
(2014) 11 AHC CK 0120

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 70957 of 2011, 19842, 32831, 35128, 35152, 35154, 35155, 37906, 40560, 41228, 41907, 43131, 43590, 43594, 44863, 44900, 45268, 45272, 47275, 48677, 48680, 49056, 49065, 52121 and 64308 of 2013 and 3103, 3141, 4746, 4769, 959

Gallant Ispat Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Constitution of India, 1950 — Article 299, 348 — Uttar Pradesh Electricity (Duty) Act, 1952 - Section 3, 3(4)

Citation : (2015) 3 ADJ 311

Hon'ble Judges : Krishna Murari, J;Ashwani Kumar Mishra, J.

Bench : Division Bench

Advocate : Mayank Agrawal, B.C. Rai and Ansul Singhal, for the Appellant; Mahboob Ahmad, Baleshwar Chaturvedi, Shivam Yadav and Chandan Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Krishna Murari, J.?The petitioners in these bunch of writ petitions are engaged in different manufacturing process requiring consumption of electrical energy. They have approached this Court raising a dispute that they are being illegally denied the benefits provided under the Industrial and Services Sector Investment Policy, 2004 (hereinafter referred to as "Policy 2004") promulgated by State of U.P. by way of exemption from payment of electricity duty. The said policy was framed under the 10th Five Year Plan with a purpose of extensive industrial development and to make it labour intensive and to eradicate pervasive unemployment and poverty. The Policy 2004 contained lot of incentive for new industries. The objective of the policy was to achieve all round development of the State and to accelerate the pace of growth not only in the field of industries but also trade, commerce and services.

2. Clause 3.4.2.9 of the Policy 2004 contains a provision for exemption from

electricity duty in respect of new units for the first 10 years and for a period of 15 years to such new unit declared as Pioneer Units. Clause 3.4.2.9 reads as under.

"All new units shall be exempted from electricity duty for the first 10 years. Units declared as Pioneer units under para 4.5 shall be given this exemption for 15 years."

Pioneer units in para 4.5.1 have been defined as under.

"The first industrial units established in every district and having an investment of-

- a. Rs. 10 crores, for information technology, bio-technology or food processing units;
- b. Rs. 25 crores, for any other unit shall be declared as pioneer units.

Such units will be given interest free loan for a period of 15 years instead of 10 years under the Industrial Investment Promotion Scheme."

3. Clause 1.8.5 of the Policy 2004 provides that the date of implementation of the detailed terms and conditions and procedures to be followed shall be in accordance with the Government Orders to be issued for implementation of the facilities/concessions provided for in the Scheme. The said clause reads as under.

"1.8.5- The necessary Government orders will be issued by the State Government for implementation of all facilities/concessions/provisions through various concerning departments envisaging the date of implementation detailed terms and conditions and the procedures to be followed. It is advisable that the entrepreneurs should act upon these G.Os after taking them into cognizance. The Udyog Bandhu will provide these G.Os in totality to needy entrepreneurs."

4. In view of Clause 1.8.5 of the Policy 2004, the facilities and concessions were not liable to be extended automatically, but were liable to be extended only after issuance of the necessary Government Orders in that regard.

5. It is undisputed that the State Government issued an order dated 21st January, 2010 directing that all new industrial units and all such new units, which are declared as Pioneer Units, shall be exempted from payment of electricity duty for a period of 10 years and 15 years respectively. The aforesaid Government Order is quoted hereunder.

"UTTAR PRADESH SHASAN URJA ANUBHAG-3

In pursuance of the provisions of clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following English translation of notification No. 1765/24-3-2009-2000 (124)/09, dated January 21, 2010.

NOTIFICATION

No. 1765/24-3-2009-2000 (124)/09,

Lucknow: Dated: January 21, 2010

Whereas the Industrial and Service Sector Investment Policy, 2004 has been approved by the Cabinet in its meeting dated February 19, 2004;

And Whereas in para 3-4-2-9 of the said Policy it has been provided that all new units shall be admissible for exemption from the Electricity Duty for a period of ten years and all such units as are declared pioneer units shall be admissible for exemption from the Electricity duty for a period of fifteen years;

Now, therefore, with view to implementing the said policy, the Governor, in exercise of the powers under sub-section (4) of Section 3 of the Uttar Pradesh Electricity Duty Act 1952 (U.P. Act No. 33 of 1952) is pleased to direct that all new industrial units and all such new units as are declared as Pioneer Units shall be exempted from Electricity Duty for a period of ten years and fifteen years respectively.

By Order, (Navneet Sehgal) Secretary."

6. The petitioners established their manufacturing units on various dates. Some of them before the 21.1.2010, the date on which the State Government issued the notification granting exemption from payment of electricity duty in accordance with Clause 3.4.2.9 of the policy 2004, and some of them established the units after the said date. Thus, the bunch of writ petitions can be classified into two groups, one who have established their units before 21.1.2010, the date of notification and the other, who have established their manufacturing units after the said date. The petitioners, in both the groups of the writ petition have approached this Court claiming to be entitled for the exemption from payment of electricity duty in accordance with notification dated 21.1.2010.

7. Shri Mayank Agrawal, learned counsel for the petitioners contends that after enforcement of the Policy 2004, based on the promise of the State Government to provide exemption from payment of electricity duty under the said policy, all the petitioners established their units after making huge investments. They also made an application for exemption in the electricity duty from the date of the commencement of the production. In some of the cases, where the industries were established and started the production before 21.1.2010, the date of notification, the Executive Engineer through office memorandum dated 27.3.2010, allowed exemption from payment of electricity duty and, accordingly, electricity duty already paid by some of the petitioners, was adjusted in instalments from the bills of subsequent dates. However, Special Secretary, State of U.P. issued a letter dated 7.4.2011 to the effect that the exemption in payment of electricity duty is effective from the date of Gazette Notification dated 21.1.2010 and thereafter the Chief Engineer, Distribution and Superintending Engineer issued an order providing 21st January, 2010 as the cut of date for the purposes of providing exemption in payment of electricity duty.

8. As a result, in such cases, where the exemption from payment of duty was granted prior to 21.1.2010, an order was issued to withdraw the exemption and the said petitioners were directed to refund the exemption granted to them. In the meantime, one M/s. Shri Balaji Concast (P) Ltd. filed a Writ Petition No. 7152 (M/B) of 2011 seeking a mandamus commanding the respondents to allow exemption from payment of electricity duty to it for a period of 10 years onwards 21st January, 2010. This Court vide order dated 14.8.2012 disposed of the writ petition by making the following observations.

"In view of the above, we dispose of the writ petition finally, and liberty is given to the petitioner to move a fresh representation within a period of fifteen days to the Secretary Energy, who shall look into the matter and take a decision in accordance with law by passing a speaking and reasoned order expeditiously, say within a period of six weeks from the date of receipt of a certified copy of this order and communicate the same. While deciding the representation the Secretary Energy shall keep in mind the relief claimed by the petitioner from this Court.

Subject to aforesaid direction, writ petition is disposed of finally."

9. In pursuance to the aforesaid order passed by this Court, M/s. Sri Balaji Concast (P) Ltd., made a representation before the State Government, which was decided vide order dated 8.11.2012 holding that the exemption was liable to be granted w.e.f. 21.1.2010 when the State Government issued the Notification under Policy 2004 granting exemption from payment of electricity duty. Based on the aforesaid order of the State Government, Chief Engineer, Commerce issued a letter to all the Managing Directors of the various Vidyut Vitran Nigams Ltd. to the effect that exemption in payment of electricity duty is to be granted to the units established on or after 21.1.2010. The said letter further provided that, in case, due to mistake any exemption has been granted to the units established before 21.1.2010, the same was illegal and may be revoked. Consequent to the said order, exemption granted to the units established prior to 21.1.2010, the date of issuance of the Government Order, was withdrawn and the benefit taken by such petitioners was directed to be refunded.

10. Learned counsel for the petitioners contends that the act of the respondents in withdrawing the exemption granted to them pursuant to the Policy 2004 is ex facie, illegal, unwarranted and unjustified. It is further submitted that based on the representations and the promise of the State Government to provide the grant of exemption as enumerated in the Policy 2004, various petitioners made huge investment and the State Government is bound by the principles of promissory estoppel and cannot say that exemption is to be granted w.e.f. 21.1.2010 when the Government Order in this regard was issued. The principles of legitimate expectation has also been invoked by the petitioners in support of their case.

11. Shri Mahboob Ahmad appearing for the respondent-Corporation refuting the

arguments advanced on behalf of petitioner submitted that the Policy clearly provided, that benefits extended under the Policy shall be liable to be enforced through Government Orders to be issued in this regard by concerned departments, providing, the date of implementation and prescribing the procedure. It further cautioned the entrepreneurs to act accordingly after considering the Government Orders to be issued, and there was no such promise made as is being alleged by the petitioner, and the doctrine of promissory estoppel or legitimate expectation cannot be invoked by the petitioners. It is further submitted that terms of Policy 2004 that date of implementation of the same shall be provided by the Government Orders to be issued subsequently through concerned departments, were unambiguous and the petitioners, if made a change in their position, misreading the same, the respondents cannot be bound by that. He submits that terms contained in the Policy being very clear only such units which were established on or after the issuance of the Government Order dated 21.1.2010, shall be entitled for exemption from payment of electricity duty.

12. We have given our thoughtful consideration to the rival submissions and perused the record.

13. In such cases, where the petitioners have established their manufacturing units on or after 21.1.2010, the date on which the State Government issued the Government Order extending the exemption from payment of electricity duty, there can be no manner of doubt that in accordance with the Policy 2004 and the Government Order dated 21.1.2010 such petitioners are entitled for being granted exemption from payment of electricity duty either for a period of 10 years from the date of establishment of their unit or for a period of 15 years, in case, they are covered under the definition of Pioneer Unit with effect from the date of their establishment.

14. Learned counsel appearing for the respondent-Corporation also does not dispute this fact that such petitioners, who have established their manufacturing units on or after 21.1.2010, the date of the Government Order, are entitled for exemption from payment of electricity duty for 10 years and 15 years, as the case may be.

15. Thus, in such writ petitions, where the manufacturing units have been established on or after 21.1.2010, such units shall be entitled for exemption from payment of electricity duty for a period of 10 or 15 years, as the case may be, from the date of their establishment or starting manufacturing process.

16. However, the issue whether the petitioners, who established their manufacturing units after promulgation of the Policy 2004 and before the issuance of the Government Order dated 21.1.2010, will also be entitled for exemption from payment of electricity duty, requires consideration. The case of such petitioners is based on the principles of promissory estoppel, and legitimate expectation.

17. As already noted above, contention on behalf of such petitioners is that in pursuance to the promise made in the Policy 2004, they made huge investment in establishing the manufacturing units under firm belief that State Government shall grant them exemption from payment of electricity duty for the period specified in the Policy and now it cannot be permitted to go back on its promise.

18. It is also submitted that once the policy was promulgated providing for certain benefits, the petitioners had a legitimate expectation of being extended the benefit.

19. Learned counsel for the petitioners in support of the contention has relied upon a large number of decisions to which we shall refer to at the relevant place.

20. Promissory estoppel has been defined in para 958 of Halsbury's Laws of England (Fourth Edition) as under:

"Promissory estoppel. Promissory estoppel is an extension by equity of common law estoppel by representation. The principle of promissory estoppel is that, when one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but must accept their legal relations subject to the qualification which he himself has so introduced.

Promissory estoppel may prevent a party to a contract from going back on a concession he has made to the other party and so may modify contracts in the sense of suspending or even extinguishing contractual rights but cannot stand alone as giving a cause of action in itself and thus has not made any general inroads into the doctrine of consideration."

21. The principles of promissory estoppel can be summed up as 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 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 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.

22. The celebrated decision of Hon^{ble} Apex Court in the case of Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., , contains most eloquent exposition of doctrine of promissory estoppel against Government. While expanding the theory of promissory estoppel and repelling the contention advanced on behalf of the Government that it was not competent for the Government to fulfil its future executive action which must necessarily be determined when the question arises and no promise or undertaking can be held

to be binding on the Government so as to hamper its executive action, the Apex Court observed as under.

"We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set up no person may be deprived of his right or liberty except in due course of and by authority of law : if a member of the executive seeks to deprive a citizen of this right or liberty otherwise than in exercise of power derived from the law-common or statute-the Courts will be competent to and indeed would be bound to, protect the rights of the aggrieved citizen."

23. After considering the decision rendered in the case of Ganges Manufacturing Co. v. Sourujmull, Collector of Bombay v. Municipal Corporation of the City of Bombay and Municipal Corporation of the City of Bombay v. Secretary of State for India, (1905) ILR 29 BOM 580, it was summed up as under.

"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."

24. The doctrine of promissory estoppel was redefined by the Hon^{ble} Apex Court in the case of Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd., , by observing as under.

"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."

25. Referring to the decision in Indo Afghan Agencies's case, it was observed that "the rule laid down in these decisions undoubtedly advance the cause of justice and hence we have no hesitation in accepting it."

26. The doctrine of promissory estoppel with its preconditions, strengths and limitations has been further defined by the Hon^{ble} Apex Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . This decision made a significant development in the law pertaining to doctrine of promissory estoppel. The question which came up for consideration was as to whether and if so to what extent, the doctrine of promissory estoppel was applicable against the Government. The principles argument advanced on behalf of State of U.P. was that the plea of promissory estoppel is not available against exercise of its executive functions against the State, for the reason that State cannot bind itself so as to filter its future executive actions. The defence set up by the Government of executive necessity was negated by the Hon^{ble} Apex

Court. It was held that the executive necessity did not release the Government from its obligation to honour the promise made by it, in case a citizen relying upon a promise so made has altered his position. The Court further went on to hold that a party who has, acting upon the promise or representation made by the Government, altered his position, is entitled to enforce such promise or representation against the Government, even though the promise or representation was not reduced to a formal contract as per Article 299 of the Constitution and the said Article does not militate against the applicability of the doctrine of promissory estoppel against the Government.

27. After considering various authorities on the doctrine, the Hon'ble Apex Court summarised the legal position on the subject as under.

"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, no 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 that is 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-Afghan 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."

28. Exception carved out was that there can be no promissory estoppel against the Legislature in exercise of its legislative functions nor can the Court or public authority be debarred by promissory estoppel from enforcing a statutory prohibition, nor can the doctrine be pressed into service to compel the Government as public authority to carry out a promise, contrary to law or which was outside the authority or power of office of Government or public authority to

make. The doctrine of promissory estoppel was held to be enforceable against the Government or public authority on the principles of equity and, thus, it must yield if the doctrine of equity so required. If the Government or public authority could demonstrate, it would be inequitable to bind them, the Court would not raise an equity in favour of the persons to whom the promise has been made and the enforce the same. The doctrine of promissory estoppel would stand displaced because the principles of equity would not require the Government as public authority to be bound by the promise or representation made by it.

29. The doctrine of promissory estoppel again came up for consideration before the Hon"ble Apex Court in the case of Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., . The view taken in the case of M/s. Motilal Padampat Sugar Mills Co. Ltd. (supra) was reiterated. A contrary view taken by a two Judges Bench in the case of Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, , did not find favour and it was observed as under.

"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 Jit Ram v. State of Haryana, 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 Jit Ram case could possible 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 Jit Ram case found themselves unable to agree with the law laid down in Motilal Sugar Mills case, they could have referred Jit Ram 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. We have carefully considered both the decisions in Motilal Sugar Mills case and Jit Ram 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 Jit Ram 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 propositions of law laid down in that case."

30. The scope, applicability and limitations of the doctrine of promissory estoppel

enunciated in the aforesaid pronouncements has again been reaffirmed by the Hon"ble Apex Court in a more recent decision rendered in the case of State of Punjab Vs. Nestle India Ltd. and Another, . It may be relevant to quote the following paragraph 39 of the reports.

"Indeed the principles of promissory estoppel have been applied time and again by this Court and it is unnecessary to burden our decision by referring to all the cases except to note that the view expressed by Chandrashekhara Aiyar, J. in 1952 still holds good. (See State of M.P. v. Orient Paper Mills Ltd., Delhi Cloth and General Mills Ltd. v. Union of India, Sharma Transport v. Government of A.P. and State of Orissa v. Mangalam Timber Products Ltd."

31. Now, we proceed to consider the principles of legitimate expectations pressed by the petitioners in support of their claim.

32. The legitimate expectation is not the same thing as anticipation. It is also different from a mere wish or desire of hope nor is it a claim or demand based on a right. The legitimacy of an expectation can be inferred only if it is founded on a sanction of law or system or an established procedure followed in regular and natural sequence. Such expectation should be justifiable, legitimate and protectable as observed by the Hon"ble Apex Court in the case of Navjyoti Co-Group Housing Society etc. Vs. Union of India and Others, . The principles of legitimate expectations have been explained by the Hon"ble Apex Court in the case of Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan, , in the following words.

"The basic principles in this branch relating to "legitimate expectation" were enunciated by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (AC at pp. 408-09) (commonly known as CCSU case). It was observed in that case that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision -maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced. In the above case, Lord Fraser accepted that the civil servants had a legitimate expectation that they would be consulted before their trade union membership was withdrawn because prior consultation in the past was the standard practice whenever conditions of service were significantly altered. Lord Diplock went a little further, when he said that they had a legitimate expectation that they would

continue to enjoy the benefits of the trade union membership, the interest in regard to which was protectable. An expectation could be based on an express promise or representation or by established past action or settled conduct. The representation must be clear and unambiguous. It could be a representation to the individual or generally to a class of persons."

33. Claim based on legitimate expectation requires reliance on representation and resultant detriment in the same way as claim based on promissory estoppel.

34. We now proceed to test the facts of the case in the light of the well-settled principles of promissory estoppel and legitimate expectation.

35. The entire case of the petitioners is based on the fact that they were entitled to benefit of exemption from payment of electricity duty in view of promise made under Policy 2004 by the State of U.P.

36. The first question which arises is what is the promise made. From a perusal of the Policy 2004 it becomes clear that one of the concessions promised was exemption from payment of electricity duty to the new units for a period of 10 years and 15 years to the units covered under the definition of Pioneer units.

37. The next question which immediately arises for consideration is the manner, mode and implementation of the promise to grant of exemption. The answer to the question is contained in clause 1.8.5 of the Policy itself. At the cost of repetition, it is being reproduced again.

"1.8.5- The necessary Government orders will be issued by the State Government for implementation of all facilities/concessions/provisions through various concerning departments envisaging the date of implementation detailed terms and conditions and the procedures to be followed. It is advisable that the entrepreneurs should act upon these G.Os after taking them into cognizance. The Udyog Bandhu will provide these G.Os in totality to needy entrepreneurs."

38. The provisions being a part of the Policy 2004 clearly provided that implementation of all facilities/concessions, date of implementation and also the procedure to be followed for claiming such facilities/concessions shall be prescribed by the Government Orders to be issued through concerning departments.

39. Reading clauses 3.4.2.9 and 1.8.5 of the Policy 2004 together, the only conclusion which can be drawn is that new units and pioneer units shall be entitled for exemption from payment of electricity duty on issuance of a Government Order through the concerned department providing for date of implementation and the terms and conditions as also the procedure to be followed. Those intending to avail the concessions/benefits were further advised to act upon the Government Orders after taking the same into cognizance. Thus, a word of caution was also there for those intending to avail the benefits. The enforcement of the policy was not left open to anybody's imagination, but it was provided in unequivocal and certain terms that date of implementation shall be

prescribed by a Government Order to be issued subsequently.

40. That being the factual position, if the petitioners altered their position by setting up industry under a misbelief that they will be entitled to exemption from electricity duty, without issuance of a Government Order providing the date of implementation, the Government, under no circumstances, be compelled to enforce the Policy and grant exemption from payment of electricity duty to such petitioners pressing into service the principles of promissory estoppel or even the theory of legitimate expectation. The plain and simple reason is that Policy 2004 itself did not grant exemption from payment of electricity duty or other concessions. It merely promised that Government Order would be issued envisaging the date of implementation, detailed terms and conditions and procedures to be followed for availing the benefits/concessions through concerned departments.

41. Keeping its promise made under the Policy 2004, the State Government issued Government Order dated 21.1.2010, providing for exemption of payment from electricity duty to the eligible units under the Policy.

42. The aforesaid view being taken by us finds support from a decision of the Hon'ble Apex Court rendered in the case of S.T. Muthusami Vs. K. Natarajan and Others, . In the said case, the sales tax assessment orders were challenged on the ground that in view of the Industrial Policy Resolution (IPR) dated 18.7.1979 issued by State of Orissa that sales tax was not payable by a new industry on the purchase of raw material for the period prescribed in IPR. Apart from others, one of the question for consideration before the Hon'ble Apex Court was whether the Government had made any promise to the respondent and if so, can it depart from the promise made in IPR, which was stated to be effective from 1977-1983. The stand taken by the Sales Tax Officer was that there was no notification in force granting exemption during the relevant period and in the absence of such an exemption during the relevant period and in the absence of such a notification, the assessee would not gain immunity from payment of tax. The issue was answered by the Hon'ble Apex Court as under.

"The two I.P.Rs have not been issued under any particular statute. A general announcement was made by the Government that certain economic policy would be pursued for acceleration of growth of the industrial sector in the State of Orissa. For that purpose, a package of measures for stimulating the growth of industries was announced.

It was specifically made clear in the IPR dated 18.7.1979 that

"Government Orders will issue laying down the mode of administering the concessions and incentives by concerned departments."

In other words, IPR dated 18.7.1979 by itself did not grant any exemption to the persons who set up industries pursuant to that IPR. The IPR merely promised that orders will be issued laying down the mode of administering concessions and

incentives by concerned departments."

43. The Hon"ble Apex Court, thus, held that case of promissory estoppel is without any basis.

44. The facts of the present case are identical. Here also the Policy was not issued under any Statute. It was specifically provided in the Policy that Government Orders shall be issued through various concerned departments for implementation of the facilities/concessions envisaging the date of implementation, detailed terms and conditions and the procedures to be followed.

45. Thus, the case of the petitioners, who established their industry prior to 21.1.2010, when the Government Order was issued, cannot succeed for grant of exemption from electricity duty provided for in the Policy 2004 by pressing into service the doctrine of promissory estoppel.

46. Even the doctrine of legitimate expectation also does not come to the aid of such petitioners. A legitimate expectation cannot rest on assumption or anticipation, but ought to be based on a representation made and resultant detriment on account of withdrawal of the representation. The facts of the case do not go to establish that there was any such representation made by the Government as is being alleged by the petitioners. The expectation of the petitioners was not based on any express promise or representation or an established past action or settled conduct, rather it was an anticipation or at best a mere hope, desire or wish and the same cannot be held to be legitimate so as to enforce the same.

47. The Hon"ble Apex Court in the case of Union of India and others Vs. Hindustan Development Corpn. and others, , while explaining the nature and scope of doctrine of legitimate expectation, has made following observations.

"For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However, earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.

It is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is 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 crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfillment 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 decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the Courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the Court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors."

48. Again in the case of Ram Pravesh Singh v. State of Bihar, AIR (SCW)-2006-0-5312, it has been held by the Hon'ble Apex Court as under.

"What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by Courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent part practice of the

authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel". It may only entitle an expectant: (a) to an opportunity to show-cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, Courts may grant a direction requiring the Authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the legitimate expectation". The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognised legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly."

49. The facts of this case do not stand the test laid down by the Hon"ble Apex Court to justify the legitimacy of the expectations of the petitioners so as to grant them the relief prayed for by invoking the doctrine.

50. Apart from above, the matter is liable to be considered from another angle. The Policy 2004, which is basis of the claim of the petitioners for exemption from payment of electricity duty was not issued under any statutory provisions. It was just a policy announced by the State Government to provide incentives for new industrial units for the purpose of extensive industrial development within the State. The policy contained a stipulation for issuance of necessary Government Order through concerned departments for implementation of the promises made in the Policy, one of which was exemption from payment of electricity duty to such manufacturing units which were covered under the Policy 2004.

51. Electricity duty from the consumers is chargeable under the U.P. Electricity Duty Act, 1952 (for short Act 1952). Section 3 of the Act 1952, which reads as under, provides for levy of electricity duty.

"3. Levy of electricity duty.--(1) Subject to the provisions hereinafter contained, there shall be levied for and paid to the State Government on the energy:

(a) sold to a consumer by a licensee, the Board, the State Government or the Central Government; or

(b) consumed by a licensee or the Board in or upon premises used for commercial or residential purposes, or in or upon any other premises except in the construction, maintenance or operation of his or its works;

(c) consumed by any other person from his own source of generation;

a duty (hereinafter referred to as "electricity duty") determined at such rate or rates as may from time to time be fixed by the State Government by notification in the Gazette, and such rate may be fixed either as a specified percentage of the rate charged or as a specified sum per unit.

Provided that such notification issued after October 1, 1984 but not later than March 31, 1985 may be made effective on or from a prior date not earlier than October 1, 1984.

(2) In respect of clauses (a) and (b) of sub-section (1), the electricity duty shall not exceed fifty per cent, of the rate charged:

Provided that in the case of one-part tariff where the rate charged is based on units of consumption, the electricity duty shall not be less than one paise per unit or more than nine paise per unit.

Explanation.--For the purposes of the calculation of electricity duty as aforesaid, energy consumed by a licensee or the Board or supplied free of charge or at concessional rates to his or its partners, directors, members, officers or servants shall be deemed to be energy sold to consumers by the licensee or the Board, as the case may be, at the rates applicable to other consumers of the same category.

(3) In respect of clause (c) of sub-section (1), the electricity duty shall not be less than one paise or more than six paise per unit.

(4) The State Government may, in the public interest, having regard to the prevailing charges for supply of energy in any area, the generating capacity of any plant, the need to promote industrial production generally or any specified class thereof and other relevant factors, either fix different rates of electricity duty in relation to different classes of consumption of energy or allow any exemption from payment thereof.

(5) No electricity duty shall be levied on-

(a) energy consumed by the Central Government or sold to the Central Government for consumption by that Government; or

(b) energy consumed in the construction, maintenance or operation of any railway by the Central Government or sold to that Government for consumption in the construction, maintenance or operation of any railway;

(c) by a cultivator in agricultural operations carried on in or near his fields such as the pumping of water for irrigation, crushing, milling or thrashing of the produce of those fields or chaffcutting.

(d) energy consumed in light upon supplied made under the Janta Service Connection Scheme.

Explanation.--For the purposes of clause (e) "Janta Service Connection Scheme" means a scheme approved by the State Electricity Board for supplying energy to Harijans, landless labourers, farmers (holding land not exceeding one acre), members of armed forces (whether serving or retired), war widows and other weaker sections in districts notified by the State Government."

52. Section 3(4) of the Act vests the State Government with the power to fix different rates of electricity duty to different classes or allow exemption from payment of the same.

53. The Policy 2004 by itself neither granted nor could have granted any exemption from payment of electricity duty. The method and manner of granting exemption is laid down under the provisions of the Act 1952. An execution order or policy decision cannot override the requirement of a Statute. The issue stands settled by the decision of the Hon"ble Apex Court in the case of Sales Tax Officer and another v. M/s. Shree Gurga Oil Mills (supra). Again in the case of Poonam Verma and Others Vs. Delhi Development Authority, , while considering a scheme floated by the Delhi Scheme 1982, in paragraph 27 and 28 of the report, has observed as under.

"27. Guidelines per se do not partake of the character of statute. Such guidelines in absence of the statutory backdrop are advisory in nature. Mr. Ram Prakash himself has relied upon a decision of this Court in Narendra Kumar Maheshwari v. Union of India, wherein it has been laid down: (SCC p. 510, para 107)

"107....This is because guidelines, by their very nature, do not fall into the category of legislation, direct, subordinate or ancillary. They have only an advisory role to play and non-adherence to or deviation from them is necessarily and implicitly permissible if the circumstances of any particular fact or law situation warrants the same. Judicial control takes over only where the deviation either involves arbitrariness or discrimination or is so fundamental as to undermine a basic public purpose which the guidelines and the statute under which they are issued are intended to achieve."

[See also Narendra Kumar Maheshwari v. Union of India, SCC at p. 508; Bhim Singhji v. Union of India, SCC at p.232; J.R. Raghupathy v. State of A.P. (SCC para 31) and Uttam Prakash Bansal v. LIC of India.]

28. Guidelines being advisory in character per se do not confer any legal right."

54. The same view has been taken in the case of The Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society Jaipur and Others, . Thus, Policy guidelines or executive instructions unless clothed with statutory force cannot be enforced.

55. Thus unless a notification granting exemption from payment of electricity duty was issued as per Section 3 of the Act 1952, the exemption of the same promised in the Scheme had no statutory force and could not have been enforced.

56. In view of the above facts and circumstances, the only irresistible conclusion is that those petitioners, who have established their manufacturing units on or after 21.1.2010, when the State Government issued notification under Section 3 of the Act 1952, shall be entitled to exemption from payment of electricity duty in accordance with the terms and conditions contained therein. However, the petitioners, who established their units before the date of notification, i.e., 21.1.2010, shall not be entitled to claim the exemption, and the petitions filed by them stand dismissed. As a result, Writ Petition Nos. 41228 of 2013, 18071 of 2014, 18225 of 2014, 34854 of 2014, 38538 of 2014, 43131 of 2013, 43590 of 2013, 43594 of 2013, 44863 of 2013, 44900 of 2013, 45268 of 2013, 45272 of 2013, 48677 of 2013, 48680 of 2013, 49056 of 2013, 49065 of 2013, 52121 of 2013, 47275 of 2013, 64308 of 2013, 4769 of 2013 and 4746 of 2013, stand allowed and the petitioners therein are held entitled for exemption from payment of electricity duty. Writ Petition Nos. 19842 of 2013, 70957 of 2011, 35128 of 2013, 35152 of 2013, 35154 of 2013, 35155 of 2013, 32831 of 2013, 37906 of 2013, 3103 of 2014, 14133 of 2014, 14505 of 2014, 9592 of 2014, 10386 of 2014, 41907 of 2013, 40560 of 2013 and 3141 of 2014 stand dismissed.