

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.17644 and 17645 of 2018

COMMON ORDER:

Since these two writ petitions are identical in nature and as the issues involved in these cases are also similar, this Court deems it appropriate to dispose of these two writ petitions by way of this common order.

2. In these two writ petitions, challenge is to the orders dated 03.04.2018 of the Chairman and Managing Director, Visakhapatnam Industrial Water Supply Company, Visakhapatnam/the third respondent herein informing the decision of cancellation of the contracts and black listing of the petitioner.

3. Petitioner in these cases entered into a Joint Venture Agreement with M/s. Prasad Irrigation Engineering Consultancy Limited for Bidding, Executing Civil Engineering Consultancy, Third Party Quality Assurance and Control, and Project Works.

4. In response to the tenders floated by the third respondent on 14.09.2016 for preparation of detailed project reports for improving the storage capacity of Penjeruvu Tank in Yelamanchili Mandal, V.K.Sagaram Tank in Rayavaram Mandal and Kondakarla Ava in Munagapaka Mandal, Visakhapatnam District, the said Joint Venture submitted its tenders and thereafter having agreed to the cost quoted, the second respondent herein issued work orders.

5. By way of the impugned proceedings the third respondent herein communicated their decision to cancel the works, duly forfeiting the EMD and also informed that both the agencies in the joint venture would be disqualified to participate in tenders in Greater Visakhapatnam Municipal

Corporation and Visakhapatnam Industrial Water Supply Company. The third respondent also issued fresh tender notification on 28.04.2018.

6. This Court, by way of interim orders directed the respondents not to finalise the tenders pursuant to the said tender notification. Seeking vacation of the said orders and supported by counter affidavits deposited by the third respondent on behalf of the respondents 2, 3 and 5, now the vacate applications have been filed.

7. With the consent of the learned counsel for the petitioner and as the pleadings are complete, this Court is inclined to dispose of these writ petitions finally.

8. Heard Sri Swaroop Oorilla, learned counsel for the petitioner and the learned Advocate General, representing Sri S.Laxminarayana Reddy, learned Standing Counsel for the Greater Visakhapatnam Municipal Corporation apart from perusing the material available on record.

9. Submissions/contentions of the learned counsel for the petitioner:

9.1. The questioned action is highly illegal arbitrary, unreasonable and violative of Article 14 of the Constitution of India and the principles of natural justice.

9.2. Petitioner herein executed 80% of the work and without taking into account the earlier correspondence i.e., letters of the Superintendent Engineer addressed to the petitioner and the Chief Engineer, North Coast Water Resources Department, Visakhapatnam, the third respondent herein resorted to the impugned action.

9.3. Without communicating the impugned order dated 03.04.2018, the third respondent issued a fresh tender notification on 28.04.2018 and the said action is highly illegal, arbitrary and cannot stand for judicial scrutiny and in fact the third respondent passed the impugned orders on 01.05.2018.

9.4. The third respondent did not mention the ground in the impugned order dated 03.04.2018 that are now raised at paragraphs 8 and 9 of the counter affidavit.

9.5. The impugned action is liable to be declared as illegal and arbitrary and is hit by the principles of promissory estoppel and legitimate expectation. The cancellation order dated 03.04.2018 does not refer to the letter dated 19.08.2017 issued by M/s. Prasad Irrigation Engineering Consultancy Ltd.

9.6. The impugned action of blacklisting the petitioner herein is a patent violation of principles of natural justice.

In support of his submissions and contentions, the learned counsel for the petitioner places reliance on the judgments of the Hon'ble Apex Court in *ZONAL MANAGER, CENTRAL BANK OF INDIA v. DEVI ISPAT LIMITED AND OTHERS*¹, *UNION OF INDIA (UOI) AND ORS. v. TANTIA CONSTRUCTION PVT. LTD*², *UNION OF INDIA (UOI) AND ORS. v. INDO-AFGHAN AGENCIES LTD*³, *CENTURY SPINNING AND MANUFACTURING COMPANY LTD. AND ANR v. THE ULHASNAGAR MUNICIPAL COUNCIL AND ANR*⁴, *MOTILAL PADAMPAT SUGAR MILLS CO. LTD. v. STATE OF UTTAR PRADESH AND ORS*⁵, *JIT RAM SHIV KUMAR AND ORS v. STATE OF HARYANA AND ORS*⁶, *UNION OF INDIA (UOI) AND ORS v. GODFREY PHILIPS INDIA LTD*⁷, *STATE OF RAJASTHAN & ANR v. M/S. MAHAVEER OIL INDUSTRIES & ORS*⁸, *STATE OF BIHAR AND ORS v. KALYANPUR CEMENTS LTD.*⁹, *ERUSIAN EQUIPMENT & CHEMICALS LTD. v. STATE OF WEST BENGAL AND ANR.*¹⁰, *JOSEPH VILANGANDAN v. THE EXECUTIVE ENGINEER, (PWD), ERANAKULAM AND ORS.*¹¹ and *GORKHA SECURITY SERVICES v. GOVERNMENT (NCT OF*

¹ (2010) 11 SCC 186

² (2011) 5 SCC 697

³ AIR 1968 SC 718

⁴ (1970) 1 SCC 582

⁵ (1979) 2 SCC 409

⁶ (1981) 1 SCC 11

⁷ (1985) 4 SCC 369

⁸ (1999) 4 SCC 357

⁹ (2010) 3 SCC 274

¹⁰ (1975) 1 SCC 70

¹¹ (1978) 3 SCC 36

*DELHI) AND OTHERS*¹² and the judgments of this Court in *SUPERINTENDING ENGINEER, T.G.P. CIRCLE, CUDDAPAH AND ANOTHER v. PIONEER BUILDERS, HYDERABAD*¹³, *TRIMEX INDUSTRIES PVT. LTD., ALWARPET, CHENNAI v. ANDHRA PRADESH MINERAL DEVELOPMENT CORPORATION LTD., HYDERABAD*¹⁴, *IBC LTD., CHENNAI v. A.P. MINERAL DEVELOPMENT CORPORATION LTD., HYDERABAD*¹⁵, *KATTA RAMESH AND ANR. V. THE BRANCH MANAGER, STATE BANK OF INDIA AND ORS.*¹⁶, *EXOTIC GRANITES EXPORTS, HYDERABAD v. STATE OF TELANGANA AND OTHERS*¹⁷

10. Submissions/contentions of the learned Advocate General:

10.1. There is neither arbitrariness nor there exists any public interest nor there is any violation of principles of natural justice nor there is any allegation of malafides, as such, the impugned action which pertains to contractual matter is not amenable for any judicial review under Article 226 of the Constitution of India.

10.2. Though the tender condition stipulated three months time for completion of the works, the works could not be completed even after 1 ½ years and as the subject works being time bound projects, the impugned action resorted to in public interest cannot be faulted.

10.3. In view of the letter dated 19.08.2017 by the partner of a joint venture for opting out and the request for termination, the impugned action is perfectly justified.

10.4. No agreements were executed despite granting a number of opportunities.

Learned Advocate General in support of his submissions and contentions, takes the support of the judgments of the Hon'ble Apex Court in *STATE OF U.P. AND OTHERS v. BRIDGE & ROOF COMPANY (INDIA) LTD.*¹⁸, *NATIONAL HIGHWAYS AUTHORITY OF INDIA v.*

¹² (2014) 9 SCC 105

¹³ 2009 (3) ALD 162 (DB)

¹⁴ 2013 (2) ALD 320

¹⁵ 2013 (3) ALD 740

¹⁶ 2011 (6) ALT 564

¹⁷ 2017 (2) ALD 513

¹⁸ (1996) 6 SCC 22

*GANGA ENTERPRISES AND ANOTHER*¹⁹, *RAJASTHAN STATE INDUSTRIAL DEVELOPMENT & INVESTMENT CORPN v. DIAMOND & GEM DEVELOPMENT CORPN LTD AND ANR*²⁰, *JOSHI TECHNOLOGIES INTERNATIONAL INC v. UNION OF INDIA AND OTHERS*²¹, *RISHI KIRAN LOGISTICS PRIVATE LIMITED Vs. BOARD OF TRUSTEES OF KANDLA PORT TRUST AND OTHERS*²², *PIMPRI CHINGHWAD MUNICIPAL CORPORATION AND OTHERS v. GAYATRI CONSTRUCTION COMPANY AND ANOTHER*²³, *KISAN SAHKARI CHINI MILLS LTD. V. VARDAN LINKERS*²⁴, *ANDHRA STEEL CORPORATION LTD.v. A.P.S.E.B*²⁵, *UNION OF INDIA AND OTHERS v. GODFREY PHILIPS INDIA LIMITED*²⁶ and *BANNARI AMMAN SUGARS LTD. V. COMMERCIAL TAX OFFICER AND OTHERS*²⁷ and the judgment of this Court in *DBM GEOTECHNICS AND CONSTRUCTIONS (petitioner) LTD. V. UNION OF INDIA*²⁸.

11. In the above background, now the issue that emerges for consideration of this Court is_

“Whether the impugned action of cancellation of contracts, forfeiting EMD and Blacklisting the petitioner herein is sustainable and tenable and whether the petitioner is entitled for any relief under Article 226 of the Constitution of India?

12. The information available before this Court demonstrates in clear and vivid terms that on behalf of a joint venture of the petitioner and M/s. Prasad Irrigation Engineering Consultancy, tenders were submitted for the subject works and the same were accepted by the respondents. It is not in

¹⁹ (2003) 7 SCC 410

²⁰ (2013) 5 SCC 470

²¹ (2015) 7 SCC 728

²² (2015) 13 SCC 233

²³ (2008) 8 SCC 172

²⁴ 2008 (12) SCC 500

²⁵ (1991) 3 SCC 263

²⁶ (1985) 4 SCC 369

²⁷ (2005) 1 SCC 625

²⁸ 2016 (1) ALD 297

controversy that vide proceedings dated 10.12.2016, while indicating the letters of acceptance, respondents requested the Joint Venture to attend the office of the Chief Engineer, Greater Visakhapatnam Municipal Corporation along with non-judicial stamp worth Rs.100/- and enter into agreements within 7 days. It is also the categorical case of the respondents in their counter affidavit, which is not controverted that vide letters dated 06.01.2017, 20.07.2017 and 10.08.2017, the third respondent asked the joint venture to enter into agreements and to expedite the works also. The receipt of the said letters by the petitioner is not in dispute. It is also significant to note that one of the partners in the Joint Venture ie., M/s. Prasad Irrigation Engineering Consultancy vide its letter dated 19.08.2017 informed the Greater Visakhapatnam Municipal Corporation that the petitioner herein participated in the subject bids without their consent and also pointed out that without following the Government instructions vide G.O.Ms.No.23, dated 05.03.1999 work orders were issued. In this context, it would be highly appropriate and essential to refer to paragraphs 3, 4 and 5 of the said letter dated 19.08.2017, which reads as under:

“3. As per the general conditions of our joint venture, the participation and share of 1st party (Lead Party) is 90%, having no similar work experience. The participation and share of 2nd Party (Ourselves having 100% of similar work experience is 10% only. The general conditions of our joint venture are against the norms of G.O.Ms.No.23 dated.05.03.1999, GO.Ms.No.407 dated. 26.05.1999 and Guide lines of COT dated.11.10.1999. Hence, the general conditions of the joint venture enclosed with bid documents of the above works by Mr.Suresh Kumar should have been rejected and disqualified.

4. The lead party in the general conditions of joint venture is having Zero similar work experience and having no sufficient financial capacity. In as much as the work order has been issued, the Department, may invite the other party who has got more similar work experience to act as a lead party of the joint venture, to involve at least 51% of the work to satisfy the conditions of the GO.Ms.No.23 dated. 05.03.1999 and COT Guide lines to complete the work with the same tender premium. If the other party having similar work experience, is not willing to take up the work, the agreement may be terminated and action deemed to be fit may be initiated by the Department.”

13. It is also the case of the third respondent organisation that vide letter dated 13.12.2017, in response to the letter of the petitioner dated

11.12.2017, respondents rejected the request of the petitioner and informed that the DPR should be submitted by the joint venture only. Though the petitioner herein disputed the receipt of the said letter dated 13.12.2017, the said aspect, in the considered opinion of this Court, would not make any difference since the joint venture company emerged as the successful bidder in the tenders, but not the petitioner alone. It is also significant to note that though the petitioner filed a reply to the counter affidavit, the said reply affidavit also does not deny the above said letter dated 19.08.2017 addressed by M/s.Prasad Irrigation Engineering Consultancy.

14. Since the joint venture participated in the tenders and as the respondents issued LOA/Work orders in favour of joint venture only, the joint venture alone is required to submit the reports within the time stipulated. In the instant case, admittedly, joint venture did not enter into the agreements despite the request made by the respondents and on the other hand one of the partners i.e., M/s. Prasad Irrigation Engineering Consultancy addressed the above said letter dated 19.08.2017 categorically stating that without its consent the petitioner herein who has no similar work experience, which is a mandatory requirement as per G.O.Ms.No.23 dated 05.03.1999, participated in the bids and in the said letter M/s. Prasad Irrigation Engineering Consultancy also requested the respondents to terminate the contracts. The lack of work experience to the petitioner is not disputed by the petitioner herein.

15. Coming to the judgments cited by the learned counsel for the petitioners_ in *ZONAL MANAGER, CENTRAL BANK OF INDIA v. DEVI / SPAT LIMITED AND OTHERS (supra 1)*, the Hon'ble Apex Court at paragraph 28, held as follows:

“28. It is clear that (a) in the contract if there is a clause for arbitration, normally, a writ court should not

invoke its jurisdiction; (b) the existence of effective alternative remedy provided in the contract itself is a good ground to decline to exercise its extraordinary jurisdiction under Article 226; and (c) if the instrumentality of the State acts contrary to public good, public interest, unfairly, unjustly, unreasonably discriminatory and violative of Article 14 of the Constitution of India in its contractual or statutory obligation, writ petition would be maintainable. However, a legal right must exist and corresponding legal duty on the part of the State and if any action on the part of the State is wholly unfair or arbitrary, writ courts can exercise their power. In the light of the legal position, writ petition is maintainable even in contractual matters, in the circumstances mentioned in the earlier paragraphs."

16. In *UNION OF INDIA (UOI) AND ORS. V. TANTIA CONSTRUCTION PVT. LTD (supra 2)*, the Hon'ble Supreme Court at paragraphs 20, 22 and 33, held as follows:

"20. It was also contended that since the Petitioners had illegally terminated the contract with the Respondent Company, the Writ Court had stepped in to correct such injustice. In fact, Mr. Chakraborty also submitted that the objection taken on behalf of the Petitioners that the relief of the Respondent Company lay in arbitration proceedings and not by way of a Writ Petition was devoid of substance on account of the various decisions of this Court holding that an alternate remedy did not place any fetters on the powers of the High Court under Article 226 of the Constitution.

22. Mr. Chakraborty also referred to and relied on the decision of this Court in *Modern Steel Industries vs. State of U.P. and others* [(2001) 10 SCC 491], wherein on the same point this Court had held that the High Court ought not to have dismissed the writ petition requiring the Appellant therein to take recourse to arbitration proceedings, particularly when the vires of a statutory provision was not in issue. Reference was also made to the decision of this Court in *Whirlpool Corporation vs. Registrar of Trade Marks* [(1998) 8 SCC 1]; *National Sample Survey Organisation and Another vs. Champa Properties Limited and Another* [(2009) 14 SCC 451] and *Hindustan Petroleum Corporation Limited and Others vs. Super Highway Services and Another* [(2010) 3 SCC 321], where similar views had been expressed.

33. Apart from the above, even on the question of maintainability of the writ petition on account of the Arbitration Clause included in the agreement between the parties, it is now well-established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr. Chakraborty would clearly indicate that the

constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution.”

17. In *UNION OF INDIA (UOI) AND ORS. V. INDO-AFGHAN AGENCIES LTD (supra 3)*, the Hon’ble Supreme Court at paragraphs 18 to 20, held as follows:

“18. It was somewhat faintly urged that if the Government is held bound by every representation made by it regarding its intention. when the exporters have acted in the manner they were invited to act, the Government would be held bound by a contractual obligation even though no formal contract in the manner required by Art. 299 of the Constitution was executed, and the exporter would be entitled to claim damages contrary to that provision for breach of the contract even though no formal written contract had been executed in the manner provided by that Article. But the respondents are not seeking to enforce any contractual right; they are seeking to enforce compliance with the obligation which is laid upon the Textile Commissioner by the terms of the Scheme, and we are of the view that even if the Scheme is executive in character, the respondents who were aggrieved because of the failure to carry out the terms of the Scheme were entitled to seek resort to the Court and claim that the obligation imposed upon the Textile Commissioner by the Scheme be ordered to be carried out.

19. We hold that the claim of the respondents is appropriately founded upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondents acting upon that representation under the belief that the Government would carry out the representation made by it. On the facts proved in this case, no ground has been suggested before the Court for exempting the Government from the equity arising out of the acts done by the exporters to their prejudice relying upon the representation. This principle has been recognised by the Courts in India and by the Judicial Committee of the Privy Council in several cases. In The Municipal Corporation of the City of Bombay v. The Secretary of State for India in Council(1), it was held by the Bombay High Court that even though there is no formal (1) I.L.R. 29 Bom. 580. contract as required by the statute. the Government may be bound by a representation made by it.’ In that case in answer to a requisition by the Government of Bombay addressed to the Municipal Commissioner to remove certain fish and vegetable markets to facilitate the construction of an arterial road, the Municipal Commissioner offered to remove the structures if the Government would agree to rent to the Municipality other land mentioned in his letter at a nominal rent. The Government accepted the suggestion and sanctioned the application of the Municipal Commissioner for a site for

tabling and establishing the new markets. The Municipal Commissioner then took possession of the land so made available and constructed stables, workshops and chawls thereon. Twenty-four years thereafter the Government of Bombay served notices on the Municipal Commissioner determining the tenancy and requesting the Commissioner to deliver possession of the land occupied by the markets, and to pay in the meantime rent at the rate of Rs. 12,000/- per annum. The Municipality declined to pay the rent, and the Secretary of State for India filed a suit against the Municipal Commissioner for a declaration that the tenancy of the Municipality created by Government Resolution of December 9, 1865, stood determined and for an order to pay rent at the rate of Rs. 12,000/- per annum. It was urged before the High Court of Bombay that the events which had transpired had created an equity in favour of the Municipality which afforded an answer to the claim of the Government to eject the Municipality. Jenkins, C.J., delivering the judgment of the Court observed:

"The doctrine, involved in this phase of the case is often treated as one of estoppel, but I doubt whether this is a correct, though it may be a convenient name to apply. It differs essentially from the doctrine embodied in section 115 of the Evidence Act, which is not a rule of equity, but is a rule of evidence that was formulated and applied in Courts of law; while the doctrine, with which I am now dealing, takes its origin from the jurisdiction assumed by Courts of Equity to intervene in the case of, or to prevent fraud."

After referring to *Ramsden v. Dyson*(1), the learned Chief Justice observed that the Crown comes within the range of equity and proceeded to examine whether the facts of the case invited the application of that principle.

20. This case is, in our judgment a clear authority that even though the case, does not fall within the terms of s. 115 of the Evidence Act, it is still open to, a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution."

18. In *CENTURY SPINNING AND MANUFACTURING COMPANY LTD. AND ANR V. THE ULHASNAGAR MUNICIPAL COUNCIL AND ANR* (*supra* 4), the Hon'ble Supreme Court at paragraphs 11 and 12, held as follows:

"11. Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation

amounting to a promise may be enforced ex contractu by a person who acts upon the promise : when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation may be if the contract be not in that form be enforced against it in appropriate cases in equity. 'In Union of India & Ors. v. Mls. IndoAfghan Agencies Ltd.(1) this Court held that the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the Government. This Court held that the following observations made by Denning, J., in Robertson v. Minister of Pensions(1) applied in India.

"The Crown cannot escape by saying that estoppe ls do not bind the Crown for that doctrin e has long been exploded. Nor can the Crown escape by praying in aid the doctrin e of executi ve necessi ty, that is, the doctrin e that the Crown cannot bind itself so as to fetter its future executi ve action."

We are in this case not concerned to deal with the question whether Denning, L.J., was right in extending the rule to a different class of cases as in Falmouth Boat Construction Co. Ltd. v. Howell(1) where he observed at p. 542 :

"Whenever Government officers in their dealings with a subject take on themselves to assume authority in a matter with which the subject is concerned, he is entitled to rely on their having the authority which they assume. He does not know, and cannot be expected to]mow, the limits of their authority, and he ought not to suffer if they exceed it. "

It may be sufficient to observe that in appeal from that judgment (Howell v. Falmouth Boat Construction do. Ltd.) Lord Simonds observed after referring to the observations of Denning, L.J.

"The illegality of an act is the same whether the action has been misled by an assumption of authority on the part of a government officer however- high or low in the hierarchy.

The question is whether the character of an act done in force of a statutory prohibition is affected by the fact that it had been induced by a misleading assumption of authority. In my opinion the answer is clearly : No."

12. If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice."

19. In *MOTILAL PADAMPAT SUGAR MILLS CO. LTD. v. STATE OF UTTAR PRADESH AND ORS* (*supra* 5) the Hon'ble Apex Court at paragraphs 25 to 31, held as follows:

"25. The doctrine of promissory estoppel was also held applicable against a public authority like a Municipal Council in Century Spinning & Manufacturing Co. Ltd. & Anr. v. The Ulhasnagar Municipal Council & Anr.(2) The question which arose in this case was whether the Ulhas Nagar Municipal Council could be compelled to carry out a promise made by its predecessor municipality that the factories in the industrial area within its jurisdiction would be exempt from payment of octroi for seven years from the date of the levy. The appellant company, in the belief induced by the assurance and undertaking given by the predecessor municipality that its factory would be exempt from octroi for a period of seven years, expanded its activities, but when the municipal council came into being and took over the administration of the former municipality, it sought to levy octroi duty on appellant-company. The appellant company thereupon filed a writ petition under Article 226 of the Constitution in the High Court of Bombay to restrain the municipal council from enforcing the levy of octroi duty in breach of the promise made by the predecessor municipality. The High Court dismissed the petition in limine but, on appeal, this Court took the view that this was a case which required consideration and should have been admitted by the High Court. Shah, J., speaking on behalf of the Court, pointed out "Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contractu by a person who acts upon the promise: when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation may be if the contract be not in that form be enforced against it in appropriate cases in equity." The learned Judge then referred to the decision in the *Indo Afghan Agencies* case and observed that in that case it was laid down by this Court that "the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice relying upon the representations as to its future conduct made by the Government". It was also pointed out by the learned Judge that in the *Indo-Afghan Agencies* case this Court approved of the observations made by Denning, J. in *Robertson v. Minister of Pensions* (*supra*) rejecting the doctrine of executive necessity and held them to be applicable in India. The learned Judge concluded by saying in words pregnant in the hope and meaning for democracy:

"If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it

relying upon which a citizen has altered his position to his prejudice."

This Court refused to make a distinction between a private individual and a public body so far as the doctrine of promissory estoppel is concerned.

26. We then come to another important decision of this Court in Turner Morrison & Co. Ltd. v. Hungerford Investment Trust Ltd. (1) where the doctrine of promissory estoppel was once again affirmed by this Court. Hegde, J, speaking on behalf of the Court, pointed out: "Estoppel" is a rule of equity. "That rule has gained new dimensions in recent years. A new class of estoppel i.e. promissory estoppel has come to be recognised by the courts in this Country as well as in England. The full implication of 'promissory estoppel' is yet to be spelled out." The learned Judge, after referring to the decisions in High Trees case, Robertson v. Minister of Pensions (supra) and the Indo-Afghan Agencies case, pointed out that "the rule laid down in these decisions undoubtedly advanced the cause of justice and hence we have no hesitation in accepting it.

27. We must also refer to the decision of this Court in M. Ramanatha Pillai v. The State of Kerala & Anr. (1) because that was a decision strongly relied upon on behalf of the State for negating the applicability of the doctrine of estoppel against the Government. This was a case where the appellant was appointed to a temporary post and on the post being abolished, the service of the appellant was terminated. The appellant challenged the validity of termination of service, inter alia, on the ground that the Government was precluded from abolishing the post and terminating the service on the principle of promissory estoppel. This ground based on the doctrine of promissory estoppel was negated and it was pointed out by the Court that the appellant knew that the post was temporary, suggesting clearly that the appellant could not possibly be led into the belief that the post would not be abolished. If the post was temporary to the knowledge of the appellant, it is obvious that the appellant knew that the post would be liable to be abolished at any time and if that be so, there could be no factual basis for invoking the doctrine of promissory estoppel for the purpose of precluding the Government from abolishing the post. This view taken by the Court was sufficient to dispose of the contention based on promissory estoppel and it was not necessary to say anything more about it, but the Court proceeded to cite a passage from American Jurisprudence, Vol. 28 (2d) at 783, paragraph 123 and observed that the High Court rightly held "that the courts exclude the operation of the doctrine of estoppel, when it is found that the authority against whom estoppel is pleaded has owed a duty to the public against whom the estoppel cannot fairly operate." It was this observation which was heavily relied upon on behalf of the State but we fail to see how it can assist the contention of the State. In the first place, this observation was clearly obiter, since, as pointed out by us, there was on the facts of the present case no scope for the applicability of the doctrine of promissory estoppel. Secondly, this observation was based upon a quotation from the passage in paragraph 123 at page 783 of Volume 28 of American Jurisprudence (2 d), but unfortunately this

quotation was incomplete and it overlooked, perhaps inadvertently, the following two important sentences at the commencement of the paragraph which clearly show that even in the United States the doctrine of promissory estoppel is applied against the State "when justified by the facts":

"There is considerable dispute as to the application of estoppel with respect to the State. While it is said that equitable estoppel will be invoked against the State when justified by the facts, clearly the doctrine of estoppel should not be lightly invoked against the State" (emphasis supplied).

Even the truncated passage quoted by the Court recognised in the last sentence that though, as a general rule, the doctrine of promissory estoppel would not be applied against the State in its governmental, public or sovereign capacity, the Court would unhesitatingly allow the doctrine to be invoked in cases where it is necessary in order "to prevent fraud or manifest injustice". This passage leaves no doubt that the doctrine of promissory estoppel may be applied against the State even in its governmental, public or sovereign capacity where it is necessary to prevent fraud or manifest injustice. It is difficult to imagine that the Court citing this passage with approval could have possibly intended to lay down that in no case can the doctrine of promissory estoppel be invoked against the Government. Lastly, a proper reading of the observation of the Court clearly shows that what the Court intended to say was that where the Government owes a duty to the public to act differently, promissory estoppel cannot be invoked to prevent the Government from doing so. This proposition is unexceptionable, because where the Government owes a duty to the public to act in a particular manner, and here obviously duty means a course of conduct enjoined by law, the doctrine of promissory estoppel cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The doctrine of promissory estoppel cannot be applied in teeth of an obligation or liability imposed by law.

28. We may then refer to the decision of this Court in Assistant Custodian v. Brij Kishore Agarwala & Ors.(1) It is not necessary to reproduce the facts of this case, because the only purpose for which this decision was relied upon on behalf of the State was to show that the view taken by the House of Lords in *Howell v. Falmouth Boat Construction Co. Ltd.* (Supra) was preferred by this Court to that taken by Lord Denning in *Robertson v. Minister of Pension* (supra). It is true that in this case the Court expressed the opinion "that the view taken by the House of Lords is the correct one and not the one taken by Lord Denning" but we fail to see how that can possibly help the argument of the State. The House of Lords did not in *Howell's* case negative the applicability of the doctrine of promissory estoppel against the Government. What it laid down was merely this, namely, that no representation or promise made by an officer can preclude the Government from enforcing a statutory prohibition. The doctrine of promissory estoppel cannot be availed to permit or condone a breach of the law. The ratio of the decision was succinctly put by Lord Normand when he said"- neither a

minister nor any subordinate officer of the Crown can by any conduct or representation bar the Crown from enforcing a statutory prohibition or entitle the subject to maintain that there has been no breach of it". It may also be noted that promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law. There can also be no promissory estoppel against the exercise of legislative power. The Legislature can never be precluded from exercising its legislative function by resort to the doctrine of promissory estoppel. Vide State of Kerala v. Gwalior Rayon Silk Manufacturing Co. Ltd.

29. The next decision to which we must refer is that in Excise Commissioner, U.P. Allahabad v. Ram Kumar.⁽²⁾ This was also a decision on which strong reliance was placed on behalf of the State. It is true that, in this case, the Court observed that "it is now well settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers," but for reasons which we shall presently state, we do not think this observation can persuade us to take a different view of the law than that enunciated in the Indo-Afghan Agencies' case. In the first place, it is clear that in this case there was factually no foundation for invoking the doctrine of promissory estoppel. When the State auctioned the licence for retail sale of country liquor and the respondents being the highest bidders were granted such licence, there was in force a Notification dated 6th April, 1959, issued under section 4 of the U.P. Sales Tax Act, 1948, exempting sale of country liquor from payment of sales tax. No announcement was made at the time of the auction whether the exemption from sales tax under this Notification dated 6th April, 1959 was or was not likely to be withdrawn. However, on the day following the commencement of the licence granted to the respondents, the Government of U.P. issued a Notification dated 2nd April, 1969 superseding the earlier Notification dated 6th April, 1959 and imposing sales tax on the turnover in respect of country spirit with immediate effect. This notification dated 2nd April, 1969 was challenged by the respondents by filing a writ petition and amongst the several grounds of challenge taken in the writ petition, one was that "since the State Government did not announce at the time of the aforesaid auction that the Notification dated 6th April, 1959 was likely to be withdrawn and the sales of country liquor were likely to be subjected to the levy of sales tax during the excise year and in reply to the query made by them at the time of the auction they were told by the authorities that there was no sales tax on the sale of country liquor, the appellants herein were estopped from making the demand in respect of sales tax and recovering the same from them". It was in the context of this ground of challenge that the Court came to make the observation relied upon on behalf of the State. Now, it is clear that, even taking the case of the respondents at its highest, there was no representation or promise made by the Government that they would continue the exemption from sales tax granted under the Notification dated 6th April, 1959 and would not withdraw it, and the Notification dated 2nd April, 1969 could not, therefore, be assailed as being in breach of any such representation or promise. There was accordingly, no factual basis for making good the plea of promissory estoppel and

the observation made by the court in regard to the applicability of the doctrine of promissory estoppel against the Government was clear obiter. That perhaps was the reason why the Court did not consider it necessary to refer to the earlier decisions in *Century Spinning & manufacturing Co.'s case* and *Turner Morrison's case* and particularly the decision in the *Indo-Afghan Agencies case* where the court in so many terms applied the doctrine of promissory estoppel against the Government in the exercise of its executive power. It is not possible to believe that the Court was oblivious of these earlier decisions, particularly when one of these decisions in the *Indo-Afghan Agencies case* was an epoch making decision which marked a definite advance in the field of administrative law. Moreover, it may be noted that though, standing by itself, the observation made by the Court that "there can be no question of estoppel against the Government in exercise of its legislative, sovereign or executive powers" may appear to be wide and unqualified, it is not so, if read in its proper context. This observation was made on the basis of certain decisions which the Court proceeded to discuss in the succeeding paragraphs of the judgment. The Court first relied on the statement of the law contained in paragraph 123 at page 783, Volume 28 of the *American Jurisprudence* (2d), but it omitted to mention the two important sentences at the commencement of the paragraph and the words "unless its application is necessary to prevent fraud or manifest injustice" at the end, which clearly show that even according to the *American Jurisprudence*, the doctrine of promissory estoppel is not wholly inapplicable against the Government in its governmental, public or sovereign capacity, but it can be invoked against the Government "when justified by the facts" as for example where it is necessary to prevent fraud or injustice. In fact, as already pointed out above, there are numerous cases in the United States where the doctrine of promissory estoppel has been applied against the Government in the exercise of its governmental, public or executive powers. The Court then relied upon the decision in the *Gwalior Rayon Silk Manufacturing Co.'s case*, but that decision was confined to a case where legislation was sought to be precluded by relying on the doctrine of promissory estoppel and it was held, and in our opinion rightly, that there can be no promissory estoppel against the legislature in the exercise of its legislative function. That decision does not negative the applicability of the doctrine of promissory estoppel against the Government in the exercise of its governmental, public or executive powers. The decision in *Howell's case* was, thereafter, relied upon by the Court, but that decision merely says that the Government cannot be debarred by promissory estoppel from enforcing a statutory prohibition. It does not countenance an absolute proposition that promissory estoppel can never be invoked against the government. The Court also cited a passage from the judgment of the High Court of Jammu & Kashmir in *Malhotra & Sons & Ors. v. Union of India & Ors.*,⁽¹⁾ but this passage itself makes it clear that the courts will bind the Government by its promise where it is necessary to do so in order to prevent manifest injustice or fraud. The last decision on which the Court relied was *Federal Crop Insurance Corporation v. Morrill* (supra) but this decision also does not support the view contended for on behalf of the State. We

have already referred to this decision earlier and pointed out that the Federal Crop Insurance Corporation in this case was held not liable on the policy of insurance, because the regulations made by the Corporation prohibited insurance of reseeded wheat. The principle of this decision was that promissory estoppel cannot be invoked to compel the Government or a public authority to carry out a representation or promise which is contrary to law. It will thus be seen from the decisions relied upon in the judgment that the Court could not possibly have intended to lay down an absolute proposition that there can be no promissory estoppel against the Government in the exercise of its governmental, public or executive powers. That would have been in complete contradiction of the decisions of this Court in the Indo- Afghan Agencies Case, Century Spinning and Manufacturing Co.'s case and Turner Morrison's case and we find it difficult to believe that the Court could have ever intended to lay down any such proposition without expressly referring to these earlier decisions and over-ruling them. We are, therefore, of the opinion that the observation made by the Court in Ram Kumar's case does not militate against the view we are taking on the basis of the decisions in the Indo-Afghan Agencies' case, Century Spinning & Manufacturing Co.'s case and Turner Morrison's case in regard to the applicability of the doctrine of promissory estoppel against the Government.

30. We may then refer to the decision of this Court in Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v. Sipahi Singh & Ors.(2) It was held in this case in paragraph 12 of the judgment that the respondent could not invoke the doctrine of promissory estoppel because he was unable to show that, relying on the representation of the Government, he had altered his position by investing moneys and the allegations made by him in that behalf were "much too vague and general" and there was accordingly no factual foundation for establishing the plea of promissory estoppel. On this view, it was unnecessary to consider whether the doctrine of promissory estoppel was applicable against the Government, but the Court proceeded to reiterate, without any further discussion, the observation in Ram Kumar's case that "there cannot be any estoppel against the Government in the exercise of its sovereign, legislative and executive functions". This was clearly in the nature of obiter and it cannot prevail as against the statement of law laid down in the Indo-Afghan Agencies case. Moreover, it is clear from paragraph 14 of the judgment that this Court did not intend to lay down any proposition of law different from that enunciated in the Indo-Afghan Agencies case because it approved of the decision in the Indo-Afghan Agencies case and distinguished it on the ground that in that case there was not enforcement of contractual right but the claim was founded upon equity arising from the Scheme, while in the case before the Court, a contractual right was sought to be enforced. There is, therefore, nothing in this decision which should compel us to take a view different from the one we are otherwise inclined to accept.

31. We may point out that in the latest decision on the subject in Radha Krishna Agarwal v. State of Bihar & Ors.(1) this Court approved of the decisions in the Indo-Afghan

Agencies case and Century Spinning and Manufacturing Co's case and pointed out that these were cases where it could be held that public bodies or the State are as much bound as private individuals are to carry out obligations incurred by them because parties seeking to bind the authorities have altered their position to their disadvantage or have acted to their detriment on the strength of the representations made by these authorities". It would, therefore, be seen that there is no authoritative decision of the Supreme Court which has departed from the law laid down in the celebrated decisions in the Indo-Afghan Agencies case and the Century Spinning & Manufacturing Co's case. The law laid down in these decisions as elaborated and expounded by us continues to hold the field."

20. In *JIT RAM SHIV KUMAR AND ORS v. STATE OF HARYANA AND ORS* (*supra* 6), the Hon'ble Supreme Court at paragraph 40, held as under:

"40. The scope of the plea of doctrine of promissory estoppel against the Government may be summed up as follows:

(1) The plea of promissory estoppel is not available against the exercise of the legislative functions of the State.

(2) The doctrine cannot be invoked for preventing the Government from discharging its functions under the law.

(3) When the officer of the Government acts outside the scope of his authority, the plea of promissory estoppel is not available. The doctrine of ultra vires will come into operation and the Government cannot be held bound by the authorised acts of its officers.

(4) When the officer acts within the scope of his authority under a scheme and enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the Court is entitled "to require the officer to act according to the scheme and the agreement or representation. The Officer cannot arbitrarily act on his mere which am i ignore his promise on some undefined and undisclosed grounds of necessity or change the conditions to the prejudice of the person who had acted upon such representation and put himself in a disadvantageous position.

(5) The officer would be justified in changing the terms of the agreement to the prejudice of the other party on special considerations such as difficult foreign exchange position or other matters which have a bearing on general interest of the State."

21. In *UNION OF INDIA (UOI) AND ORS v. GODFREY PHILIPS INDIA LTD* (*supra* 7), the Hon'ble Apex Court Court at paragraphs 12 and 13, held as follows:

“12. There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel.

We must concede that the subsequent decision of this Court in *Jeet Ram v. State of Haryana* : [1980]3SCR689 , takes a slightly different view and holds that the doctrine of promissory estoppel is not available against the exercise of executive functions of the State and the State cannot be prevented from exercising its functions under the law. This decision also expresses its disagreement with the observations made in *Motilal Sugar Mills* case that the doctrine of promissory estoppel cannot be defeated by invoking the defence of executive necessity, suggesting by necessary implication that the doctrine of executive necessity is available to the Government to escape its obligation under the doctrine of promissory estoppel.

We find it difficult to understand how a Bench of two Judges in *Jeet Ram's* case could possibly overturn or disagree with what was said by another Bench of two Judges in *Motilal Sugar Mills* Case. If the Bench of two Judges in *Jeet Ram's* case found themselves unable to agree with the law laid down in *Motilal Sugar Mills* case, they could have referred *Jeet Ram's* case to a larger Bench, but we do not think it was right on their part to express their disagreement with the enunciation of the law by a coordinate Bench of the same Court in *Motilal Sugar Mills* case. We have carefully considered both the decision in *Motilal Sugar Mills* and *Jeet Ram's* case and we are clearly of the view that what has been laid down in *Motilal Sugar Mills* case represents the correct law in regard to the doctrine of promissory estoppel and we express our disagreement with the observations in *Jeet Ram's* case to the extent that they conflict with the statement of the law in *Motilal Sugar Mills* case and introduce reservations cutting down the full width and amplitude of the prepositions of law laid down in that case.

13. Of course we must make it clear, and that is also laid down in *Motilal Sugar Mills* case (supra), that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority.

The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in Motilal Sugar Mills case (supra) and we find ourselves wholly in agreement with what has been said in that decision on this point.

22. In *STATE OF RAJASTHAN & ANR v. M/S. MAHAVEER OIL INDUSTRIES & ORS* (supra 8), the Hon'ble Apex Court at paragraphs 14 to 16, held as follows:

“14. Are the respondents justified in holding the State to the promise made by it in the form of an incentive scheme which is made available for a specified period of time, when new industries are set up on the basis of that scheme relying on the promise of benefits held out by it? Public interest requires that the State be held bound by the promise held out by it in such a situation. But this does not preclude the State from withdrawing the benefit prospectively even during the period of the scheme, if public interest so requires. Even in a case where a party has acted on the promise, if there is any supervening public interest which requires that the benefit be withdrawn or the scheme be modified, that supervening public interest would prevail over any promissory estoppel.

15. After examining a large number of authorities, this Court in the case of *Kasinka Trading and Anr. v. Union of India and Anr.* (1995 (1) SCC 274) held that when there was a supervening public interest in withdrawing the promise held out, the Government cannot be estopped from withdrawing the benefit held out under an existing scheme. In the case of *Shrijee Sales Corporation and Anr. v. Union of India* (1997 (3) SCC 398), once again this Court after examining a number of authorities has held that if any supervening public interest so demands, the benefit under any incentive scheme can be withdrawn. The same view has been again reiterated in *Union of India and Ors. v. Godhawani Brothers and Anr.* (1997 (11) SCC 173).

16. The State Government has, with the permission of this Court, relied upon an affidavit in this connection which they had filed in Civil Appeal No.5738 of 1994 *State of Rajasthan and Anr. v. Gopal Oil Mills and Anr.* (Supra). The appellant - State has pointed out that their experience with regard to implementation of the said incentive scheme during the years 1988 and 1989 revealed that the object of having more new industries in the areas specified could not be achieved, particularly in the case of oil industry and cotton industry. On the contrary, the policy had adversely affected existing units in the State. Since the tax liability of new units was much less, and the tax liability on the old units was high, old units gradually started closing down while new units started coming up. As a result, in the two years 1988 and 1989, 64 old units were closed down and 74 new units were started. The closure of old units and their replacement by new units resulted in blocking of capital and funds invested in

the old units. Therefore, in effect, the incentive scheme as operating for oil industries was resulting in closure of existing units and substitution of the same by new units - which was never the intention of the incentive scheme. It was, therefore, decided to withdraw the benefit of the scheme in public interest in respect of oil industry. The notification of 7.5.1990, therefore, was clearly issued on account of a supervening public interest.

23. In *STATE OF BIHAR AND ORS v. KALYANPUR CEMENTS LTD.*

(*supra* 9), the Hon'ble Supreme Court at paragraphs 76 to 79, held as under:

"76. The law with regard to the applicability of the doctrine of promissory estoppel was again comprehensively considered by this Court in the case of Nestle India (*supra*). Ruma Pal, J. speaking for the Bench observed as follows:-

"24. But first a recapitulation of the law on the subject of promissory estoppel. The foundation of the doctrine was laid in the decision of Chandrasekhara Aiyar, J. in Collector of Bombay v. Municipal Corpn. of the City of Bombay (AIR 1951 SC 469)".....Chandrasekhara Aiyar, J. concurred with the conclusion of Das, J. but based his reasoning on the fact that by the resolution, representations had been made to the Corporation by the Government and the accident that the grant was invalid did not wipe out the existence of the representation nor the fact that it was acted upon by the Corporation. What has since been recognised as a signal exposition of the principles of promissory estoppel, Chandrasekhara Aiyar, J. said: (AIR p. 476, paras 21 & 22)

'21. ... The invalidity of the grant does not lead to the obliteration of the representation.

22. Can the Government be now allowed to go back on the representation, and, if we do so, would it not amount to our countenancing the perpetration of what can be compendiously described as legal fraud which a court of equity must prevent being committed. If the resolution can be read as meaning that the grant was of rent-free land, the case would come strictly within the doctrine of estoppel enunciated in Section 115 of the Evidence Act. But even otherwise, that is, if there was merely the holding out of a promise that no rent will be charged in the future, the Government must be deemed in the circumstances of this case to have bound themselves to fulfil it. ... Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power."

"25. In other words, promissory estoppel long recognised as a legitimate defence in equity was held to found a cause of action against the Government, even when, and this needs to be emphasised, the representation sought to be enforced was legally invalid in the sense that it was made in a manner

which was not in conformity with the procedure prescribed by statute."

"26. This principle was built upon in Union of India v. Anglo Afghan Agencies where it was said (SCR at p. 385): (AIR p 728, para 23) "23. Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen."

xxxx xxxx xxxx xxxx "44. Of course, the Government cannot rely on a representation made without complying with the procedure prescribed by the relevant statute, but a citizen may and can compel the Government to do so if the factors necessary for founding a plea of promissory estoppel are established. Such a proposition would not "fall foul of our constitutional scheme and public interest". On the other hand, as was observed in Motilal Padampat Sugar Mills case and approved in the subsequent decisions: (SCC p. 442, para 24) "It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel."

"46.The facts in the present case are similar to those prevailing in Godfrey Philips. There too, as we have noted earlier, the statutory provisions required exemption to be granted by notification. Nevertheless, the Court having found that the essential prerequisites for the operation of promissory estoppel had been established, directed the issuance of the exemption notification."

77. In Petrochemical (supra), this Court has clearly reiterated the promissory estoppel would apply where a party alters his position pursuant to or in furtherance of the promise made by a State. It is also clearly held that such a policy decision can be expressed in notifications under statutory provisions or even by executive instructions. Whenever the ingredients for invoking the principle of promissory estoppel are established, it could give rise to a cause of action. Not only may it give rise to a cause of action but would also preserve a right. The relevant observations are as under:- "121. The doctrine of promissory estoppel would undoubtedly be applicable where an entrepreneur alters his position pursuant to or in furtherance of the promise made by a State to grant inter alia exemption from payment of taxes or charges on the basis of the current tariff. Such a policy decision on the part of the State shall not only be expressed by reason of notifications issued under the statutory provisions but also under the executive instructions. The appellants had undoubtedly been enjoying the benefit of (sic exemption from) payment of tax in respect of sale/consumption of electrical energy in relation to the cogenerating power plants."

"122. Unlike an ordinary estoppel, promissory estoppel gives rise to a cause of action. It indisputably creates a right. It also acts on equity. However, its application against constitutional or statutory provisions is impermissible in law."

"130. We, therefore, are of the opinion that doctrine of promissory estoppel also preserves a right. A right would be preserved when it is not expressly taken away but in fact has expressly been preserved."

78. This Court in MRF Ltd. Kottayam (supra) considered the legality of a notification withdrawing the exemption granted by an earlier notification. Relying on the representations contained in the earlier notification, MRF had altered its position. Whilst setting aside the subsequent notification withdrawing the exemptions, this Court held that the whole actions of the State including exercise of executive power has to be tested on the touchstone of Article 14 of the Constitution of India. It was held that the action of the State must be fair. In this context we may notice the observations made in paragraph 38 and 39 of the judgment:-

"38. The principle underlying legitimate expectation which is based on Article 14 and the rule of fairness has been restated by this Court in Bannari Amman Sugars Ltd. v. CTO21. It was observed in paras 8 and 9: (SCC pp. 633-34)

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

9. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done

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

"39. MRF made a huge investment in the State of Kerala under a promise held to it that it would be granted exemption from payment of sales tax for a period of seven years..... ".....The action of the State cannot be permitted to operate if it is arbitrary or unreasonable. This Court in E.P. Royappa v. State of T.N observed that where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. Equity that arises in favour of a party as a result of a representation made by the State is founded on the basic concept of "justice and fair play". The attempt to take away the said benefit of exemption with effect from 15-1-1998 and thereby deprive MRF of the benefit of exemption for more than 5 years out of a total period of 7 years, in our opinion, is highly arbitrary, unjust and unreasonable and deserves to be quashed."

79. We are also unable to accept the submission with the decisions dated 06.01.2001 and 05.03.2001 had been taken due to the change in the national policy. This was sought to be justified by Dr. Dhawan on the basis of the Conferences of Chief Ministers/Finance Ministers. It is settled law as noticed by Bhagwati, J in Motilal Padampat (supra) that the Government cannot, claim to be exempt from liability to carry out the promise, on some indefinite and undisclosed ground of necessity or expediency. The Government is required to place before the Court the entire material on account of which it claims to be exempt from liability. Thereafter, it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from liability. It is only when the Court is satisfied that the Court would decline to enforce the promise against the Government. However, the burden would be upon the Government to show that it would be inequitable to hold the Government bound by the promise. The Court would insist a highly rigorous standard of proof in the discharge of this burden."

24. In *ERUSIAN EQUIPMENT & CHEMICALS LTD. V. STATE OF WEST BENGAL AND ANR.* (*supra* 10), the Hon'ble Supreme Court at paragraphs 14 to 21, held as follows:

“14. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to earn livelihood and to pursue any trade. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling.

15. The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion".

16. In passing an order of blacklisting the Government department acts under what is described as a standardised Code. This is a Code for internal instruction. The Government departments make regular purchases. They maintain list of approved suppliers after takings into account the financial standard of the firm, their capacity and their past performance. The removal from the list is made for various reasons. The grounds on which blacklisting may be ordered are if the proprietor of the firm is convicted by court of law or security considerations so warrant or if there is strong justification for believing that the proprietor or employee of the firm, has been guilty of malpractices such as bribery, corruption, fraud. or if the firm continuously refuses to return Government dues or if the firm employs a Government servant, dismissed or removed on account of corruption in a position where he could corrupt Government servant. The petitioner was blacklisted on the ground of justification for believing that the firm has been guilty of malpractices such as bribery, corruption, fraud. The petitioners were blacklisted on the ground that there were proceedings pending against the petitioners for alleged violation of provisions under the Foreign Exchange Regulations Act.

17. The Government is a government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one but 'if it does so, it must do as fairly without discrimination and without unfair procedure. Reputation is a part of person's character and personality. Blacklisting tarnishes one's reputation.

18. Exclusion of a member of the public from dealing with a State in sales transactions has the effect of preventing him from purchasing and doing a lawful trade in the goods by discriminating against him in favour of other people. The State can impose reasonable conditions regarding rejection and acceptance of bids or qualifications of bidders. Just as exclusion of the lowest tender will be arbitrary similarly exclusion of a person who offers the highest price from participating at a public auction would also have, the same aspect of arbitrariness.

19. Where the State is dealing with individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with others. A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice. A body may 'be under a duty to give fair consideration to the facts and to consider the representations but not to disclose to those persons details of information in its possession. Sometimes duty to act fairly can also be sustained without providing opportunity for an oral hearing. It will depend upon the nature of the interest to be affected, the circumstances in which a power is exercised the nature of sanctions involved therein.

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

21. With regard to the case of the petitioners, it is made clear that the authorities will give an opportunity to the petitioners to represent their case, and the authorities will hear the petitioners as to whether their name should be put on the blacklist or not. This is made clear that the decision on this question will not have any effect on the proceedings pending in Calcutta High Court where the petitioner has challenged the adjudication proceedings under the Foreign Exchange Regulations Act. Any decision of the authorities on the blacklisting will have no effect on the correctness of any of the facts involved in those proceedings.”

25. In *JOSEPH VILANGANDAN v. THE EXECUTIVE ENGINEER, (PWD), ERANAKULAM AND ORS. (supra 11)*, the Hon'ble Supreme Court at paragraphs 17 and 18, held as follows:

“17. The majority judgment of the Kerala High Court, inasmuch as it holds that a person is not entitled to a hearing, before he is blacklisted, must be deemed to have been overruled by the decision of this Court in *Erusian Equipment* (ibid) wherein it was held that

"fundamentals of fairplay require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

Controversy in the instant case, therefore, narrows down into the issue, whether such an opportunity was given to the appellant. Answer to this question will turn on an interpretation of the notice, dated April 17, 1968 (Ex. P-8) given by the Executive Engineer to the appellant. This notice has been extracted in a foregoing part of this judgment. The material sentence therein is:

"You are, therefore, requested to show cause.... why the work may not be arranged otherwise at your risk and loss, through other agencies after debarring you as a defaulter...."

The crucial words are those that have been underlined. They take their colour from the context. Construed along with the links of the sentence which precede and succeed them, the words "debarring you as a defaulter", could be understood as conveying no more than that an action with reference to the contract in question, only was under contemplation. There are no words in the notice which could give a clear intimation to the addressee that it was proposed to debar him from taking any contract, whatever, in future under the department. A perusal of the appellant's reply (Ex. P-7), dated May 20, 1968, sent to the Executive Engineer, also appears to show that by the word "debarring" mentioned in the Executive Engineer's letter dated April 17, 1968 (Ex. P-6), he understood as debarring him from executing the contract in question after declaring him a defaulter, and then getting the same work done by other agencies, at his risk and loss. All that has been said in Ex. P-7 by the appellant is directed to justify that the non-execution of the contract was not due to his fault, but due to the delay on the part of the department in handing over the building to him for starting the work within the time specified in the agreement, and consequently, if any loss would be incurred by the department in getting the work done through any other agency, he would not be liable to make good the same. In short, the letter (Ex. P-6) dated April 17, 1968 from the Executive Engineer, did not give any clear notice to the appellant that action to debar him from taking in future any contract, whatever, under the department or its Ernakulam Division was in contemplation. The appellant was thus not afforded adequate opportunity to represent against the impugned action.

18. This being the position, the rule in *Erusian Equipment's* case (*ibid*) will be attracted with full force. While conceding that the State can enter into contract with any person it chooses and no person has a fundamental right to insist that the Government must enter into a contract with him, this Court observed (in the said case) :

Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned

should be given an opportunity to represent his case before he is put on the black list.”

26. In *GORKHA SECURITY SERVICES v. GOVERNMENT (nct OF DELHI) AND OTHERS* (*supra* 12), the Hon'ble Apex Court, at paragraphs 16 to 22, held as follows:

“16. It is a common case of the parties that the blacklisting has to be preceded by a show cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting many civil and/ or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in Government Tenders which means precluding him from the award of Government contracts.

17. Way back in the year 1975, this court in the case of *M/s. Erusian Equipment & Chemicals Ltd. v. State of West Bengal & Anr.*; (1975) 1 SCC 70, highlighted the necessity of giving an opportunity to such a person by serving a show cause notice thereby giving him opportunity to meet the allegations which were in the mind of the authority contemplating blacklisting of such a person. This is clear from the reading of Para Nos. 12 and 20 of the said judgment. Necessitating this requirement, the court observed thus:

“12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting

indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist”.

18. Again, in Raghunath Thakur v. State of Bihar and Ors.; (1989) 1 SCC 229 the aforesaid principle was reiterated in the following manner:- “4. Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order. In that view of the matter, the last portion of the order insofar as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law. In the premises, that portion of the order directing that the appellant be placed in the blacklist in respect of future contracts under the Collector is set aside. So far as the cancellation of the bid of the appellant is concerned, that is not affected. This order will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the Government is so entitled to do in accordance with law i.e. after giving the appellant due notice and an opportunity of making representation. After hearing the appellant, the State Government will be at liberty to pass any order in accordance with law indicating the reasons therefor. We, however, make it quite clear that we are not expressing any opinion on the correctness of otherwise of the allegations made against the appellant. The appeal is thus disposed of.”

19. Recently, in the case of Patel Engineering Ltd. v. Union of India and Anr.; (2012) 11 SCC 257 speaking through one of us (Jasti Chelameswar, J.) this Court emphatically reiterated the principle by explaining the same in the following manner:

“13. The concept of “blacklisting” is explained by this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B. as under:

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains.”

14. The nature of the authority of the State to blacklist the persons was considered by this Court in the abovementioned case and took note of the constitutional provision (Article 298), which authorises both the Union of India and the States to make contracts for any purpose and to carry on any

[pic]trade or business. It also authorises the acquisition, holding and disposal of property. This Court also took note of the fact that the right to make a contract includes the right not to make a contract. By definition, the said right is inherent in every person capable of entering into a contract. However, such a right either to enter or not to enter into a contract with any person is subject to a constitutional obligation to obey the command of Article 14. Though nobody has any right to compel the State to enter into a contract, everybody has a right to be treated equally when the State seeks to establish contractual relationships. The effect of excluding a person from entering into a contractual relationship with the State would be to deprive such person to be treated equally with those, who are also engaged in similar activity.

15. It follows from the above judgment in Erusian Equipment case that the decision of the State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into the contractual relationship with such persons is called blacklisting. The State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. The authority of the State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that the State is to act fairly and rationally without in any way being arbitrary—thereby such a decision can be taken for some legitimate purpose. What is the legitimate purpose that is sought to be achieved by the State in a given case can vary depending upon various factors.”

20) Thus, there is no dispute about the requirement of serving show cause notice. We may also hasten to add that once the show cause notice is given and opportunity to reply to the show cause notice is afforded, it is not even necessary to give an oral hearing. The High Court has rightly repudiated the appellant's attempt in finding foul with the impugned order on this ground. Such a contention was specifically repelled in Patel Engineering (supra).

Contents of Show Cause Notice

21) The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22) The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:

- i) The material/ grounds to be stated on which according to the Department necessitates an action;
- ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

we may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.

Discussion with reference to the instant case”

27. In *SUPERINTENDING ENGINEER, T.G.P. CIRCLE, CUDDAPAH AND ANOTHER v. PIONEER BUILDERS, HYDERABAD (supra 13)*, a Division Bench of this Court at paragraphs 12 to 14, held as follows:

“12. A careful analysis of the judgments of the Supreme Court referred to above reveals that the earlier conservative view of noninterference in cases arising under non-statutory contracts has given way to a some what liberal approach of limited interference. In effect, the Constitutional law limitations on the State actions while acting in administrative sphere are also applied even to contractual sphere.

13. Though ordinarily the superior Courts relegate the parties to the common law remedies such as arbitration (wherever such a provision in the concluded contracts is made) or a civil suit, in specific situations such as term of contract being against the public policy or while enforcing a term of contract the State acts arbitrarily, unfairly or unreasonably or makes discrimination amongst the persons similarly situated, they exercise extraordinary jurisdiction under Article 226 or Article 32 of the Constitution in such particular situations.

14. On the analysis as above, we cannot accept the contention of the learned Government Pleader that the learned Single Judge ought not to have entertained the writ petition as it raised a dispute arising under a concluded contract. If it is eventually found that the appellants acted arbitrarily in seeking to deduct from the bills under the later contract, the alleged liability of

the respondent arising under the earlier contract, we are of the view that the writ petition is certainly maintainable.”

28. In *TRIMEX INDUSTRIES PVT. LTD., ALWARPET, CHENNAI v. ANDHRA PRADESH MINERAL DEVELOPMENT CORPORATION LTD., HYDERABAD* (*supra*¹⁴), this Court at paragraph 13, held as follows:

“13. As regards the submission of the learned Standing Counsel that a Writ Petition for enforcement of contractual terms is not maintainable, much water has flown under the bridge after the Judgments of the Supreme Court in *M/s. Radhakrishna Agarwal Vs. State of Bihar* [2], *Assistant Commissioner Vs. Issac Peter* [3] and *State of U.P. Vs. Bridge & Roof Co. (India) Ltd.* [4]. In *ABL International Ltd.* (1-*supra*), the Supreme Court held that where the action of the State or its instrumentalities suffers from patent arbitrariness, the Constitutional Courts will interfere with such action by entertaining the Writ Petitions. In *Superintending Engineer, T.G.P. Circle, Cuddapah Vs. Pioneer Builders, Hyderabad* [5], wherein a Division Bench of this Court, speaking through me, held at paras 12 and 13 as under:

“A careful analysis of the judgments of the Supreme Court referred to above reveals that the earlier conservative view of non-interference in cases arising under non-statutory contracts has given way to a somewhat liberal approach of limited interference. In effect, the Constitutional law limitations on the State actions while acting in administrative sphere are also applied even to contractual sphere.

Though ordinarily the Superior Courts relegate the parties to the common law remedies such as arbitration (wherever such a provision in the concluded contracts is made) or a civil suit, in specific situations such as term of contract being against the public policy or while enforcing a term of contract the State acts arbitrarily, unfairly or unreasonably or makes discrimination amongst the persons similarly situated, they exercise extraordinary jurisdiction under Article 226 or Article 32 of the Constitution in such particular situations.”

29. In *IBC LTD., CHENNAI v. A.P.MINERAL DEVELOPMENT CORPORATION LTD., HYDERABAD* (*supra* 15), this Court at paragraphs 23 and 27, held as follows:

“23. Re Point No.3: The principle of promissory estoppel which is also called “requisite estoppel”, “quasi estoppel” and “new estoppel” has been evolved by the Courts of equity to avoid injustice and it is neither in the realm of contract nor in the realm of estoppel. Rowlatt, J., was the earliest Judge who has propounded the doctrine of promissory estoppel in *Rederiaktiebolaget Amphitrite Vs. The King*, 1921 (3) KB 500. This was followed by the Australian jurist Dixon.,J in *Grundt Vs. Great Boulder Pty. Gold Mines Ltd.* [22] , who has described the principle as under:

"It is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to no misunderstanding, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumption were deserted that led to it."

This principle was followed by Lord Denning in more than one case (*Central London Property Trust Ltd. Vs. High Trees House Ltd.* [23] , *Robertson Vs. Minister of Pensions* [24] , *Central Newbury Car Auctions Ltd. Vs. Unity Finance Ltd.* [25]). The observations of Denning.,J in *Robertson* (24-*supra*) are worth noticing :

“The Crown cannot escape by saying that estoppels do not bind the Crown, for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is the doctrine that the Crown cannot bind itself so as to fetter its future executive action. That doctrine was propounded by Rowlatt, J., in 1921-3 KB 500 but it was

unnecessary for the decision because the statement there was not a promise which was intended to be binding but only an expression of intention. Rowlatt, J., seems to have been influenced by the cases on the right of the Crown to dismiss its servants at pleasure, but those cases must now all be read in the light of the judgment of Lord Atkin in *Reilly v. The King*, 1934 AC 176, 179..."

27. It is not the pleaded case of the respondent that enforcement of the doctrine of promissory estoppel in the instant case will be inequitable or against public interest. The learned Advocate-General has advanced two contentions on this aspect, namely, that the petitioner did not lay the foundation for claiming the relief on the basis of the doctrine of promissory estoppel, and that since the market rate of the agreed variety of Barytes is very high, the respondent cannot be forced to supply the same at a very low price. As regards the first submission, it is no doubt that in order to invoke the doctrine of promissory estoppel, the proponent thereof must lay a strong foundation by coming out with specific pleadings. Let me now examine whether the petitioner succeeded in doing so."

30. In *KATTA RAMESH AND ANR. V. THE BRANCH MANAGER, STATE BANK OF INDIA AND ORS.* (*supra* 16), this Court at paragraph 8, held as under:

"8. The law on doctrine of promissory estoppel is too well settled. Where a person makes a promise on the basis of which another person acted and altered his position, the promisor cannot be permitted to wriggle out of the promise so made to the detriment of the promisee (See *Union of India v. Indo-Afghan Agencies* : AIR 1968 SC 718, *Motilal Padampat Sugar Mills Company, Ltd., v. State of U.P.* : (1979) 2 SCC 409, *D.C.M. Ltd., v. Union of India* : (1996) 5 SCC 468, *Pawan Alloys & Casting (P) Ltd., v. U.P.S.E.B.* : (1997) 7 SCC 251)."

31. In *EXOTIC GRANITES EXPORTS, HYDERABAD v. STATE OF TELANGANA AND OTHERS* (*supra* 17), this Court at paragraph 26, held as under:

"26. According to the learned counsel for the petitioner the impugned action is contrary to the Principle of Promissory Estoppel and the doctrine of legitimate expectation. In this connection, it may be apt to refer to the judgments cited by the learned counsel for the petitioner.

27. In the case of UNION OF INDIA (UOI) AND ORS. : AIR 1968 SC 718 (Supra), the Hon'ble Apex Court at paragraphs 21 and 24, held as under:

"21. This case is, in our judgment a clear authority that even though the case does not fall within the terms of s. 115 of the Evidence Act, it is still open to a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution.

24. Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisal of the circumstances in which the obligation has arisen. We agree with the High Court that the impugned order passed by the Textile Commissioner and confirmed by the Central Government imposing cut in the import entitlement by the respondents should be set aside and quashed and that the Textile Commissioner and the Joint Chief Controller of Imports and Exports be directed to issue to the respondents import certificates for the total amount equal to 100% of the f.o.b. value of the goods exported by them, unless there is some decision which falls within clause 10 of the Scheme in question."

28. In the case of M/S. S.V.A. STEEL RE-ROLLING MILLS LTD. ETC. ETC. MANU/SC/0109/2014 : 2014 (3) ALD 130 (Supra). the Hon'ble Apex Court at paragraphs 30, 31 and 35 held thus:

"30. 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.

31. Framing such policies and doing the needful for its implementation are administrative functions of the Respondent-State and therefore, normally this Court would not like to interfere with its policies but looking at the peculiar facts of the case, where an assurance had been given for uninterrupted supply of electricity, one would presume that the Respondent-State must have made necessary arrangements to provide 100% uninterrupted supply of electricity for 5 years to the new units. If for any reason it was not possible to supply electricity as assured, the Respondent-State ought to have extended the period of 5 years by the period during which assured electricity was not supplied. By doing so, the Respondent-State could have made an effort to fulfill its promise and satisfied the persons

who had acted on an assurance given by the State and set up their manufacturing units in the State of Kerala.

35. 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 than 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."

29. In the case of KATTA RAMESH AND ANR. : 2011 (5) ALD 335 AP (Supra), this Court at paragraph 8 held as under:

"8. The law on doctrine of promissory estoppel is too well settled. Where a person makes a promise on the basis of which another person acted and altered his position, the promisor cannot be permitted to wriggle out of the promise so made to the detriment of the promisee (See Union of India v. Indo-Afghan Agencies : : AIR 1968 SC 718, Motilal Padampat Sugar Mills Company, Ltd., v. State of U.P. : : (1979) 2 SCC 409, D.C.M. Ltd., v. Union of India : : (1996) 5 SCC 468, Pawan Alloys & Casting (P) Ltd., v. U.P.S.E.B. : : (1997) 7 SCC 251)."

30. In the case of DHARAMPAL PREMCHAND LIMITED (supra), the High Court of Tripura at paragraph 25, held as under:

"25. In Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh and Ors., reported in : : AIR 1979 SC 621, the apex court while dwelling upon the doctrine of promissory estoppel as the principle, evolved on equity to avoid injustice, has held that it is neither in the realm of contract nor in the realm of estoppel. The true principle of promissory estoppels seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relation or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise as made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, it would be inequitable to allow him to do so having regard to the positional change that had

taken place between the parties, and this would be so irrespective of whether there is pre-existing relationship between the parties or not. The doctrine of promissory estoppel need not be inhabited by same limitation as of estoppel in the strict sense of term. It is an equitable principle evolved by the courts for doing justice and there is no reason why it should be given only a limited application by way of defence. There is no reason in logic or principle why promissory estoppels should not be available as a cause of action, if necessary to satisfy the equity. The apex court has further elucidated the law as under:

"19. When we turn to the Indian law on the subject it is heartening to find that in India not only has the doctrine of promissory estoppel been adopted in its fullness but it has been recognized as affording a cause of action to the person to whom the promise is made. The requirement of consideration has not been allowed to stand in the way of enforcement of such promise. The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negatived. It is remarkable that as far back as 1880, long before the doctrine of promissory estoppel was formulated by Denning, J., in England, A Division Bench of two English Judges in the Calcutta High Court applied the doctrine of promissory estoppel and recognised a cause of action founded upon it in the *Ganges Manufacturing Co. v. Surajmuli and other* : : (1880) ILR 5 Cal 669. The doctrine of promissory estoppel was also applied against the Government in a case subsequently decided by the Bombay High Court in *Municipal Corporation of Bombay v. The, Secretary of State*: (1905) ILR 29 Bom."

34. In the instant case, the respondents by their actions and conduct made the petitioner to part with a sum of Rs.44,60,974/- and also made him to purchase an extent of 1-64 hectares of land in Nagaram Village and 4-31 Hectares in Katrapally village and there is absolutely no dispute that the petitioner registered the said land in favour of the State Government by way of Sale Deeds bearing Doc.Nos.1016 and 1017 of 2006 dated 02.08.2006. In this connection, it would be apt to refer to the judgments cited by the learned counsel for the petitioner. The principles laid down in the above judgments are squarely applicable to the case on hand because in the present case also the conduct of the respondents compelled and made the petitioner to pay the amounts and to purchase the lands for afforestation. Therefore, the impugned action is contrary to the principle of Estoppel and the Doctrine of Legitimate Expectation. Therefore, the issue No.3 is also answered in favour of the petitioner and against the respondents.

32. Coming to the Judgments cited by the learned Advocate General in *STATE OF U.P. AND OTHERS v. BRIDGE & ROOF COMPANY (INDIA) LTD.* (*supra 18*), the Hon'ble Apex Court at paragraphs 15 to 21, held as under:

15. In our opinion, the very remedy adopted by the respondent is misconceived. It is not entitled to any relief in these proceedings, i.e., in the writ petition filed by it. The High court appears to be right in not pronouncing upon any of the several contentions raised in the writ petition by both the parties and in merely reiterating the effect of the order of the Deputy commissioner made under the proviso to section 8-D (1).

16. Firstly, the contract between the parties is a contract in the realm of private law. It is governed by the provisions of the contract Act or may be, also by certain provisions of the sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for Civil court as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High court under Article 226. Indeed, the High Court has not granted the said prayer.

17. Secondly, whether there has been a reduction in the statutory liability on account of a change in law within the meaning of sub-clause (4) of clause 70 of the contract is again not a matter to be agitated in the writ petition. That is again a matter relating to interpretation of a term of the contract and should be agitated before the arbitrator in the civil court, as the case may be. If any amount is wrongly withheld by the Government, the remedy of the respondent is to raise a dispute as provided by the contract or to approach the civil court, as the case may be according to law. Similarly if the Government says that any over-payment has been made to the respondent, its remedy also is the same.

18. Accordingly, it must be held that the writ petition filed by the respondent for the issuance of a writ on Mandamus restraining the Government from deducting or withholding a particular sum, which according to the respondent is payable to it under the contract, was wholly misconceived and was not maintainable in law [See the decision of this Court in Assistant Excise Commissioner v. Isaac Peter (1994 (4) S.C.C.104), where the law on the subject has been discussed fully.] The writ petition ought to have been dismissed on this ground alone.

19. We must mention in this behalf that the order of composition of tax liability, if any, under Section 7-D of the Act has not been placed before us. [We presume that it is an order separate from the order dated May 27 1992. But, even if it is not, it makes no difference to what we were saying hereafter.] Whether such composition agreement results in reduction of tax liability within the meaning of Clause 70(4) of the Contract is again a matter concerning the

interpretation of a term of the Contract. Accordingly, the question to whom the benefit of reduction in tax should go' is not a matter for a writ petition, for the very same reasons as are mentioned hereinbefore.

20. Now coming to the order made by the Deputy Commissioner under the proviso to Section 8-D (1) of the Act, all that it says is that the Government shall deduct tax at source only at the rate of one per cent instead of at the rate of 4 per cent. The said order-, having been made under the statute, relieves the government of its obligation to deduct at source at the rate of 4 per cent. In other words, by virtue of the said order, no action can be taken against the government [Appellants] for not deducting at the rate of 4 per cent under Section 8- D. Learned counsel for the respondent contend that the order under the proviso to Section 8-D(1) does not determine the tax liability of the respondent, which liability, they say, will be determined only in the assessment proceedings. May be they are right or may be, not. We need not express any opinion on these submissions because, as already pointed out hereinabove, the said question depends upon the interpretation of the terms of the contract between the parties. Just because the interpretation of orders made under Section 7-D or Section 8-D(1) may also fall for consideration while construing the terms of the contract does not convert the controversy into a public law issue. It is yet a matter within the realm of private law and, therefore, outside the purview of the writ petition. The Arbitrator under the contract or the civil court, as the case may be - can go into and decide both questions of fact as well as questions of law.

21. There is yet another substantial reason for not entertaining the writ petition. The contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration [Clause 67 of the Contract]. The Arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extra-ordinary jurisdiction of the High Court under Article 226. Tree existence of an effective alternative remedy - in this case, provided in the contract itself - is a good ground for the court to decline to exercise its extra-ordinary jurisdiction under Article 226. The said Article was not meant to supplant the existing remedies at law but only to supplement them in certain well-recognised situations. As pointed out above, the prayer for issuance of a writ of mandamus wastes wholly misconceived in this case since the respondent was not seeking to enforce any statutory right of theirs nor was it seeking to enforce any statutory obligation cast upon the appellants. Indeed, the very resort to Article 226 - whether for issuance of mandamus or any other writ, order or direction - was misconceived for the reasons mentioned supra."

33. In *NATIONAL HIGHWAYS AUTHORITY OF INDIA v. GANGA ENTERPRISES AND ANOTHER* (*supra* 19), the Hon'ble Supreme Court at paragraph 6, held as follows:

“6. The Respondent then filed a Writ Petition in the High Court, for refund of the amount. On the pleadings before it, the High Court raised two questions viz. (a) whether the forfeiture of security deposit is without authority of law and without any binding contract between the parties and also contrary to Section 5 of the Contract Act and (b) whether the writ petition is maintainable in a claim arising out of a breach of contract. Question (b) should have been first answered as it would go to the root of the matter. The High Court instead considered question (a) and then chose not to answer question (b). In our view, the answer to question (b) is clear. It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. It has been so held in the cases of Kerala State Electricity Board v. Kurien E. Kalathil reported in [2000] 6 SCC 293, State of U.P. v. Bridge & Roof Co. (India) Ltd. reported in (1996) 6 SCC 22 and B.D.A. v. Ajai Pal Singh reported in (1989) 2 SCC 116. This is settled law. The dispute in this case was regarding the terms of offer. They were thus contractual disputes in respect of which a Writ Court was not the proper forum. Mr. Dave however relied upon the cases of Veriganto Naveen v. Government of A.P. reported in [2001] 8 SCC 344 and Harminder Singh Arora v. Union of India reported in [1986] 3 SCC 247. These however are cases where the Writ Court was enforcing a statutory right or duty. These cases do not lay down that a Writ Court can interfere in a matter of contract only. Thus on the ground of maintainability the Petition should have been dismissed.”

34. In *RAJASTHAN STATE INDUSTRIAL DEVELOPMENT & INVESTMENT CORPN v. DIAMOND & GEM DEVELOPMENT CORPN LTD AND ANR* (*supra* 20), the Hon'ble Supreme Court at paragraph 19, held as follows:

“19. There can be no dispute to the settled legal proposition that matters/disputes relating to contract cannot be agitated nor terms of the contract can be enforced through writ jurisdiction under Article 226 of the Constitution. Thus, writ court cannot be a forum to seek any relief based on terms and conditions incorporated in the agreement by the parties. (Vide: Bareilly Development Authority & Anr. v. Ajay Pal Singh & Ors., AIR 1989 SC 1076; and State of U.P. & Ors. v. Bridge & Roof Co. (India) Ltd., AIR 1996 SC 3515).”

35. In *JOSHI TECHNOLOGIES INTERNATIONAL INC v. UNION OF INDIA AND OTHERS* (*supra* 21), the Hon'ble Supreme Court at paragraphs 69 and 70, held as follows:

“69. The position thus summarized in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, can refuse to exercise. It also follows that under the following circumstances, 'normally', the Court would not exercise such a discretion:

69.1 the Court may not examine the issue unless the action has some public law character attached to it.

69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

70. Further legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to the contracts entered into by the State/public Authority with private parties, can be summarized as under:

70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practice some discriminations.

70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, Involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases court can direct the aggrieved party to resort to alternate remedy of civil suit etc.

70.4. Writ jurisdiction of High Court under Article 226 was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty,

inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the license if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the license, if he finds it commercially inexpedient to conduct his business.

70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8. If the contract between private party and the State/instrumentality and/or agency of State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract. This Court has maintained the position that writ petition is not maintainable. Dichotomy between public law and private law, rights and remedies would depend on the factual matrix of each case and the distinction between public law remedies and private law, field cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision making process or that the decision is not arbitrary.

70.10. 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 requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.”

36. In *RISHI KIRAN LOGISTICS PRIVATE LIMITED Vs. BOARD OF TRUSTEES OF KANDLA PORT TRUST AND OTHERS (supra 22)*, the Hon’ble Supreme Court at paragraph 38, held as follows:

“38. It thus stands crystalised that by way of writ petition under Article 226 of the Constitution, only public law remedy can be invoked. As far as contractual dispute is concerned that is outside the power of judicial review under Article 226 with the sole exception in those cases where such a contractual dispute has a public law element.”

37. In *PIMPRI CHINGHWAD MUNICIPAL CORPORATION AND OTHERS v. GAYATRI CONSTRUCTION COMPANY AND ANOTHER (supra 23)*, the Hon’ble Supreme Court at paragraph 13, held as follows:

“13. . In Kerala State Electricity Board and Anr. v. Kurien E.Kalathil and Ors. (2000 (6) SCC 293), this Court dealt with the question of maintainability of petition under Article 226 of the Constitution and the desirability of exhaustion of remedies and availability of alternative remedies, as also difference between statutory contracts and non-statutory contracts. In paras 10 and 11 of the judgment it was noted as follows:

"10. We find that there is a merit in the first contention of Mr Raval. Learned counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the

Contract Act, that would not make the contract statutory.

Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies."

38. In *KISAN SAHKARI CHINI MILLS LTD. V. VARDAN LINKERS*

(*supra* 24), the Hon'ble Supreme Court at paragraphs 27 and 39, held as follows:

"27. Before a court can record a finding as to whether there is a contract, it has to find out who are the parties to the contract, when and what was the offer, whether there was an acceptance, and whether

the offer and acceptance were valid. None of these were addressed nor answered by the High Court.

39. Thus, there was no material before the High Court to assume or come to the conclusion that there was a concluded contract for supply of 85,000 quintals of molasses.”

39. In *ANDHRA STEEL CORPORATION LTD.v. A.P.S.E.B (supra 25)*, the Hon’ble Apex Court at paragraphs 5 to 17, held as under:

“5. The pleas common to all the appellants which were raised before the High Court as also before us may now be enumerated. It has been asserted that in view of the direction issued by the State Government fixing concessional tariff for the appellants it was not open to the Electricity Board to have levied minimum charges and it was bound to supply electricity to the appellants on the concessional tariff alone as fixed by the state Government. As regards the order of the State Government dated 5th December, 1978 which clarified that its earlier orders fixing concessional tariff did not preclude the Electricity Board from levying inter alia minimum charges it has been asserted that the said order is illegal. In the alternative, it is asserted that if clarificatory orders could be issued by the State Government with regard to its orders fixing concessional tariff the subsequent clarification made by order dated 16th January, 1980 had to prevail over the earlier clarification dated 5th December, 1978.

6. The order of the State Government dated 12th March, 1979 withdrawing the concessional tariff with effect from that date had also been assailed on the ground that it was passed on the representation of the Electricity Board without giving any opportunity to the appellants to show cause against the said representation and consequently the said order was in violation of principles of natural justice. Pleas of promissory estoppel and right based on the doctrine of legitimate expectation have also been raised.

7. As regards the submission made on behalf of the Andhra Steel Corporation about singling it out in the matter of grant of concessional tariff on the basis of the order issued by the State Government for the period ending 12th March, 1979 Shri Shanti Bhushan, learned counsel for the Electricity Board has very fairly stated that the Electricity Board would extend to the Andhra Steel Corporation also the same benefit which was extended to the other four mini steel plants in the matter of grant of concessional tariff for the said period ending 12th March, 1979. In this view of the matter it is not now necessary to deal with this plea.

8. As regard the plea that in view of the direction issued by the State Government fixing concessional tariff for the appellants it was not open to the Electricity Board to have levied minimum charges as it was bound to supply electricity to the appellants on the concessional tariff alone as fixed by the State Government it was submitted by learned counsel for the appellants that not only it was specifically stated in the G.O. dated 26th November, 1977 that the directions contend there were issued under section 78A of the Act, it was accepted even by the Electricity Board to be a direction under Section 78A of the Act as is apparent from its proceedings dated 20th January, 1978. According to learned counsel for the appellants a direction issued under Section 78A of the Act was of a compulsive nature and was binding on the Electricity Board. The only dispute which the Electricity Board could raise was as envisaged and in the manner provided by Sections 78A(2) of the Act about the direction being a matter of policy. The Electricity Board according to learned counsel not having taken raucous to the procedure contained in Section 78A(2) of the Act was precluded from asserting before the High Court that the Government orders granting concessional tariff to the appellants did not fall within the purview of Section 78A of the Act. The contention of the learned counsel for the Electricity Board on the other hand has been that a direction under Section 78A of the Act can be only with regard to a matter of policy vis-a-vis the consumers generally or of a particular class or category as distinguished from individual consumers and even such a direction does not have a binding force and is calculated only to guide the Electricity Board in the discharge of its statutory functions. Learned counsel for the parties were at variance even on the question as to whether the power of fixing tariff under Section 49 of the Act could be regulated by a direction under Section 78A thereof. In support of the submission that a direction issued by the Government is compulsive in nature learned counsel appearing for the appellants and the State of Andhra Pradesh drew or attention to certain decisions and principles of administrative laws laying down the scope of a direction.

9. Having considered the respective submissions of learned counsel for the parties on this point we are of the opinion thaton the facts of the instant appeals it is not necessary to go into the rival contentions referred to above on this point. Here, the Electricity Board as is apparent from its proceedings dated 20th January, 1978 proceeded to implement the directions with regard to fixation of concessional tariff issued by the State Government and resolved to realise electricity charges from the appellants only at the concessional tariff of 12.2 p. as fixed in the Government Order dated 26th November, 1977. It, however, took the further view in the said proceedings that the

directions issued by the Government did not have any bearing on the obligation of the appellants to pay minimum charges which they were bound to pay under the agreements executed by them even though such minimum charges were to be calculated at the rate of 12.2 p. per unit subject to escalation as indicated in the Government Orders in question. Such minimum charges were payable even if no electricity was consumed by the appellants for any reason whatsoever. It is in this context that we are of the opinion that the question with regard to the nature of a direction issued under section 78A of the Act is only of academic value in these appeals. The basic question which falls for our consideration, however, is as to whether the obligation of the appellants to pay minimum charges under the agreement executed by them ceased to be operative on account of the directions issued by the State Government fixing concessional tariff as has been asserted by learned counsel for the appellants. As indicated earlier the case of the electricity Board in this behalf has been that the directions in question did not have any bearing on the obligation of the appellants to continue to pay minimum charges, of course, to be calculated on the basis of the concessional tariff of 12.2 p. per unit. A plain reading of the Government Orders dated 2nd Movement, 1977 and 26th November, 1977 makes it clear that there is no specific direction contained therein that the appellants would not be bound to pay minimum charges or that the obligation to pay minimum charges under the agreements executed by them would remain suspended during the period when the concession tariff would be operative. What was, however, urged by learned counsel for the appellants was that the very purpose of fixing concessional tariff by the State Government would be frustrated if the appellants are held to be bound to continue to pay minimum charges in pursuance of the agreements entered into by them. With regard to this submission it is at the outset necessary to appreciate the genesis of prescription of minimum charges. To put it succinctly the purpose of prescribing minimum charges is to ensure that no undue loss is caused to the Electricity Board because the absence of minimum charges is likely to create a tendency in a prospective consumer to have connection for an inflated requirement and having agreed to meet such requirement the Electricity Board would be under an obligation to maintain the supply upto that requirement even if no or very little energy is consumed. In Amalgamated electricity Co. v. Jalgaon Borough Municipality, [1975] 2 SCC Page 508 it was held in paragraph 9 of the Report:

"Moreover it is obvious that if the plaintiff company was to give bulk supply of electricity at a concessional rate of 0.5 anna per unit it had to lay down lines and to keep the power ready for being supplied as and when required. The consumers could put their switches on whenever they liked

and therefore the plaintiff had to keep everything ready so that power is supplied the moment the switch was put on. In these circumstances it was absolutely essential that the plaintiff should have been ensured the payment of the minimum charges for the supply of electrical energy whether consumed or not so that it may be able to meet the bare maintenance expenses."

10. In Bihar State Electricity Board v. Green Rubber Industries, [1990] 1 S.C.C. Page 731 while dealing with the question whether the stipulation to pay minimum guarantee charges irrespective of whether energy was consumed or not is reasonable and valid it was inter alia held that considered by the test of reasonableness it cannot be said to be unreasonable inasmuch as the supply of electricity to consumer involves incurring of overhead installation expenses by the Board which do not vary with the quantity of electricity consumed and the installation has to be continued irrespective of whether the energy is consumed or not.

11. The purpose of prescribing minimum charges being, as stated above, can it be said that while issuing the direction to the Electricity Board to supply electricity to the five mini steel plants at concessional rate the State Government was oblivious of the said purpose and required the Electricity Board not only to supply electricity on the concessional rate but also incur undue loss in maintaining the required bulk of energy stipulated in the various agreements even if the concerned mini plants either used no energy or used very little energy.

12. In our opinion, on the material placed before us it is not possible to take the view that such was the intention of the State Government in directing supply to be made to the appellants on concessional tariff. That it was not the intention of the State Government to do so was subsequently clarified by the State Government itself vide Government Order dated 5th December, 1978. In this view of the matter the submission made on behalf of the appellants that with the grant of concessional tariff the agreements in so far as they required the appellants to pay minimum charges ceased to be operative or that the purpose of granting concessional tariff was likely to be frustrated if they were required to continue to pay minimum charges cannot, therefore, be accepted. In granting concessional tariff obviously it does not appear to be the purpose to compel the Electricity Board to maintain the supply of the contracted load of electricity to the appellants by incurring losses in the manner stated above. The only purpose in directing supply of energy at concessional rates was reduce the charges of actual energy consumed by the appellants and this purpose could not be frustrated till the Electricity Board complied with the direction

of supplying electricity to them at the concessional rate. In this view of the matter it is apparent that the direction of the State Government to the Electricity Board to supply electricity to the appellants at concessional rate did not either expressly or by necessary implication grant immunity to the appellants from payment of minimum charges.

13. In support of the plea that the order of the State Government dated 5th December, 1978 which clarified that its earlier orders fixing concessional tariff did not preclude the Electricity Board from levying minimum charges and the subsequent order dated 12th March, 1979 withdrawing the concessional tariff were invalid it was submitted by learned counsel for the appellants that those orders were in violation of principles of natural justice as also the doctrine of promissory estoppel. In so far as this submission is concerned what is of significance is that by the Government Order dated 2nd November, 1977 and 26th November, 1977 concession was granted to the appellants. This is manifest from the aforesaid Government Orders themselves which expressly used the expression "concessional power tariff" or "concessional tariff. At no stage, does it appear to have been disputed by the appellants that what was extended to them by the said Government Orders was by way of concession. In the context of granting exemption from sales tax certain observations were made by this Court in Shri Bakul Oil Industries v. State of Gujarat, [1987] 1 S.C.C. Page 31 which would, keeping in view the principle laid down therein with regard to the grant of concession, be, in our opinion, useful in considering the above stated submission made by the learned counsel for the appellants. It was held:

"Viewed from another perspective, it may be noticed that the State Government was under no obligation to grant exemption from sales tax. The appellants could not, therefore, have insisted on the State Government granting exemption to them from payment of sales tax, What consequently follows is that the exemption granted by the government was only by way of concession. Once this position emerges it goes without saying that a concession can be withdrawn at any time and no time limit can be insisted upon before the concession is withdrawn. The notifications of the government clearly manifest that the State Government had earlier granted the exemption only by way of concession and subsequently by means of the revised notification issued on July 17, 1971, the concession had been withdrawn. As the State Government was under no obligation, in any manner known to law, to grant exemption it was fully within its powers to revoke the exemption by means of a subsequent notification. This is an additional factor militating against the contentions of the appellants."

14. It was further held:

"The exemption granted by the government as already stated, was only by way of concession for encouraging entrepreneurs to start industries in rural and undeveloped areas and as such it was always open to the State Government to withdraw or revoke the concession. We must, however, observe that the power of revocation or withdrawal would be subject to one limitation viz. the power cannot be exercised in violation of the rule of promissory estoppel. In other words, the government can withdraw an exemption granted by it earlier if such withdrawal could be done without offending the rule of promissory estoppel and depriving an industry entitled to claim exemption from payment of tax under the said rule. If the government grants exemption to a new industry and if on the basis of the representation made by the government an industry is established in order to avail the benefit to exemption, it may then follow that the new industry can legitimately raise a grievance that-

The exemption could not be withdrawn except by means of legislation having regard to the fact that promissory estoppel cannot be claimed against a statute."

15. This being the law with regard to grant of concession we are of the opinion that neither of the two orders mentioned above can be said to be illegal on the ground that they were passed in violation of principles of natural justice. Who only question in this connection which survives is that of promissory estoppel. With regard to this plea it would be seen that it is not the case of the appellants that they established their mini plants after the grant of concessional tariff by the two Government Orders referred to above and but for the grant of such concessional tariff they would not have established their mini plants. The necessary facts so as to sustain the plea of promissory estoppel are not, in our opinion, to be found to have been either pleaded or established by the appellants. To take it by way of an illustration reference may be made to the special leave petition giving rise to Civil Appeal Nos. 1454-1463 of 1981 filed by M/s. Andhra Steel Corporation Ltd. The plea with regard to promissory estoppel is to be found in ground no.(i) which reads :

"Whether in view of the fact that the Petitioner had acted upon the Government orders dated 2.11.1977 and 26.11.1977 and thus altered its position (as without the concessions being granted to the Petitioner they would not have possibly run the industry, since it was bound to suffer huge (losses) is the State Government stopped from revoking, or modifying the same before the full period of concession had run out of efflux of time that is, by 31-10-1980?" (emphasis supplied)

16. Almost identical is ground no.(i) in the special leave petition giving rise to Civil Appeal Nos. 1642-1645 of 1981. The use of the word "possible" is obviously indicative of lack of specific averment with regard to principle of estoppel. Even such an averment has not been made qua the Electricity Board. With regard to the plea based on the doctrine of legitimate expectation suffice it to say that except invoking the said doctrine nothing substantial was brought to our notice on the basis of which the appellants could be held entitled to any relief.

17. In so far as the Government Order dated 16th January, 1980 on which reliance has been placed by learned counsel for the appellants in the alternative is concerned it may be pointed out that the said order even though in substance amounts to a clarification of the earlier order of clarification dated 5th December, 1978, states nothing as to why the clarification contained in the order dated 5th December, 1978 in categorical terms did not express the real intention of the State Government in issuing the earlier Government Orders granting concessional tariff. As already indicated above, the orders granting concessional tariff, in our opinion, did not either expressly or by necessary implication grant immunity to the mini steel plants from their obligation to pay minimum charges and this having been categorically stated by the State Government in its clarificatory order dated 5th December, 1978 there was apparently no basis for issuing the second clarificatory order dated 16th January, 1980. Further, the said order dated 16th January, 1980 had been issued on some representation made on behalf of the mini steel plants at a point of time when writ petitions on their behalf had already been filed in the High Court and the matter was subjudice. In such a situation, apart from the propriety of issuing the second clarificatory order dated 16th January, 1980 it is obvious that what was contained in this order is analogous to an averment made by the State Government in reply to the writ petitions filed on behalf of the appellants. In our opinion, in the circumstances pointed out above the order dated 16th January, 1980 has no bearing in finding out the true import of the orders of the State Government granting concessional tariff."

40. In *UNION OF INDIA AND OTHERS v. GODFREY PHILIPS INDIA LIMITED* (*supra* 26), the Hon'ble Supreme Court at paragraphs 9 and 11, held as follows:

"9. Now the doctrine of promissory estoppel is well-established in the administrative law of India. It represents a

principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the inter position of equity which has always, true to its form, stepped in to mitigate the rigour of strict law. This doctrine, though of ancient vintage, was rescued from obscurity by the decision of Mr. Justice Denning as he then was, in his celebrated judgment in *Central London property Trust Limited v. High Trees House Limited*, (1956) 1 All E. R. 256-. The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. It has often been said in England that the doctrine of promissory estoppel cannot itself be the basis of an action: it can only be a shield and not a sword: but the law in India has gone far ahead of the narrow position adopted in England and as a result of the decision of this Court in Motilal Sugar Mills v. State of Uttar Pradesh, [1979] 2 S.C.R. 641, it is now well-settled that the doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. The decision of this Court in Motilal Sugar Mills case (supra) contains an exhaustive discussion of the doctrine of promissory estoppel and we find ourselves wholly in agreement with the various parameters of this doctrine outlined in that decision.

11. The resultant position summarised by this Court in Motilal Sugar Mills case (supra) in the following words:

The law may therefore now be taken to be settled as a result of this decision that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a Republic governed by the rule of law, on one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the government say that it is under no obligation to act in a manner i.e. fair and just or that it is not bound by the considerations of honesty and good faith? Why should the government not be held to a high standard of rectangular

rectitude while dealing with its citizens ? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the government to repudiate even its contractual obligations, but let it be said to the eternal glory of this court, this doctrine was emphatically negated in the Indo-Afgan agencies case and the supremacy of the rule of law was established. It was laid down by this court that the government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action.

The doctrine of promissory estoppel as explained above was also held to be applicable against public authorities as pointed out in Motilal Sugar Mills case. This court in Motilal Sugar Mills case quoted with approval the observations of Shah, J. in Century Spinning and Manufacturing Company limited v. Ulhasnagar Municipal Council [1970] 3 S.C.R. 854, where the learned Judge said:

Public bodies are as much bound as private individuals to carry out representations of facts and premises made by them, relying on which other persons have altered their position to their prejudice.

If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice."

The Court refused to make a distinction between a private individual and a public body so far as the doctrine of promissory estoppel is concerned."

40. In *DBM GEOTECHNICS AND CONSTRUCTIONS (petitioner) LTD. V. UNION OF INDIA (supra 27)*, this Court at paragraphs 12 and 13, held as under:

"12. The scope of interference under Article 226 of the Constitution of India with regard to contractual matters is considered by the Supreme Court in various decisions and it is now well settled that the scope is limited and the said issue was dealt by the Supreme Court in its latest decision in RISHI KIRAN LOGISTICS PVT. LTD. v. BOARD OF TRUSTEES OF KANDLA PORT TRUST, which was also a case of a contract awarded to the highest bidder under a tender but because of five years of time lag on account of non-receipt of the Coastal Regulatory Zone (CRZ) clearance, the Board of Trustees decided to cancel the tender and passed a resolution, which was subject matter of challenge. The Supreme Court relied upon the ratio in TATA CELLULAR v. UNION OF INDIA [(1994) 6 SCC 651], which has laid down principles of judicial review in case of contractual powers Governmental bodies in order to prevent arbitrariness. Relevant portion of the said decision is extracted hereunder:

20. Lucid enunciation on the scope of judicial review of administrative action, that too in tender matters can be found in Tata Cellular v. Union of India, 1994 (6) SCC 651), where following discussion is worthy of extraction:

70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the state. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision making process itself. The duty of the court is to confine itself to the question of legality. Its concern should be:

- (i) Whether a decision making authority exceeded its powers?
- (ii) Committed an error of law,
- (iii) Committed a breach of rules of natural justice,
- (iv) reached a decision which no reasonable tribunal would have reached or,
- (v) Abused its powers.

Para 22 of the decision is also relied upon by the learned senior counsel, which is extracted hereunder:

22. In so far as argument of malafides is concerned, apart from bald averment, there are no pleadings and there is not even a suggestion as to how the aforesaid decision was actuated with malafides and on whose part. Even at the time of arguments Mr. Vikas Singh did not even advert to this aspect. In fact, the entire emphasis of Mr. Vikas Singh was that since there was a concluded contract between the parties, cancellation of such a contract amounted to arbitrariness. As already pointed out above that can hardly be a ground to test the validity of a decision in administrative law. For the sake of argument, even if you presume that there a concluded contract, mere termination thereof cannot be dubbed as arbitrary. A concluded contract if terminated in a bonafide manner, that may amount to breach of contract and certain consequences may follow thereupon under the law of contract. However, on the touch stone of parameters laid down in the administrative law to adjudge a decision as arbitrary or not, when such a decision is found to be bonafide and not actuated with arbitrariness, such a contention in administrative law is not admissible namely how and why a concluded contract is terminated.

13. In the light of the ratio of the decisions aforesaid since only decision making process is subject to judicial review and not the decision, it is difficult to accept the contention of the learned counsel for the petitioner on both the grounds urged by the petitioner. The terms of the contract relied upon by the learned standing counsel support the decision making process and it is also not contraverted that there was extensive correspondence between the parties on the issue of handing over of site and furnishing of 5% of performance bank guarantee and only, ultimately, resultant termination is effected. The contract also provides mechanism for resolution of disputes under clauses 24 and 25 of the conditions of contract under Section 3 of the tender document. Hence, recording of detailed findings on the contentious issue of breach of contract would necessarily prejudice both the parties, in case, the mechanism for dispute resolution is resorted to. Even within the scope of judicial review, therefore, I am satisfied with the order of termination impugned herein as well as rejection of the petitioners request for reconsideration does not suffer from any arbitrariness.”

41. In *BANNARI AMMAN SUGARS LTD. V. COMMERCIAL TAX OFFICER AND OTHERS*²⁹, the Hon’ble Apex Court at paragraphs 19 and 20, held as follows:

“19. In order to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and bald expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. The Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the Courts have to do equity and the fundamental principles of equity must for ever be present in the mind of the Court.

20. In *Shrijee Sales Corporation and Anr. v. Union of India* 1897 (3) SCC 398 it was observed that once public interest is accepted as the superior equity which can override individual equity the principle would be applicable even in cases where a period has been indicated for operation of the promise. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Moreover, the Government is competent to rescind from the promise even if there is no manifest public interest involved, provided no one is put in any adverse situation which cannot be rectified. Similar view was expressed in *Pawan Alloys and Casting Pvt. Ltd. Meerut etc. v. P.P. State Electricity Board and Ors.* AIR 1997 SC 3810 and in *Sales Tax officer and Anr. v. Shree Durga Oil Mills and Anr.* (MANU/SC/0879/1998 : 1998(97)ELT202(SC) , it

²⁹ (2005) 1 SCC 625

was further held that the Government could change its industrial policy if the situation so warranted and merely because the resolution was announced for a particular period, it did not mean that the government could not amend and change the policy under any circumstances. If the party claiming application of the doctrine acted on the basis of a notification it should have known that such notification was liable to be amended or rescinded at any point of time, if the government felt that it was necessary to do so in public interest.”

42. It is very much evident from the principles laid down in the above referred judgments that writ petitions under Article 226 of the Constitution of India in respect of contractual matter is maintainable when there is involvement of public interest element, violation of principles of natural justice, unfairness and when there is malafide action. It is not stated anywhere in the pleadings of the petitioner herein that the impugned action is tainted with malafides nor it is the case of the petitioner herein that there is involvement of public interest. On the other hand, the time stipulated for completion of work was only three months, but the work could not be completed even after lapse of 1 ½ years and the same would affect the interest of the public as such the impugned action cannot be faulted.

43. Since one of the partners i.e., M/s. Prasad Irrigation Engineering Consultancy by way of a letter dated 19.08.2017 opted out and requested to terminate the contract while pointing out the violation of the instructions of the State Government, as mentioned supra, the impugned action cannot be faulted on the grounds of promissory estoppel and the legitimate expectation. Therefore, the judgments cited by the learned counsel for the petitioner in order to substantiate its contentions would not render any assistance to the petitioner herein on the ground of maintainability and the principles of promissory estoppel and legitimate expectation.

44. It is also pertinent to note that by way of the impugned orders the respondents resorted to the action of blacklisting the petitioner herein also. Admittedly, respondents herein have resorted to such an action of blacklisting

without being preceded by issuance of any show-cause notice and affording opportunity of being heard. This, in the considered opinion of this Court, is a patent violation of the principles of natural justice to the extent of such action. On this ground alone the impugned orders, to the extent of blacklisting the petitioner only, in the considered opinion of this Court, cannot be sustained.

45. For the aforesaid reasons, the writ petitions are partly allowed, setting aside the impugned orders only to the extent of blacklisting the petitioner herein to execute further works to participate in further tenders in GVMC and VIWSCO. It is also made clear that so far as other issues are concerned i.e., cancellation of subject works contracts and forfeiture of the EMDs, writ petitions are dismissed.



A.V.SESHA SAI, J

Date:18.07.2018

Note:

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b/o grk



THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.17644 and 17645 of 2018

Dated: 18.07.2018

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