppage of manufacturing process.

34. The judgments cited by the counsel appearing for the respondents would not help them for the reason that in the cases referred to, the Government had to change the policy in public interest. In the instant case, by compensating the aggrieved appellants, no harm would be caused to the State of Kerala except that it will have to compensate the appellants by supplying assured electricity for some extended period at a specified tariff.

35. For the aforestated reasons, in our opinion, the respondent-State was not wholly fair when it extended benefit to the appellants only for the period during which electricity supply was reduced to less than 50% on certain days.

36. We, therefore, hold that the benefit extended by the respondent State is not sufficient. The respondent-State ought to have extended the period even for the days when supply of electricity was more than 50% but not 100% as assured under G.Os. dated 21.5.1990 and 6.2.1992. We, therefore, direct the respondents to give the said benefit by extending the period of incentive.

37. We, therefore, allow the appeals by quashing and setting aside the impugned order passed by the High Court and direct the respondents to calculate the period during which 100% electricity supply was not given to the appellants and extend the period of incentive accordingly. The calculation shall be made and consequential orders shall be passed within two months from today. The appeals are allowed with no order as to costs."

11. A reading of the judgment in S.V.A. Steel Re-rolling Mills case (supra) would show that, the question which came up for consideration of the Apex Court was as to how the adversely affected industries which had been assured by a promise by the respondent State with regard to continuous supply of electricity for five years can be fairly compensated. The Apex Court observed that, though Section 22B of the Electricity Act, 1910 enables the respondent State to regulate the supply, distribution and consumption of electricity for the purpose of maintenance and supply of equitable distribution of energy, provisions of the said Section are not much relevant for the reason that, the respondent State had given an assurance with regard to uninterrupted supply of electricity and therefore, the respondents ought to have made

provision for uninterrupted supply of electricity to the appellants and other similarly situated persons by regulating electricity supply in a proper manner. The Apex Court observed further that, if an assurance was given to the appellants and similarly situated persons that they would be given 100% electricity supply for five years, the respondents cannot wriggle out of their liability by making a policy to the effect that the benefit by way of incentive would be extended only if the electricity supply was reduced to less than 50% on a particular day and that, the respondent State was not wholly fair when it extended benefit to the appellants only for the period during which electricity supply was reduced to less than 50% on certain days. The Apex Court held that, the benefit extended by the respondent State is not sufficient and that, the State ought to have extended the period even for the days when supply of electricity was more than 50% but not 100% as assured under Government Orders dated 21.5.1990 and 6.2.1992 (Exts.P2 and P3 orders in the present Writ Petition). The Apex Court in Ext.P5 judgment directed the respondents to give the said benefit to the appellants by extending the period of incentive. In the result, the appeals were allowed by quashing and setting aside the impugned judgment of this Court dated 24.2.2005 and the respondents were directed to calculate the period during which 100% electricity supply was not given to the appellants and extend the period of incentive accordingly. The Apex Court directed that, the calculation shall be made and consequential orders shall be passed within two months from the date of judgment.

12. A reading of Ext.P5 judgment of the Apex Court in S.V.A. Steel Re-rolling Mills case (supra) makes it explicitly clear that, the subject matter of the decision touches upon the policy of the respondent State in extending the period of incentive covered by Exts.P2 and P3 Government Orders. The Apex Court interfered with the policy decision of the respondent State in extending the said benefit only for the period during which electricity supply was reduced to less than 50% and declared that, the respondent State ought to have extended the period even for the days when supply of electricity was more than 50% but not 100%, as assured under Exts.P2 and P3 Government Orders dated 21.5.1990 and 6.2.1992.

13. On receipt of Ext.P5 judgment, the petitioner Association submitted Ext.P6 representation dated 17.3.2014 requesting the respondent State to comply with the said judgment and come out

with an appropriate Government Order extending the Pre-92 benefit even for days when supply of electricity was more than 50% but not 100% as assured under Exts.P2 and P3 Government Orders and thereafter approached this Court seeking a writ of mandamus commanding the respondent State to implement and issue requisite orders granting the benefit of Ext.P5 judgment of the Apex Court to the eligible members of the Association. However, raising a preliminary issue regarding maintainability of this Writ Petition, the 2nd respondent Board would contend that, the benefit flowing out of Ext.P5 judgment cannot be claimed by the Industrial Units other than those before the Apex Court.

14. In **K.I.Shephard and others v. Union of India and others (1987 (4) SCC 431)** the question which came up for consideration before the Apex Court is as to the legality of the schemes drawn under Section 45 of the Banking Regulation Act, 1949, for the amalgamation of Hindustan Commercial Bank, Bank of Cochin Ltd., and Lakshmi Commercial Bank with Punjab National Bank, Canara Bank and State Bank of India respectively. Pursuant to the schemes, 28 employees of Hindustan Commercial Bank, 21 employees of Bank of Cochin Ltd. and 76 employees of Lakshmi

Commercial Bank were excluded from employment and their services were not taken over by the respective transferee banks. Some of these excluded employees of the Cochin Bank approached this Court for relief under Article 226 of the Constitution. A learned Single Judge of this Court gave them partial relief, but on appeal to the Division Bench by the transferee bank concerned, the writ petitions were dismissed. Aggrieved by the said judgment, some of the excluded employees of the Cochin Bank approached the Apex Court. Writ petitions were also filed directly before the Apex Court by some of the excluded employees of Hindustan Commercial Bank and Lakshmi Bank. The Apex Court allowed the appeals as well as the writ petitions, by setting aside the impugned judgments, and directed that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior to amalgamation. The Apex Court held that, the employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. Though some of the excluded employees have not come to Court, the Apex Court held that, there is no justification to penalise them for not having litigated and that, they too shall be entitled to the same benefits as the petitioners. Para.19 of the judgment reads thus;

> "**19.** The writ petitions and the appeals must succeed. We set aside the impugned judgments of the Single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees have not come to Court. There is no justification to penalise them for not having litigated. They too shall be entitled to the same benefits as the petitioners. ....."

15. The judgment in K.I.Shephard's case (supra) was referred to in **BSNL v. Ghanshyam Dass and others (2011 (4) SCC 374)**, by a Three-Judge Bench of the Apex Court, in which it was held that, the principle laid down in K.I. Shephard (supra) that it is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to Court to seek relief would apply only in the following circumstances,

namely, where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees; where the relief granted by the Court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not; where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the Court; and where the Court expressly directs that the relief granted should be extended to those who have not approached the court. Paras.21 to 26 of the judgment read thus;

> "**21.** We have considered the submissions of learned counsel for the parties. The order dated 7.7.1992 of the Central Administrative Tribunal in O.A. No.1455 of 1991 (Santosh Kapoor and others v. Union of India), contained the following directions;
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> > 'In the above view of the matter, we direct that the promotions to 10% posts in scale Rs.2000-3200 would have to be based on seniority in basic cadres subject to fulfillment of other conditions in the BCR Scheme viz. those who were regular employees as on 1.1.1990 and had completed 26 years of service in basic grades (including higher scales). The

respondents are directed to consider applicants accordingly from due dates with consequential benefits. The employees who may be senior to applicants in the scale of Rs.1600-2660 and who may have already been given the scale of Rs.2000-3200 at the cost of those senior in basic grades by any different interpretation of the BCR Scheme, may in the discretion of the respondents, instead of being reverted, be considered for promotion to scale of Rs.2000-3500 by suitable adjustments in the matter of posts by upgradation as necessary.'

22. It will be clear from the directions in the aforesaid order dated 7.7.1992 in O.A. No.1455 of 1991 that the Government was directed to consider only the applicants in the O.A. for promotion to 10% posts in the scale Rs.2000- 3200 (Grade-IV) on the basis of seniority in the basic cadres from the due dates with consequential benefits. The respondents in the two Civil Appeals before us were not the applicants in O.A. No.1455 of 1991 and there was no direction to the Government to consider the respondents in the two appeals for promotion to Grade-IV scale on the basis of seniority in the basic cadre as per the BCR Scheme. Hence, the respondents were not entitled to claim any promotion to Grade-IV on the basis of their seniority in the basic grade on the basis of the order dated 07.07.1992 of the Tribunal in O.A. No.1455 of 1991 as affirmed by the order dated 09.09.1993 of this Court in Civil Appeal No.3201 of 1993.

23. In K.I. Shephard (supra) relied upon by the learned counsel for the respondents, this Court directed that each of the transferee banks should take over the employees who had been excluded from employment under the amalgamation schemes of the banks on the same terms and conditions of employment under the respective banking companies prior to amalgamation and further directed that such employees, who were taken over, would be entitled to the benefit of continuity of service for all purposes including salary and perks. This Court further found that some of the excluded employees had not come to Court and held that there was no justification to penalize them for not having litigated and that they too shall be entitled to the same benefits as the petitioners in that case.

24. There was, therefore, a clear direction in the judgment of this Court in K.I. Shephard (supra) that the excluded employees, who had not approached the Court, shall also be entitled to the same benefits as the petitioners in that case were entitled under the judgment of this Court. In the present case, as we have seen, the Central Administrative Tribunal has not directed in its order dated 7.7.1992 in O.A. No.1455 of 1991 that the benefits of the order would also be extended to those who had not approached the Tribunal.

25. The principle laid down in K.I. Shephard (supra) that it is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief would apply only in the following circumstances;

a) where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees;

b) where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;

c) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the court; and

d) where the court expressly directs that the relief granted should be extended to those who have not approached the court.

26. On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others."

16. In **Union of India and others v. Hanuman Industries and another (2015 (6) SCC 600)**, a decision relied on by the learned Senior Counsel for the 2nd respondent Board, the Apex Court held that, deliberate delay by the applicants in seeking relief will disentitle them from claiming such relief based on promissory estoppel. Paras.19 to 22 of the judgment read thus;

"**19.** In M/s.Motilal Padampt Sugar Mills Company (supra), this

Court, on an exhaustive survey of the law pertaining to the doctrine of promissory estoppel held that the same was an equitable doctrine that would yield when equity so required. While propounding that the same had been evolved to avoid injustice where it is demonstrated that a party acting on the words or conduct of another, amounting to clear and unequivocal promise and intended to create legal relations or effect legal relationships to arise in the future had altered his position, then the promise would be binding on the promisor and he would not be permitted to renege therefrom unless it would be inequitable to compel him to do so. While extending this doctrine to the Government as well, it was enunciated that if it can be shown that having regard to the facts as had subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise the equity in favour of the promisee and enforce the promise against the Government. Their Lordships held that the doctrine of the promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government should be held bound by the promise made by it. That aside overriding public interest against enforcement of the doctrine qua the Government, it would be still competent for it to depart from the promise on giving reasonable notice which need not be a formal one, affording the promisee a reasonable opportunity of resuming his position was underlined. We consider it inessential to dilate on the other decisions cited on behalf of the respondents on this theme as these are in essence in reiteration of the above proposition.

20. The gravamen of the authorities pertaining to delay highlight in unison that the same has to be explained by cogent convincing and persuasive explanation to justify condonation thereof. The legal diktat being so fundamental that a detailed treatment of the decisions relied upon by the respondents in this regard is not warranted.

21. Noticeably, in the earlier round of litigation, there was no scope to examine the purport of the contents of the letter dated 4.5.2010, which to reiterate only affirmed the decision of withdrawal and closure of SPINE with effect from 23.2.2007. The contents of the said letter to repeat disclose in unequivocal terms that even prior thereto a decision to that effect had been taken on and from that date. This decision as referred to hereinabove amongst others also received media coverage. The plea that the respondents had no knowledge of the withdrawal/closure of SPINE then, is to say the least, unconvincing. We see no weighty or cogent reason for the respondents to wait till the earlier Special Leave Petition was dismissed on 1.5.2009 by this Court to embark upon their pursuit for redress in similar terms. Their writ petitions dated 27.8.2009 also do not evince that the same were filed after the letter/notification dated 4.5.2010. In our considered opinion therefore, the respondents were deliberately bidding time to seek judicial remedy in case their co-applicants under the scheme emerged successful in their adjudicative enterprise. As the initial decision conveyed by the letter dated 5.2.2007 to stop further sanction/disbursement of Grant-in-Aid under the scheme pending scrutiny of the report of the industrial units involved did eventually metamorphosise in the closure/ withdrawal of the scheme, there is an apparent correlation between the intervening developments conveyed from time to time eventuating in such a conclusion. The merit of the factums leading to this decision however has not been questioned or impeached.

22. On a consideration of the totality of the aspects involved, we are thus of the unhesitant view that the respondents herein in view of their deliberate laches, negligence and inaction have disentitled themselves to the benefit of the adjudication in the earlier lis. In the accompanying facts and circumstances in our comprehension, it would be iniquitous and repugnant as well to the public exchequer to entertain the belated claim of the respondents on the basis of the doctrine of promissory estoppel which is even otherwise inapplicable to the case in hand."

17. In **State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others (2015 (1) SCC 347)**, a decision relied on by the learned Senior Counsel for the petitioner Association, the Apex Court held that, the normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their

cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like. On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence. Para.22 of the judgment reads thus;

"**22.** The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under;

22.1. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma and others v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

18. In **U.P. Pollution Control Board and others v. Kanoria Industrial Ltd. and another (2001 (2) SCC 549)**, a decision relied on by the learned Senior Counsel for the petitioner Association, the Apex Court, following its earlier judgment in Shenoy and Co. v. CTO (1986 (2) SCC 512) reiterated that, when the Apex Court declares a law and holds either a particular levy as valid or invalid it is idle to contend that the law laid down by the Apex Court in that judgment would bind only those parties who are before the

Court and not others in respect of whom appeal had not been filed. To do so is to ignore the binding nature of a judgment of the Apex Court under Article 141 of the Constitution. To contend that the conclusion reached in such a case as to the validity of a levy would apply only to the parties before the Court is to destroy the efficacy and integrity of the judgment and to make the mandate of Article 141 illusory. When the main judgment of the High Court has been rendered ineffective, it would be applicable even in other cases, for exercise to bring those decisions in conformity with the decisions of the Apex Court will be absolutely necessary.

19. In **S.J. Coke Industries Pvt. Ltd. v. Central Coalfields Ltd. (2015 (8) SCC 72)** the Apex Court reiterated that, Article 141 of the Constitution provides that the law declared by the Apex Court shall be binding on all Courts within the territory of India. Therefore, once the Apex Court decided the issue by passing a reasoned order, a fortiori, the ratio decidendi declared in the said decision is binding on all the Courts in the country for giving effect to it while deciding the lis of the same nature. In Paras.33 and 34 of the judgment, the Apex Court has also repelled the contention regarding delay and laches. Paras.27 and 31 to 34 of the judgment read thus;

“**27.** Article 141 of the Constitution provides that the law declared by this Court shall be binding on all Courts within the territory of India. Therefore, once this Court decided the issue in the case of Eastern Coalfields Ltd. (2011 (14) SCC 624) on 10.8.2011 by passing a reasoned order, a fortiori, the ratio decidendi declared in the said decision was binding on all the Courts in the country for giving effect to it while deciding the lis of the same nature. Both the Courts below were, therefore, under legal obligation to have taken note of the said decision and then should have decided the writ petition/appeal in conformity with the law laid down therein. It was more so because controversy involved in both the cases was similar in nature.

xxx xxx xxx xxx

31. Coming now to the issue of refund of excess amount payable to the writ petitioners, we find that this Court has examined the said issue in para 13 and decided in favour of the writ petitioners in following words:

[Eastern Coalfields Ltd. (2011 (14) SCC 624) at page 628]

> "13. In the present case, it is a case of refund of price recovered by the appellant in excess and not of any kind of payment of tax or duty. Besides, the appellant has already refunded such excess amount realised to many other parties without raising any such plea. If anything is done by a party in violation of the law, consequence has to follow and they are bound to return the money to the parties from whom excess amount has been realised. There is

also no document placed on record in support of any such plea. Bald allegation of this nature cannot be accepted particularly when no such plea has been raised in this Court."

32. In the light of aforesaid law laid down, we find no justification to deny the benefit of such law to the present Companies (writ petitioners) on the ground of parity with the writ petitioner of Central Coalfields Ltd. case (SLP(C)No.17406 of 2010) and Eastern Coalfields Ltd case (2011 (14) SCC 624).

33. As taken note of supra, in our opinion having regard to the background facts of this case, the right to file writ petition to claim refund of excess amount arose after the issue was decided by this Court firstly on 19.7.2010 when this Court dismissed the SLP filed by Central Coalfield Ltd. in limine and upheld the reasoned order of the Patna High Court on this very issue. It is not in dispute that the Companies filed the writ petitions on 10.8.2010 (within one month from the date of the decision of this Court in Central Coalfields Ltd. case). Indeed, the Companies could have filed the writ petitions even subsequent to the decision rendered in the case of Eastern Coalfield Ltd. (10.8.2011) because it is in this case, this Court rendered a reasoned judgment finally repelling all the objections of Coal Companies on merits and upheld the right of the writ petitioners to claim refund of excess amount which they had paid to CCL and other coal fields pursuant to the Scheme.

34. We cannot, therefore, concur with the view taken by the Division Bench when it proceeded to dismiss the writ petitions

> on the ground of delay and laches. The Single Judge, in our view, rightly entertained the writ petitions on merits and proceeded to grant relief as claimed by the companies in the writ petition and the Division Bench, in our opinion, should have upheld the view of the Single Judge."

20. In the case on hand, by Ext.P2 Government Order dated 21.5.1990 certain incentives were granted to new industries in the matter of power connection. Therefore, by Ext.P3 Government Order dated 6.2.1992 the new industries were exempted for 5 years from payment of enhanced power tariff, which came into effect from 1.1.1992, on certain conditions enumerated in clauses (i) to (iv) of para.1 of that order. In spite of the assurance given by the 1st respondent State that the new units would not suffer any power cut; because of certain difficulties faced by the 2nd respondent Board, there used to be power cuts, which adversely affected the new units. The petitioner Association represented the grievance of its members, vide representations dated 28.6.1999 and 3.7.1999, pointing out that due to power cuts at various spells during the period between 1995 to 1997, the concession of power tariff given in Ext.P3 order could not be availed of fully by the eligible industrial units and therefore, the Government was requested for extension of the period

of tariff concession. It was based on the said request made by the petitioner Association, the 1st respondent State issued Ext.P4 order dated 26.10.1999 in order to alleviate the difficulties of the new industrial units set up under the policy stated in Ext.P2, whereby the Government granted extension of the period of supply of power at Pre-92 tariff to the eligible industrial units covered under Ext.P3 order, which suffered power cuts of 50% or more for such period when power cuts of 50% or more was in force.

21. Seeking extension of the period of power supply at Pre-92 tariff for such period when power cut below 50% was in force, certain industrial units had approached this Court in W.P.(C)No.5795 of 2004 and connected cases, which ended in dismissal by a common judgment dated 24.2.2005, which was under challenge before the Apex Court. By Ext.P5 judgment dated 2.6.2014 the Apex Court set aside the common judgment of this Court in W.P.(C) No.5795 of 2004 and connected cases. The Apex Court interfered with the policy decision of the 1st respondent State in extending the benefit of Pre-92 tariff only for the period during which electricity supply was less than 50% and declared that, the 1st respondent State ought to have extended the period even for the days when

supply of electricity was more than 50% but not 100% as assured under Exts.P2 and P3 Government Orders. Immediately after Ext.P5 judgment, the petitioner Association filed Ext.P6 representation dated 17.3.2014 before the 1st respondent State, for issuance of an appropriate order extending the benefit of Pre-92 tariff.

22. When the policy of the Government in Ext.P4 order is interfered with by the Apex Court in Ext.P5 judgment, the binding nature of that judgment under Article 141 of the Constitution of India cannot be ignored by the 1st respondent State or the 2nd respondent Board, by not extending the benefit flowing out of the law declared by the Apex Court to other industries similarly situated, especially when the petitioner Association has submitted Ext.P6 representation before the 1st respondent State immediately after the said judgment. In that view of the matter, I find absolutely no merit in the contention raised by the learned Senior Counsel for the 2nd respondent Board that the benefit flowing out of Ext.P5 judgment of the Apex Court cannot be claimed by the industrial units other than those which were before the Apex Court.

23. As I have already noticed, it was based on the representations submitted by the petitioner Association, the 1st

respondent State issued Ext.P4 order dated 26.10.1999 granting extension of the period of supply of power at Pre-92 tariff, but limiting the benefit for such period when power cut of 50% or more was in force. Now, in Ext.P5 judgment, the Apex Court extended the benefit of Pre-92 tariff even for days when supply of electricity was more than 50% but not 100% as assured in Exts.P2 and P3 orders. Immediately thereafter, the petitioner Association has submitted Ext.P6 representation before the 1st respondent State. In such circumstances, I find absolutely no merit in the contention raised by the learned Senior Counsel for the 2nd respondent Board that, the members of the petitioner Association are 'fence sitters', who are not entitled to claim the benefit flowing out of the law declared by the Apex Court in Ext.P5 judgment.

24. In that view of the matter, I hold that the present Writ Petition is maintainable. But it is made clear that, I have not expressed anything on the entitlement of the individual members of the petitioner Association for extension of the benefit of Pre-92 tariff in terms of the law declared by the Apex Court in Ext.P5 judgment, which has to be dealt with by the 1st respondent State and the 2nd respondent Board, based on individual claims made by each member

with supporting documents.

In the result, this Writ Petition is disposed of directing the 1st respondent to consider Exts.P6 and P10 representations submitted by the petitioner and pass appropriate orders thereon strictly in accordance with law, as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a certified copy of this judgment, with notice to the petitioner Association and also the 2nd respondent Board. No order as to costs.

Sd/-
ANIL K.NARENDRAN, JUDGE

skj

True copy

P.A to Judge