
(2006) 12 MAD CK 0224
In the Madras High Court
Case No : Writ Petition No. 507 of 2001

Bannari Amman Spinning Mills Ltd.

APPELLANT

Vs

The Tamil Nadu Electricity Board

RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Revision of Tariff rates on Supply of Electrical Energy Act. 1978 — Section 25(1), 4

Citation : (2006) 12 MAD CK 0224

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : Sathish Parasaran, for the Appellant; P.S. Raman, A.A.G. for J. Ravindran for TNEB, for the Respondent

Judgement

R. Banumathi, J.—Challenge in this Writ Petition is the proceedings of the second Respondent dated 26.12.2000, calling upon the Petitioner to refund Rs. 61,86,217/- erroneously allowed as Tariff Concession towards Petitioner's HTSC No. 171.

2. Facts which led to the Writ Petition are as follows-

2.1. The Petitioner has put up a Textile Unit at Vadamadurai at Vedasandhur Taluk, Dindigul District and the unit is a new High Tension Industry, entitled for the Electricity Tariff Concession as per G.O. No. 29, Energy (A.2) dated 31.01.1995. The High Tension supply to the Petitioner Industry was effected on 13.06.1996 with a sanction demand of 2150 KVA and the new Industries Tariff Concession was granted for three years from 27.06.1996 to 26.06.1999 as per the aforesaid G.O. As per the said G.O., "the concession shall not be applicable to a consumer who utilizes power from his own generated units or makes other arrangements for production purposes and utilizes power supplied by the Board for auxiliary purposes only".

2.2. From 08.06.1996, the Petitioner Industry was totally relying on the Tamil

Nadu Electricity Board [in short, the Board] for their electricity requirements. However from 6/98 to 6/99, the Petitioner Industry was using the wind energy generated by their sister concern viz., M/s. Annamalai Finance Limited. The Board has erroneously allowed to the Petitioner's Industry, the Tariff Concession in respect of energy generated and supplied to the Petitioner Industry through the Wind Mill of their sister concern.

2.3. Stating that by mistake the Board has erroneously allowed to the Petitioner the Tariff Concession in respect of energy generated and supplied to the Petitioner Industry through Wind Mill of their sister concern, the Respondent Board has called upon the Petitioner to refund the amount of Rs. 61,86,217/-. Challenging that Order, the Petitioner has filed W.P. No. 19703/1999. By the Order dated 13.12.1999, the High Court has allowed the Writ Petition, directing the Respondent to issue Show Cause Notice and give opportunity to the Petitioner and proceed in accordance with the regulations and the Government Order referred in the impugned Order.

2.4. Show Cause Notice was issued to the Petitioner and the Petitioner has submitted a detailed explanation as to why the Electricity Board should not withdraw the Tariff Concession already allowed to the Petitioner. After issuing Show Cause Notice and upon considering the explanation of the Petitioner, the impugned Order was passed, calling upon the Petitioner to refund the sum of Rs. 61,86,217/-, which is now challenged in this Writ Petition.

3. Elaborating the conditions for new industries Tariff Concession and stating that the Petitioner started availing the power supply by the private wind mill of their sister concern - M/s. Annamalai Finance Limited through the Board's main, the Respondent has filed elaborate counter affidavit.

4. Contending that the very demand for refund of the amount is unilateral and unjustifiable, the learned Counsel for the Petitioner inter alia raised the following contentions:

Permission for adjustment in respect of Wind Energy generated by M/s. Annamalai Finance Limited was sought for only by Annamalai Finance. When the proposal was mooted by M/s. Annamalai Finance Limited, it was made clear to the Board that the tariff concession availed by the Petitioner should not in any way be affected by such supply;

Permission for adjustment in respect of wind energy generated by Annamalai Finance would not disentitle the Petitioner from claiming Tariff Concession;

Basing upon Tariff Concession given by the Board, the Petitioner has altered its position in 1996 and the Respondent is bound by the doctrine of Promissory Estoppel;

The Authority deciding is the quasi judicial authority and the decision preceded the Show Cause Notice and hence, the impugned Order is the Order under dictate.

5. Contending that when self-generated energy of sister concern has been used through Board's main, the Petitioner's case falls under the notification under G.O. Ms. No. 29, the learned Additional Advocate General has submitted that the Petitioner is not entitled to Tariff Concession. The learned Additional Advocate General has raised the following contentions:

Erroneous allowing of Tariff Concession was noticed during audit and the impugned Order came to be passed;

There can be no Promissory Estoppel against the Statute;

Clarification dated 02.03.1994 and the working sheet thereon would not amount to contemporanea exposition.

Mere issuance of Order and recalling the same and thereafter, passing a considered Order would not amount to dictate action.

6. Having regard to the submissions of both sides, the following points arise for consideration:

1. In view of transfer of wind energy to HTSC, can it be said that the Respondent Board is estopped from withdrawing Tariff Concession?

2. If there was any erroneous disallowing of Tariff Concession, can the Respondent Board be bound by the doctrine of Promissory Estoppel from claiming refund of that amount which has been excessively allowed to the Petitioner's Industry as Tariff Concession?

7. It is the common ground that the Petitioner has set up new unit in Vadamadurai, Vedasanthur Taluk - in the place where high Tension concession would apply. There is also no dispute that New Industries Tariff Concession has been granted to the Petitioner for three years from 27.06.1996 to 26.06.1999 as per G.O. Ms. No. 29 dated 31.01.1995. There is also no denying that from 6/98 to 6/99, the wind mill energy generated by the Petitioner's sister concern M/s. Annamalai Finance Ltd., was adjusted towards Petitioner's HTSC No. 171.

8. The contention of the Petitioner is that it cannot be said that they have utilized the power from their own generating units or made other arrangements for production purposes and utilized the power supplied by the Board only for auxiliary purposes and hence, it is not disentitled for Tariff Concession. It is the further contention of the Petitioner that the Petitioner would not fall within the rider clause to the Tariff Concession in G.O.Ms. No. 29.

9. With a view to promote new industries or encourage expansion of industries, certain incentives by way of Tariff Concession, to high tension industries, was extended by the Government. In exercise of the power conferred by Section 4 of the Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act, G.O.Ms. No. 29 dated 31.01.1995 was passed, making some amendments to the schedule to the said Act. The amendment shall come into force on 01.02.1995. As per the said amendment, tariff concession for HT Industries coming under

High Tension Tariff is as follows:

a) In the case of new High Tension Industries to be set up in the areas other than the Madras Metropolitan areas, the following concessional tariffs shall be charged for the first three years from the date, the consumer is given service connection under high tension tariff:

For the first year - 60 per cent of the High Tension Rates

For the second year - 70 per cent of the High Tension Rates

For the third year - 80 per cent of the High Tension Rates

For the fourth year - Full Tariff.

The above concession shall apply to both unit rates and maximum demand charges. This concession shall not however, be applicable to an Industry set up before the 3rd May 1989. The concession shall not also be applicable to a consumer, who utilizes power from his own generating units or makes other arrangements for production purposes and utilizes the power supplied by the Board for auxiliary purposes only.

10. The above notification is clear and definite. The words and phraseology have to be taken at their face value. When the words in the rider clause are taken at their face value, it only means that the concession shall not be applicable to a consumer-

(i) who utilizes power from his own generating unit;

(ii) makes other arrangements for production purposes and utilizes the power supplied by the Board for auxiliary purposes only.

It is thus evident that Tariff Concession is applicable only for purchase of energy from Tamil Nadu Electricity Board.

Transfer of power generated by private wind mills using the Board's line:

11. Since the State has been facing power shortage, the Government decided that private generation be encouraged by the Board, particularly generation utilizing non-conventional sources of energy. The Board has decided to permit transfer of power. Under B.P.Ms.(FB) No. 129 dated 29.3.1986, the Board has decided to provide transfer of power from wind mill generators set up by private party to a location where power is required by a party in respect of which certain guidelines were issued. In the aforesaid Board's proceedings dated 29.03.1986, the Board has issued guideline for transfer of energy from the wind mill to the place where the power is required by the party. 2% of energy generated by wind mill will be deducted as Board's commission and the balance will be made available to the party at a place where power is required. The transaction between the Board and the party will be settled on a monthly basis.

Adjustment Of Wind Energy Generated by M/s. Annamalai Finance Ltd., towards

the Petitioner's HTSC 171:

12. M/s. Annamalai Finance Limited had requested the Board in its application dated 19.06.1998 to permit power generated in their wind mills to adjust the wind energy in HTSC 84 of M/s. Siva Distilleries Ltd. - Textile Division and HTSC No. 171 of M/s. Bannari Amman Spinning Mills Ltd. and the Board has accepted the proposal to adjust the wind energy generated by the mill of M/s. Annamalai Finance Ltd., towards their sister concern M/s. Bannari Amman Spinning Mills Limited and M/s. Shiva Distilleries Ltd. This is a clear case where the consumer is making other arrangements for production purposes. As per G.O.Ms. No. 29 dated 31.01.1995, the Petitioner is not entitled to Tariff Concession. Any concession if allowed "other than what was drawn from Tamil Nadu Electricity Board grid" could only be erroneous.

13. The learned Counsel for the Petitioner has contended that the permission for adjustment in respect of wind energy generated by M/s. Annamalai Finance Ltd., was sought for only by M/s. Annamalai Finance Ltd., and that the wind energy received by TNEB from M/s. Annamalai Finance Ltd., is one source of energy to TNEB and that the Petitioner was not informed by the Board that by granting the request of M/s. Annamalai Finance Limited, the Petitioner's rights would not stand affected in any manner. Further, it is contended that M/s. Annamalai Finance Ltd., had given a separate letter dated 19.06.1998 stating that supplementary Agreement had been entered only on condition that Tariff Concession availed by the Petitioner should not in any way be affected by the Petitioner's supply. This contention does not merit acceptance. M/s. Annamalai Finance Ltd., being the sister concern, the very purpose of transmission of wind energy to Board's main was to adjust the wind energy towards the HTSC 171 - M/s. Bannari Amman Spinning Mills Ltd. HTSC 84 - M/s. Siva Distilleries Ltd., is another sister concern of the Petitioner. While so, the Petitioner cannot contend that wind energy received by Tamil Nadu Electricity Board from M/s. Annamalai Finance Limited is one source of energy, and that by granting the request of M/s. Annamalai Finance Limited, the Petitioner's rights are not affected.

14. On 19.06.1998, M/s. Annamalai Finance Limited has requested the second Respondent that wind energy generated from their wind mill may be adjusted in HTSC No. 171 [Petitioner], after allowing Tariff Concession. It is the contention of the Petitioner that pursuant to that letter, the Respondent has allowed the Tariff Concession and that by granting the request of M/s. Annamalai Finance Ltd., for adjusting the wind energy, the Petitioner's right for Tariff Concession was not affected in any manner. Invoking the doctrine of Promissory Estoppel, the learned Counsel for the Petitioner has contended that the Respondent has held out the promise to the Petitioner and the Promissor/TNEB cannot go back from the same and seek refund of the amount. Law of Promissory Estoppel furnishes a cause of action to a citizen enforceable in Court of law against the Government, if it extends any promise which creates legal relationship and it is kept upon by the promisee irrespective of any prejudice.

15. Doctrine of Promissory estoppel evolved by equity has been pressed into service in various decisions. In *M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others*, the Supreme Court has held as under:

If a statutory authority functioning on behalf of the State in exercise of its legally permissible powers has held out any promise to a party, who relying on the same, has changed its position not necessarily to its detriment, and if this promise does not offend any provision of law or does not fetter any legislative power inhering in the promisor, then on the principle of promissory estoppel, the promisor can be pinned down to the promise offered by it by way of representation containing such promise for the benefit of the promisee.

16. In *Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another*, , the Supreme Court has held as under:

The law of promissory estoppel furnishes a cause of action to a citizen, enforceable in a Court of law, against the Government, if it extends any promise which creates legal relationship and it is acted upon by the promisee irrespective of any prejudice . Acting on the assurance, both express and implied, the appellant invested substantial amount in setting up the unit requesting, in the meanwhile, for grant of written sanction from the Government, which too, came.

17. In *Bangalore Development Authority and Others Vs. R. Hanumaiah and Others*, , the Supreme Court has held thus:

The doctrine of promissory estoppel is not based on the principle of estoppel. It is a doctrine evolved by equity in Order to prevent injustice. Where a party by his word or conduct makes a promise to another person in unequivocal and clear terms intending to create legal relations knowing or intending that it would be acted upon by the party to whom the promise is made and it is so acted upon by the other party the promise would be binding on the party making it. It would not be entitled to go back on the promise made. The principle of promissory estoppel would be applicable to the Government as well as where it makes a promise knowing or intending that it would be acted upon by the promisee, and the promisee in fact acting on the promise alters his position, then the Government will be held bound by the promise and such a promise would be enforceable against the Government, at the instance of the promisee. The Government stood on the same footing as a private individual, so far as the obligation of law is concerned.

18. The learned Counsel for the Petitioner has contended that based on the Tariff Concession granted to the Petitioner, the Petitioner's Unit has been established and huge amount has been spent by the Petitioner and while so, the interse arrangement between *M/s. Annamalai Finance Ltd., and Tamil Nadu Electricity Board* cannot affect the valuable rights of the Petitioner and the Respondents are bound by the doctrine of Promissory Estoppel. In support of his contention, the learned Counsel for the Petitioner placed has reliance upon the Full Bench

decision reported in 2006(3) CTC 609. In the batch of Writ Petitions before the Full Bench, the question referred was, "Whether the Order of Government of Pondicherry G.O.Rt. No. 30 dated 28.05.1997 withdrawing its earlier Order G.O.Rt. No. 9 of 1991 dated 11.02.1991, granting subsidy incentive scheme to the Industrial Units for five years even before the expiry of the said period is valid or not. Considering the various decisions on Promissory Estoppel, summing up well settled position, the Full Court has held as under:

1. The Government Order of Union Territory of Pondicherry in G.O.Rt. No. 9 of 1991, dated 11.02.1991, providing for power Tariff Concession is in the nature of representation/promise, assuring the industries, which get energised on or after 01.03.1991, to be extended Tariff Concession. The Petitioners had acted on the said representation and set up industries, spending huge amounts and, thus, altered their position. Therefore, the Government of Pondicherry is bound by the principles of promissory estoppel, to extend the said benefit for the entire period of five years.

(2) Though "public interest" is pleaded by the Government, the Government has not placed proper and adequate materials before the Court to the effect that overriding public interest requires that the Government should not be held bound by the promise and, consequently, the burden of the Government for placing the materials to show that there is an overriding public interest has not been discharged.

(3) Since on the assurance the units have been set up by the Petitioners and production has been commenced by spending huge amounts, the G.O.Rt. No. 30, dated 28.05.1997, cannot have the retrospective effect, so as to affect the rights of the Petitioners, which have been accrued to them, namely, to avail Tariff Concession, assured by the earlier G.O.Rt. No. 9 of 1991, dated 11.02.1991, for a period of five years, and the impugned Order would apply to the industries, which are set up subsequent to the G.O., dated 28.05.1997.

Referring to the Pawan Alloys Case, the Full Bench has held that "once a promise is held out, it cannot be withdrawn during the current period". Holding that only taking into consideration the assurance given by the Government, units have been set up by the Petitioners and production has commenced by spending huge amount, the Full Bench has observed that G.O.Rt. No. 30, dated 28.05.1997 cannot have the retrospective effect. In the case on hand, the Revision Petitioner has availed tariff concession without any intervention till 5/98, for a period of two years. During the third year of operation only, the Petitioner has altered its position by availing power from their Sister Concern Wind Mill Unit and thereby, became not eligible for Tariff Concession on the energy supplied by wind mill sources. Therefore, it cannot be contended that only by the act of the Respondent, the Petitioner has altered its position to invoke Promissory Estoppel.

19. It is well settled that there can be no estoppel against the Statute. Within the limits of statutory provisions, the administration must be free to take appropriate

action at an appropriate time when the equity so requires.

20. Withdrawal of time bound exemption by notification No. 66 dated 15.03.1979, by the Union of India was the subject matter of challenge in *Kasinka Trading and another, etc. etc. Vs. Union of India and another, .* Holding that the doctrine of Promissory Estoppel being an equitable doctrine must yield to equity when required, in the decision cited supra, the Supreme Court has held thus:

The exemption Notification issued u/s 25(1) of the Act, in "public interest", was designed to offset the excess price which the local entrepreneurs were required to pay for importing PVC resin at a time when the difference between the indigenous product and the imported product was substantial. No importer could be expected to import PVC resins after paying duty and incur losses. The exemption Notification, was therefore, issued with a view to offset those losses to the extent possible. The exemption Notification was not issued as a potential source of extra profit for the importer. Again, at the time when the Notification was withdrawn by the Government there was no scope for any loss to be suffered by the importers. The exemption Notification did not hold out to the appellants any enforceable promise. Moreover, the Notification cannot be said to have extended any "representation" much less a "promise" to a party getting the benefit of it to enable it to invoke the doctrine of promissory estoppel against the State.

21. Further in *Kasinka Trading's* case, referring to *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., ,* and other decisions, the Supreme Court has held that there could be no estoppel against the statute:

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 fact 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 case, because on the facts, equity would not require that the Government of Public authority should be bound by the promise or representation made by it.

22. As per the rider clause in G.O.Ms. No. 29 Energy A2 dated 31.01.1995, Tariff Concession is not applicable to a consumer who utilizes power from his own generating units or makes other arrangements for production purposes. G.O.Ms. No. 29 after amendment to the schedule to the Tamil Nadu Revision on Tariff Rates and supply of Electrical Energy Act, having statutory force, there cannot be any estoppel against the provisions thereon. It cannot be contended that even if Tariff Concession allowed to the Petitioner is violative of the said notification, the Board cannot withdraw the Tariff Concession and it would be inequitable to accept such a contention.

23. The principle of promissory estoppel is applicable against the Government, but in case there is supervening public equity; the Government would be allowed to change its stand and the doctrine must yield to equity when required. However, the Court must satisfy itself that such a public interest/equity exists. Law on this aspect has been emphatically laid down in the case of *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , in which the Supreme Court has held as under:

It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free of act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it would still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable.

24. Referring to *Shrijee Sales Corporation and Another Vs. Union of India (UOI)*, , the Supreme Court enunciated the two propositions as under:

(1)The determination of applicability of promissory estoppel against public authority/Government hinges upon balance of equity or "public interest".

(2) It is the Court which has to determine whether the Government should be held exempt from the liability of the "promise" or "representation".

25. Holding that the Government is competent to resile from the promise even if there is no manifest public interest is involved, in the decision cited supra, the Supreme Court has held thus:

7. The next question is whether the fact that the Notification No. 66 mentioned the period during which it was to remain in force, would make any difference to the situation. In other words, could it be said that an exemption would remain in force, would be withdrawn in public interest but not the one in which a period has been specified? Once public interest is accepted as the superior equity which can override individual equity, the principle should be applicable even in cases where a period has been indicated. The Government is competent to resile from a promise even if there is no manifest public interest involved, provided, of course, no one is put in any adverse situation which cannot be rectified. To adopt

the line of reasoning in Emmanuel Ayodeji Ajayi v. briscoe quoted in M.P. Sugar Mills, even where there is no such overriding public interest, it may still be within the competence of the Government to resile from the promise on giving the reasonable notice which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position, provided, of course, it is possible for the promisee to re store the status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable.

26. In the present case, there might not have been overriding public interest; but certainly there is supervening inequity. Even after utilizing power generated by wind mill of the sister concern viz., M/s. Annamalai Finance Limited, allowing Tariff Concession is in clear contradiction to the notification G.O.Ms. No. 29 dated 31.01.1995. When the mistake and the erroneous allowing of Tariff Concession was noticed, the Board has rightly taken steps to claim refund of concession allowed.

Clarification issued by the Member/Distribution dated 02.03.1994:

27. Wind energy generated by the private party and the transaction between the Board and the party will be billed in accordance with the B.P.Ms.[FB] No. 129 [Technical Branch], dated 29.03.1986. As per Clause 6, the transaction will be billed as under:

(vi) The transactions between the Board and the party will be settled on a monthly basis and the party will be billed only for the net excess energy drawn by the party from the grid at an appropriate tariff. If the energy drawn by the party is less than the power generated by the wind mill, then the excess energy generated will be adjusted in the next month's accounts subject to the condition that the private party will be allowed to accumulate energy only for a maximum period of three months.

28. Onbehalf of the Petitioner, reliance is placed upon the clarification Lr. No. IEMC/EE1/F.WindMill/Clarification/CR.1522/D348/94 dated 02.03.1994 from Member/Distribution, clarifying the Tariff Concession for High Tension Service, who owns a wind mill generator. In the said letter, dated 02.03.1994, the Superintending Engineer has clarified "that the Tariff Concession may be allowed for entire consumption without subtracting the wind mill generation". Along with the said letter, an illustrative working sheet is also produced to show allowing of Tariff Concession on the entire consumption without subtracting the wind mill generation. Placing reliance upon the said clarification dated 02.03.1994, and the working sheet thereon, on behalf of the Petitioner, it is contended that even if the Department comes to the conclusion that the Petitioner has made its own arrangements, even then, the Petitioner is entitled to concession as per the said clarification letter dated 02.03.1994 and concession would not have to be granted to the Petitioner for the entire energy consumed by them. The learned Counsel for the Petitioner has contended that such clarification is to be taken as

the instructions contemporanea exposition and on that score also, the Respondent cannot claim refund of the amount.

29. In the light of the above arguments and defence, the question falling for consideration is that whether the said clarification letter of the Superintending Engineer dated 02.03.1994 could override the notification on the tariff concession by applying the Doctrine of contemporanea expositio. It is to be noted that the said clarification of the Superintending Engineer for Member/Distribution dated 02.03.1994 is much prior to the Notification G.O.Ms. No. 29 Energy A2 dated 31.01.1995, which came into force from 01.02.1995. Quite evidently, the subsequent amendment to the Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act would be governing. The notification and the amendment to the schedule are quite clear, leaving no room for doubt. If the consumer utilizes the power from his own generating units or makes other arrangements for production purposes, the consumer shall not be entitled to Tariff Concession. While so, the clarification by the Superintending Engineer observing that Tariff Concession may be allowed on the entire consumption without subtracting the wind mill generation, which is purely executive direction, cannot run contrary to the statutory provisions or whittle down the effect.

30. Elaborating upon the principle of contemporanea expositio, in State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others, , the Supreme Court has held thus:

Though the assesseees had set up their industries after January 12, 1983 by which time elaborate instructions had been issued to explain the State's point of view, but this does not make any difference. Even in 1983 document is not a statutory instrument - neither a notification nor a rule framed under the Statute. Those instructions cannot be considered to be conclusive on the application of the doctrine contemporanea expositio, the principle of contemporanea expositio is invoked where a statute is ambiguous but is shown to have been clearly and consistently understood and explained by the administrators of the law in a particular manner. However, its applicability in the construction of recent statutes, and that too in the first few years of their enforcement, has been doubted. This apart, the principle will not be applicable here for two reasons. In the first place, the instructions of 1983 do not anywhere "expound" the terms of the notification. They do not give any indication that the State had applied its mind to the precise terms of the notification or their interpretation. They do not explain or clarify that, though the notification is silent, it has been intended that the limitations of the previous schemes should be read into it. Secondly, the doctrine applies in cases where the plea is that, though the language of the statute may appear to be wide enough to seem applicable against the subject in particular situations, the State itself - which was the progenitor of the statute - had not understood it in that way. But the doctrine cannot be applied to widen the ambit of the statutory language as that would virtually mean that the State can determine the interpretation of a statute by it is ipse dixit. The doctrine can

be applied to limit the State to its own narrower interpretation in favour of the subject but not to claim its interpretation in its own favour as conclusive.

31. In the said case before the Supreme Court observing that the instructions travel beyond and counter to the notification, restricting the scope of exemption under the notification, the Supreme Court has struck down the notification on the ground of impermissible delegation of legislative power to the executive.

32. The above decision squarely meets the arguments advanced by the learned Counsel for the Petitioner. The clarification issued by the Superintending Engineer which are the executive instructions/intra department correspondence, which is prior to G.O.Ms. No. 29 dated 31.01.1995, cannot be relied upon by the Petitioner. In any event, such executive instructions which runs contrary to the statutory provisions is to be struck down on the ground of being contrary to the statutory provisions.

Show Cause Notice:

33. Earlier, Additional Chief Engineer, had sent the communication dated 15.11.1999, calling upon the Petitioner to pay a sum of Rs. 61,86,217/-, challenging which, the Petitioner has filed W.P. No. 19703/1999. That Writ Petition was allowed on 13.12.1999, directing the Respondent to issue Show Cause Notice to the Petitioner and to afford opportunity to the Petitioner and proceed with the matter in accordance with the regulations and Government Order.

34. On 18.01.2000, the Additional Chief Engineer had sent Lr. No. 739/ACE/IEMC/EET/AE2/99 dated 18.01.2000, stating that allowing Tariff Concession for the energy charges in respect of energy availed through private wind mill is not feasible of compliance. Later, the same was recalled. Pursuant to the direction of the High Court in W.P. No. 19703/1999, Show Cause Notice was issued on 01.02.2000. In response to the said Show Cause Notice, the Petitioner had also submitted a detailed explanation, which runs to several pages, on 16.02.2000 and thereafter, the impugned Order was passed by the Superintending Engineer.

35. The learned Counsel for the Petitioner has vehemently contended that the Superintending Engineer has already made up his mind and the impugned Order is nothing but dictate of the Additional Chief Engineer, whose Order preceded on 20.01.2000. Submitting that the authorities who pass quasi judicial Order are to act with fairness, the learned Counsel has placed reliance upon AIR 1969 SC 48 Orient Paper Mills Ltd. v. Union of India. In the factual situations obtaining thereon, in the said case, the Supreme Court has observed that "they would essentially be Judgments of the authority that give directions and which authority had given those Judgments without hearing the aggrieved party". In Orient Paper Mills Ltd. Vs. Union of India (UOI), the Supreme Court has observed that the assessing authorities exercising the quasi judicial functions are duty bound to act in a judicial and independent manner and Judgment of Superintending authorities, if controlled by direction of Collector cannot be said to be

independently made.

36. The above said decisions have no bearing to the case on hand. It cannot be contended that the Order of the Additional Chief Engineer dated 18.01.2000, influenced the Superintending Engineer, in passing the impugned Order on 26.12.2000. The Order of Additional Chief Engineer dated 18.01.2000 is in response to the representation of the Petitioner dated 06.12.1999. In the meantime, in W.P. No. 19703/1999, the High Court has allowed the Writ Petition ordering to issue Show Cause Notice.

37. Courts are not infrequently faced with such situations. Without knowing the Order passed by the High Court, the authorities pass some Order and later coming to know about the direction issued by the High Court, those orders are recalled and fresh Show Cause Notice are being issued. On the admitted factual position, when fresh Show Cause Notice was issued and sufficient opportunity has been given to the Petitioner, the contention that the impugned Order is being influenced by the earlier Order or under the dictate of Additional Chief Engineer, cannot be countenanced.

38. Tamil Nadu Electricity Board has erroneously allowed Tariff Concession. Pursuant to G.O.Ms. No. 29 dated 31.01.1995, the Respondents have rightly passed the Order, calling upon the Petitioner to refund the amount. The impugned Order does not suffer from any procedural deficiency or manifest error of law, calling for interference, exercising jurisdiction under Article 226 of the Constitution of India.

39. In the result, the Writ Petition is dismissed. No costs.