

(2001) 10 AP CK 0130

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 424 and 425 of 2001 and Writ Petition No's. 656, 896, 998, 3563, 3873, 3879, 4014, 4015, 4016, 4017, 4018, 4019, 4020, 4021, 4082, 4089, 4139, 4140 and 22447 of 1998, 18057 of 1999, 18423, 19668, 19821 and 21488 of 2000 and 5739 of 200

Government of A.P. and Others

APPELLANT

Vs

A. Rajaiah and Others

RESPONDENT

Date of Decision : 16-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 10 AP CK 0130

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : GP, for the Appellant; S. Ramachandra Rao, for L. Ravichander, for the Respondent

Judgement

S.B. Sinha, C.J.—These writ appeals and writ petitions involving common questions of fact and law were taken up for hearing together are being disposed of by this common judgment. The question, which arises for consideration in these matters, is:

"Whether the action of the State Government in issuing G.O. Ms. No. 314 dated 26-12-2000 by cancelling the Memo dated 14-10-1991 is justified and is it in contravention of the directions issued by a Division Bench of this Court in Writ Petition No. 16558 of 1992?"

FACTS:

2. The fact of the matter is being noticed with reference to Writ Appeal No. 424 of 2001.

3. It is directed against a common order dated 25-1-2001 passed by a learned single Judge of this Court in Miscellaneous Applications filed seeking suspension of operation of G.O.Ms. No. 314, Agriculture & Cooperation (Co-op. III)

Department, dated 26-12-2000. The learned single Judge, while making the interim order dated 3-1-2001 passed in W.P. M.P. No. 3 of 2001 absolute and ordering suspension of G.O.Ms. No. 314, dated 26-12-2000, directed that the writ petitions be listed before a Division Bench since the issue involved has to be resolved by a Division Bench.

4. The writ petitioners challenge the inaction on the part of the appellants in not implementing the recommendations of a Four Man Committee under the Chairmanship of the then Minister for Information. The writ petitioners, who were recruited long back and selected after regular selections, are working as Paid Secretaries in the Primary Agricultural Cooperative Societies (for short "PACS"). They are trained to discharge the functions of Chief Executives of PACS. Originally, they were paid a consolidated sum of Rs. 150/- towards their remuneration.

5. The Andhra Pradesh Agricultural Credit Societies Paid Secretaries (Common Cadre) Regulations were framed u/s 116-A of the Andhra Pradesh Co-operative Societies Act, 1964 (the "Act" for brevity) and by proceedings dated 1-1-1980 all the Paid Secretaries of the PACS were placed in the timescale of Rs. 250-420 with a fixed Dearness Allowance, which was equivalent to Supervisors in Cadre V of the District Cooperative Central Banks. The Government of Andhra Pradesh promulgated the A.P. Cooperative Societies (2nd and 3rd Amendments) Ordinance, 1985 amending Section 116-AA of the Cooperative Societies Act decaderising the Paid Secretaries.

6. W.P. No. 15506 of 1989 was filed by the A.P. State Cooperative Secretaries and Employees Union for declaring Section 116-AA of the Act and the pay structure of Paid Secretaries as unconstitutional and for evolving a proper scheme of providing reasonable pay structure, security of tenure and terminal benefits. A learned single Judge directed the State Government to ensure payment of salary and other emoluments as per rules to the Paid Secretaries. By reason of judgment dated 18-7-1991 in another W.P. No. 17735 of 1989, a Division Bench of this Court declined to examine the validity of Section 116-AA, but directed the State Government to expedite consideration of enhancement of scales of pay payable to the Paid Secretaries.

7. The Government, having regard to the directions of this Court in W.P. No. 15506 of 1989, issued proceedings dated 14-10-1991 revising the pay scales of Paid Secretaries on par with supervisors (Cadre V) of the District Cooperative Central Banks. Later, proceedings dated 14-2-1992 were issued requiring all the District Cooperative Officers to wait for further instructions with regard to implementation of decision of the Government. A Circular dated 23-11-1992 was issued with regard to fixation of emoluments and D.A. Calculation of fixed DA allegedly contrary to instructions given on 14-10-1991 was the subject matter of another Writ Petition marked as W.P. No. 16443 of 1992. A Division Bench disposed of the W.P. No. 16558 of 1992 and batch directing consideration of the representations of the petitioners by appointing an appropriate committee for

going through the demands and for the redressal therefor. Pursuant where to a Committee was constituted which submitted its recommendations to the state. Another proceedings dated 25-9-1997 was issued alleging that the Paid Secretaries were drawing illegal salaries and the same should be recovered. The grievance of the writ petitioners is that no further step was taken by the Government to implement the orders of the Division Bench. The Government, however, constituted another Committee even though no discussion was held on the recommendations of the first Cabinet Sub Committee. Accepting recommendations of second Cabinet Sub-Committee, Government issued the impugned G.O.

8. The writ petitioners seek direction upon the Government to implement the instructions issued vide proceedings dated 14-10-1991 and pay their remuneration accordingly and to set aside the G.O.Ms. No. 314 dated 26-12-2000.

9. The first respondent filed counter-affidavit stating that the impugned G.O. was issued pursuant to the decision of this Court dated 30-8-1996 in W.P. No. 16558 of 1992 upon considering the reports of a Committee of Officials and two Cabinet Sub-Committees. The Government, it is stated, had only allowed scales of pay but not the D.A., and other allowances, to be paid to the Paid Secretaries vide Memo dated 14-10-1991. The second respondent, having noticed that the drawal of wages of Paid Secretaries in terms of revised scales of pay as applicable to Cadre-V employees of District Cooperative Central Banks is irregular and contrary to orders of this Court dated 23-11-1992, ordered to stop such payments and recover the excess amounts paid to them. Some Paid Secretaries filed W.P. No. 22447 of 1998 and this Court directed the respondents to continue to pay the scale of pay at Rs.1640-4595 until further orders and the interim order was made absolute. It is stated that the first respondent has now taken a decision to leave the matter to the societies enabling them to fix up staffing pattern, scale of pay and allowances of the employees in accordance with the provisions of Section 116-C of the Act. As the Memo dated 14-10-1991 was not consistent with Section 116-C of the Act, it was cancelled by the impugned G.O.

SUBMISSIONS:

10. Mr. S. Ramachandra Rao, learned Senior Counsel appearing on behalf of some writ petitioners would contend that the Paid Secretaries are full time employees and the Government having agreed to revise the pay scales of Paid Secretaries along with Dearness Allowance and other Allowances in view of the understanding reached between the Employees Union and the Government vide Memo dated 14-10-1991, could not later issue the impugned G.O., cancelling the Memorandum. He also contends that the lack of resources cannot be a ground to act arbitrarily and the Government cannot resile from the agreement.

11. Mr. Satya Prasad, learned counsel appearing on behalf of the petitioners in W.P. No. 896 of 2001, would contend that the action of the Government in

withdrawing the Memo dated 14-10-1991 is without any basis and the benefits conferred under the Act cannot be taken away by issuing the impugned G.O. and that the application of Section 116-C of the Act to the Paid Secretaries is wholly unjustified. He would further contend that the understanding reached between two functionaries has to be given respect to and none is expected to act in contravention thereof.

12. Mr. Prakash Reddy, learned Additional Advocate General appearing on behalf of the State, would contend that the learned single Judge erred in suspending the operation of G.O.Ms. No. 314, dated 26-12-2000, which was issued pursuant to the judgment in Writ Petition No. 16558 of 1992, on the ground that the Paid Secretaries have been paid salaries all along on par with Class V employees of District Cooperative Banks. He would further contend that the Memo dated 14-10-1991 is inconsistent with the provisions contained in Section 116-C of the Act and that the grant of pay scale and allowances is purely within the purview of the Cooperative Society. He also contends that the posts of Paid Secretaries have been decadarised under the provisions of Section 116-AA of the Act.

13. Mr. E. Manohar, learned Senior counsel appearing on behalf of the Cooperative Banks, would submit that the purported understanding dated 14-10-1991 is not enforceable and the impugned G.O., is in strict conformity with Section 116-C of the Act. He would contend that a writ of Mandamus cannot be issued to implement the report of the first Cabinet Sub-Committee as thereby the writ petitioners did not derive any legal right.

HISTORY OF INSTITUTION OF PAID SECRETARIES:

14. The structure of the Paid Secretaries has come into existence in pursuance of G.O.Ms. No. 390, dated 12-7-1973 whereby and whereunder a scheme for appointment of Paid Secretaries in Cooperative Agricultural Credit Societies was contemplated providing for appointment of Paid Secretary for each society on a consolidated pay of Rs.150/- per month and the Registrar of Cooperative Societies was requested to take immediate steps to implement the said scheme during 1973-74.

15. In 1964 the Andhra Pradesh Agricultural Credit Societies Paid Secretaries (Common Cadre) Regulations were framed u/s 116 (A) (1) of the Act. Regulation 2 (iii) thereof defines "Paid Secretary" to mean any person appointed by the specified authority of the Appointment Committee to work as Secretary, Manager or by any other designation, carrying out the functions of Chief Executive in any of the societies specified.

RELEVANT PROVISIONS OF LAW:

16. Section 116-AA of the Act provides for abolition of centralised services for certain categories of employees, which reads:

"The common cadre for all categories of employees other than those specified in Section 116-A, constituted before the commencement of the Andhra Pradesh Co-

operative Societies (Amendment) Act, 1985 and existing at such commencement shall stand abolished with effect on and from the commencement, and upon such abolition, it shall be lawful for the Registrar, to allot, subject to such rules as may be made in this behalf, the employees included in the cadre so abolished to such Primary Agricultural Credit Societies as he may deem fit:

Provided that until they are allotted as aforesaid they shall continue in the posts in which they are working at the commencement of the said Act."

17. Section 116-C of the Act, which deals with the staffing pattern of the societies, reads thus:

"(1) A society shall have power to fix the staffing pattern, qualification, pay scales and other allowances for its employees with the prior approval of the Registrar of Co-operative Societies;

(2) No appointment or removal of a Chief Executive by whatever name called of any society, or class of societies as may be prescribed which are in receipt of financial aid from the Government, shall be made without the prior approval of the Registrar of Co-operative Societies."

18. The Government is empowered to give directions to the Registrar of Cooperative Societies u/s 131 of the Act, which is in the following terms:

"(1) The Government may generally or in any particular matter under this Act, issue such orders and directions as they may consider necessary to the Registrar of Co-operative Societies and thereupon he shall give effect to such orders or directions and shall report to the Government in due course the result thereof.

(2) In any case, in which a direction has been given under sub-section (1), the Government may call for and examine the record of the proceedings of the Registrar and pass such orders in the case as they may think fit:

Provided that before passing any order under this sub-section, the person likely to be affected by such order shall be given an opportunity of making his representation."

19. Rule 72 of the Andhra Pradesh Co-operative Societies Rules, 1964 provides for guidelines in regard to allotment of decadalised Secretaries to the Societies. Sub-rule (3) of Rule 72, which is relevant, reads thus:

"(a) The Secretary, on allotment to a Society, shall be deemed to be the employee of that society and shall be entitled to receive pay and allowances as may be fixed from the funds of the said society.

(b) The service condition of the Secretaries working in the societies shall be governed by such service regulations as may be framed by the Registrar for adoption by the Societies."

FINDINGS:

20. Admitted fact remains that the common cadre scheme for the Paid Secretaries has been decentralised. The contention of the learned counsel for the writ petitioners is to the effect that the purported understanding dated 14-10-1991 is an enforceable agreement. The relevant portion of the said understanding reads thus:

"The Paid Secretaries have been representing that the Government may be pleased to modify its stand with regard to treatment of the strike period and other demands. After discussions with the Principal Secretary to Chief Minister and Secretary to Government, Food & Agriculture Department and after further discussions at the residence of the Chief Minister on 16-2-1991, the Government agreed in principle.

2. The Commissioner for Cooperation & Registrar of Cooperative Societies in his letter No. 62738/89/PACS/Cr.2 (8) dated: 21-2-1991 ordered constitution of a Committee to make an in depth study of the service conditions of the Paid Secretaries. But the Union not satisfied with the Constitution of the Committee went on strike, from 10-2-1988 to 7-6-1988 (118) days and 11-3-1991 to 24-4-1991 (45 days) and the strike was called off. After prolonged discussion with Secretary, Food & Agriculture Department the following understanding was reached between the representatives of the Employees Union and the Government.

1) xx xx xx

2) to revise the pay scales of Paid Secretaries so as to bring them on par with the Supervisor-V Cadre of the District Cooperative Central Bank's i.e., 264-11/2-286-13/2-312-18/4-384-22/4-472-26/4-576-33/4-708 along with Dearness Allowance and other Allowances with effect from 1-1-1991 to be paid by the Society concerned as per the norms prescribed by the Registrar of Coop. Societies.

3) xx xx xx

4) xx xx xx

5) to create a Corpus Fund by raising resource to enable prompt payment of Salaries particularly by the Financially weak Societies. Orders in this regard will be issued separately.

6) xx xx xx."

21. Admittedly, the Pay-masters to the Paid Secretaries were not parties thereto. They had not been given an opportunity of being heard. Such a purported understanding - whether termed as an agreement or not, was ex facie not enforceable against the District Cooperative Central Banks and Primary Agricultural Cooperative Societies. The writ petitioners were not the employees of the District Cooperative Central Banks nor they claim themselves to be. It is also not in dispute that the Primary Agricultural Cooperative Societies and District

Cooperative Central Banks are autonomous body corporates under the Act. They are required to function within the framework of the said Act. In terms of the provisions of the said Act, the State may exercise control over their functions, but it has no right to enter into a memorandum of understanding with the Paid Secretaries of the Primary Agricultural Cooperative Societies.

22. In terms of the provisions of the Act, the staffing pattern and pay scales are to be fixed by the society concerned, subject to approval of the Registrar of the Cooperative Societies. In terms of Sections 45 and 116-C, as amended by Act No. 22 of 2001, a society shall not spend or credit more than 30% of gross profit or 2% of working capital whichever is less in a year on administrative and contingent expenditure, including the pay and allowances of its employees. Primary Agricultural Cooperative Societies, thus, are statutorily injuncted from spending or crediting more than 30% of the gross profit or 2% of their working capital and they could not have been directed to pay salary to the paid secretaries on such rates, which in case of small societies may eat away their entire profit.

23. In the State of Andhra Pradesh, total loss as on 31-3-2000 of District Cooperative Central Banks is 349.46 crores and the loss incurred during the financial year 1999-2000 is 63.54 crores. It also appears that in the State of Andhra Pradesh out of 4420 Primary Agricultural Cooperative Societies only 1594 Primary Agricultural Cooperative Societies are in the profit, whereas 2826 Primary Agricultural Cooperative Societies are working at loss. The memorandum of understanding dated 14-10-1991, without District Cooperative Central Banks and Primary Agricultural Cooperative Societies being parties thereto, was not enforceable against them.

24. Late Justice P. Jaganmohan Reddy, in his P.L.N. Memorial Lecture on "Cooperatives and the Constitution" stated the principles of cooperation in the following terms:

"What are these principles which have been accepted and applied generally and what are those that are applicable in particular to India and how those adopted in India have been erosive of the basic concept of cooperation and affected the working of the cooperatives? I now propose to highlight these.

The concept of cooperation is the voluntary association of human beings for achieving socio-economic goals based on equality of control and opportunity and mutuality of common interest as producers or consumers or workers. It is not primarily an ethical movement but a strictly business one. The Rochdale Pioneers in respect of weavers and Raiffeisen in respect of farmers paved the way for solving their acute problems by resorting to cooperative principles. While a cooperative directly serves its members' interests by meeting their basic needs, it is different from other undertakings which are owned and run for the personal profits of their owners or controllers. In its organisational form the principles of cooperation are:

1. Voluntary and open membership: The membership is available without any racial, religious or any other discrimination, to all members in need of its services and willing to accept responsibilities.
2. Democratic control: The management of the cooperative affairs is to be vested in a committee elected or appointed in a manner approved by the members and accountable to them.
3. Limited interest on capital: The shares held by members receive a strictly limited rate of interest, if any.
4. Equitable distribution of surplus: The surplus is available for (a) development of the business; (b) provision of common service and; (c) patronage dividend proportional to members' transactions with cooperative.
5. Cooperative education: Members, office-bearers, employees and the general public receive education about the principles and practices of cooperation.
6. Cooperation among cooperatives: Cooperatives cooperate with one another at local, national and international levels to achieve unity of action by cooperatives throughout."

25. The amount of Government control and interference also called for adverse comments from the learned Judge in the following terms:

"Even while the government claims to have high financial stakes in the cooperatives, the contrary view which has been held by dedicated co-operators is that the government funds have always been insignificant compared with the members' funds and that many cooperatives do not depend upon governmental help. The government has been unjustifiably publicizing that its assistance has been sustaining the cooperatives. The reaction of the State Governments should have been to identify the real factors hampering the growth of cooperatives and take steps to eliminate them. Instead the governments have chosen to make the controls stricter and confer more power on the Registrar by making him the Brahma, Vishnu and Maheshwara of the cooperatives. With this kind of negative attitude, little remains of the principles of cooperation upon which cooperatives are supposed to rest for achieving economic and social well-being of their members? Shri Morarji Desai, in the third PLN Raju Memorial Lecture arranged by Samakhya, while narrating his part in 1945 as a promoter of milk cooperatives in Kheda District of Gujarat State observed that if the government interferes, the movement will go wrong. He was sorry to know that Andhra Pradesh Government was trying to interfere. He also said that the Registrar of Cooperative Societies was not there to interfere and order the societies about but to help them. While stating that the cooperatives have to function by themselves, he pointed out that where there was no interference, the cooperatives worked well, saved money and attracted deposits, etc."

26. Section 116-C of the Act empowers the cooperative societies to manage their own affairs in relation to the matters specified therein. Only the Registrar of the

Cooperative Societies in such matters has a statutory role to play. The State Government's jurisdiction to interfere in the matter of cooperative societies, which emanates from Section 131 of the Act, could not be taken aid of, as the same would be inconsistent with the provisions contained in Sections 116-AA and 116-C of the Act.

27. In Rakesh Ranjan Verma and others Vs. State of Biha and others, , the Apex Court had an occasion to consider the provisions of Section 78-A of the Electricity Supply Act, 1948 and a decision of this Court in The Andhra Pradesh State Electricity Board and Another Vs. N. Ramachandra Rao and Another, . It was held therein that the direction could not be given by the State Government to appoint the appellants as Junior Engineer of the Board as the same does not involve any matter of policy and it would be an encroachment on the powers of the Board. No direction, therefore, could be issued by the State even u/s 131 of the Act, which would be violative of the provisions of Section 116 of the Act.

28. It is not in dispute that the State Government does not bear the grant-in-aid to the cooperative societies towards the salaries of the Paid Secretaries. By reason of the aforementioned agreement dated 14-10-1991, no financial commitment had been made by the State to the Societies. Even in the writ petitions filed by the petitioners herein, the District Cooperative Central Banks and Primary Agricultural Cooperative Societies were not impleaded as parties.

29. It may be that by reason of the aforementioned Government Memo dated 14-10-1991, corpus fund was sought to be created to ensure prompt payment of salary to the Secretaries. Contributions to such funds were to be made by the Banks, Department of Cooperation and the Societies. No understanding could have been reached by the State with the Paid Secretaries. In terms of the provisions of the Act, the said agreement, therefore, is not enforceable in a court of law.

30. Keeping in view the aforementioned findings, this Court is required to consider the implication of the decisions of Division Bench of this Court. In Writ Petition No. 16558 of 1992, this Court directed the State to constitute a Committee with the representatives of the Bank and the Societies in order to fix the norms for prompt payment of salaries to them. The order reads thus:

"Therefore, in view of the above circumstances, instead of going into the merits of these case, we think it just and proper to direct the Government represented by the Secretary, Agricultural and Cooperation to constitute a Committee to consider the pay scales of the petitioners and allotment of the petitioners to the Societies after taking into consideration the views of the representatives of the A.P. State Cooperative Bank, District Cooperative Central Banks, Primary Agricultural Cooperative Societies and petitioners" Unions and take decision in accordance with the provisions of the A.P. Cooperative Societies Act and the Rules made thereunder within six months from the date of receipt of this order."

31. This Court, therefore, was aware of the fact that it is for the Co-operative

societies to fix the service conditions, including the pay scales of the employees, and the Government has no power to fix them. The question, which was therefore required to be considered by the Committee, was i) as to whether the fixation of pay made by the Government was in terms of the provisions of the Act and the Rules made thereunder and ii) the views of the representatives of State Cooperative Banks, District Cooperative Banks, Primary Agricultural Cooperative Societies and the petitioners-unions were required to be taken into consideration. Such a decision of the Committee was to be in accordance with the provisions of the Act and the Rules made thereunder.

32. Pursuant to and in furtherance of the said decision, a Committee was constituted and it submitted a report. Even the report of the Cabinet Sub-Committee was not enforceable in a court of law.

33. It is, therefore, not correct to contend that no opportunity of being heard to the parties had been given as it is accepted that before the Cabinet Sub-Committee all parties had had their say. The State evidently was not satisfied with the said report and appointed another Committee. The report of the second Committee was based on the materials already placed before the first Cabinet Sub-Committee and as such the question of giving a further opportunity of hearing would not arise.

34. In *D. Wren International Ltd. and another Vs. Engineers India Ltd. and others*, , upon considering various decisions of the Apex Court, a Division Bench of the Calcutta High Court, has stated the law in the following terms:

"In the instant case, it is not disputed that the impugned action was taken by the respondents without complying with the minimal requirements of the principles of natural justice. It is now a trite law that natural justice has to be viewed in circumstantial flexibility. It is also well known in view of the decision of the Supreme Court of India in *The Regional Manager and Another Vs. Pawan Kumar Dubey*, that one additional or different fact may make a world of difference between conclusion in two cases when the same principle are applied in each case to similar facts. The aforementioned decision has been followed by this Court in *Siben Kumar Mondal Vs. Hindustan Petroleum Corporation Ltd. and another*, ."

35. The submission of Mr. S. Ramachandra Rao to the effect that the State cannot act to defeat the orders of the Court and in defiance thereof, in this situation cannot be accepted.

36. In *S.R. Bhagwat and others, Vs. State of Mysore*, , it was held that a binding judicial pronouncement between the parties could not be made ineffective with the aid of legislative powers by enacting a provision, which in substance will overrule the judgment. But in this case, the same has not been done as a Cabinet Sub-Committee was constituted in terms of the decision of this Court and it had gone into the matter as was directed by the Court.

37. It is not for the writ petitioners to urge either that a recommendation of a particular committee has to be accepted or to say that the Government cannot refer the matter for consideration to any other Committee.

38. The submission of the learned counsel to the effect that the State is bound by the doctrine of promissory estoppel must be considered in the aforementioned backdrop.

39. The doctrine of promissory estoppel must be applied keeping in view the provisions of the statute. Firstly, having regard to the findings aforementioned, the said principle has no application in the instant case. No promise could have been made by the State in derogation of the statutory provisions. In any event, by reason of such promise the financial burden could not be thrust upon the District Cooperative Central Bank and Primary Agricultural Cooperative Societies in their absence.

40. It is now well settled principle of law that there is no estoppel against a statute.

41. In *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, , the Apex Court as to the applicability of doctrine of promissory estoppel observed:

"Of course we must make it clear, and that is also laid down in *Motilal Sugar Mills case (AIR 1978 SC 621)* (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."

42. In *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, , the Apex Court has quoted with approval the law on promissory estoppel from Professor H.W. R. Wade's *Administrative Law*, wherein it was observed:

"In public law the most obvious limitation on the doctrine of estoppel is that it cannot be invoked so as to give an overruling power which it does not in law possess. In other words, no estoppel can legitimate action, which is ultra vires."

43. The doctrine of promissory estoppel is a branch of law, which has developed a lot during the last 50 years. The doctrine of estoppel previously was in the realm of law of evidence. Doctrine of estoppel in England had all along been permitted to be used only as a shield and not as a sword. However, in India it has been held that the promissory estoppel/estoppel equitable confers a right which can be enforced in a court of law which includes a writ application under Articles 226 and 227 of the Constitution of India, in the High Court.

44. In *Corpus Juris Secundum*, Volume 31 at page 283, the law with regard to an estoppel by representation has been stated in the following terms:--

"Generally an estoppel by misrepresentation arises when and if a false representation is knowingly or negligently made by the person to another ignorant of the facts with the intention that such other act thereon and such other does reasonably rely thereon and such other does reasonably rely and act thereon in his prejudice. Where a person wilfully makes a representation intended to induce another to act on the faith of it or where, whatever his intention, a reasonable man in the situation of that other would believe that it was meant that he should act on it, and in either case that other does not act on it as true and alters his position, there is an estoppel in pais (sic) to conclude the former from averting against the latter a different state of things as existing at the same time. An estoppel arising out of an express misrepresentation being an equitable estoppel, all of the essential elements of such an estoppel, considered in sections 66-67 (supra), must be present. Hence, for an estoppel by misrepresentation to arise there must exist a false representation by the person sought to be estopped, made with knowledge, actual or constructive of its falsity, to the person seeking the benefits of the estoppel, with the intent that such person act in reliance thereon, and that he actually did reasonable rely and act on such representation to his prejudice.

For estoppel may be predicated on representations not made with fraudulent intent if the person making the same should have known of their falsity, and if of such character as to induce a reasonably prudent man to believe that they were intended to be acted on. If the representation is not such as should induce a prudent person to rely thereon, the person making it will not be estopped thereby.

In some jurisdictions it is essential that the party to whom the representation is made must have in good faith been ignorant of the fact and have had no convenient opportunity of ascertaining the fact. In this connection diligence in using means at command to learn the truth is essential except where a confidential relation exists between the parties.

A representation which is uncertain and vague cannot serve as a basis for

estoppel."

45. In American Jurisprudence, 2nd volume 28, at page 630 it has been stated as follow:--

"The proper function of equitable estoppel is the prevention of fraud, actual or constructive and the doctrine should always be so applied as to promote the ends of justice and accomplish that which ought to be done between man and man. Such an estoppel cannot arise against a party except when justice to the rights of others demands it, and when to refuse it would be inequitable. The doctrine of estoppel should be applied cautiously and only when equity clearly requires it to be done. Hence, in determining the application of the doctrine the counter equities of the parties are entitled to due consideration. It is available only in defence of a legal or equitable right or claim made injustice, or wrong of any character. Estoppel is to be applied against wrong doers, not against the victim of a wrong, although estoppel is never employed as a means of inflicting punishment for an unlawful or wrongful act."

46. In Halsbury's Laws of England, Volume 16 at page 1082, "Estoppel by Conduct" has been dealt with in para 1809 and in para 1528 at page 1073 "representation induced by party complaining" has been dealt with. It has been pointed out therein:

"A representation should be deprived on any effect as an estoppel if the making of it has been contributed by some by breach of duty on the part of the person seeking to take advantage of it. It has further been mentioned that it is not necessary that the representation should be false to the knowledge of the party making it, though in the earlier cases it had been held such representation must be have been acted upon as true by the party to whom it was made. A representation made to one person and acted on by him cannot be taken advantage of by another to whom it was not made and who has not acted on it."

47. It is further well know that for attracting the principle of estoppel by representation it must be shown that in acting upon the representation the party to whom it was made should have altered his position.

48. In "Estoppel by Representation" by Turner, 3rd Edition in Chapter XIV of the said treatise, the learned author has considered in details the development in the branch of law of promissory estoppel and the author further says that the new estoppel does not give rise to a permanent modification of the rights of the parties (inter se). It has further been stated that in general their original rights inter se are modified only for so long as is equitable, and the representor may revert to the status quo, claiming on the original basis in respect of obligations falling due thereafter either by giving sufficient notice, or by restoring the representee to a relative position equivalent to that which he originally occupied. This last may be brought about act of the representor or make take place by the happening of some event outside the control of the parties, or by efflux of time.

49. The doctrine of promissory estoppel has, however, undergone a radical change in the recent years in our country. In *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , the Supreme Court has held

" "promissory estoppel" is available as, no cause of action is necessary to satisfy the equity and in order to attract the applicability of the doctrine of promissory estoppel with the promisee acting in reliance on the promise, need not suffer a detriment, what is necessary is only that promisee should have altered his position in reliance on the promise."

50. It has further been held in the aforementioned decision:

"The said doctrine is applicable also as against the Government and in a special case the burden of proof would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court insists on a highly rigorous standard of proof in discharge of this burden...Even where there is no such overwhelming public interest the Government may resile from the promise on giving reasonable notice."

51. The aforementioned doctrine of promissory estoppel has further been reiterated in various recent decisions viz., *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, ; *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, , *Surya Narain Yadav and Others Vs. Bihar State Electricity Board and Others*, , *UNION OF INDIA AND OTHERS v. GODFREY PHILLIP INDIA LTD.*, [1985] 4 SCC 359; *KARNATAKA STATE ROAD TRANSPORT CORPORATION, BANGALORE & ANR. v. RAJEEV ALWA & ORS.*, 1987 LIC 1362 AT P. 1371 and *Inder Mohan Lal Vs. Ramesh Khanna*, .

52. In *Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others*, , the Apex Court has held:

"Applicability of rule of promissory estoppel - or for that matter any other similar rule - vis-?-vis the ultra vires acts of public officials and statutory corporations has been a vexed subject in law, both in this country as well as in England and U.S.A. It is however not necessary, to go into it for the purposes of this case, inasmuch as there is no room for invoking the rule of promissory estoppel in these cases. As pointed out hereinbefore, the respondents had not changed their position basing upon the representation - whether the representation consisted of the earlier consent of the Principal or the approval by University and Chandigarh Administration. Further, the said Rule cannot, in any event, be invoked to perpetuate the violation of a provision of law, that too a provision couched in emphatic terms (leaving no discretion in the authority) and based upon sound public policy i.e., a mandatory provision. It is not necessary to say more than this for the purpose of these cases. The decisions of this Court on the doctrine of promissory estoppel viz., *Union of India v. Indo Afghan Agencies* (AIR 1968 SC 718), *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh*

and Others, , Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, and Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., do not say otherwise. Indeed, it is reiterated in these cases that the said Rule is not available in respect of the ultra vires acts of a statutory body/authority nor can it be invoked to compel the Government - a public authority - to carry out a promise which is contrary to law or ultra vires its powers. (Also see State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc., "

53. In Union Territory, Chandigarh Admn. and others Vs. Managing Society, Goswami, GDSDC, , the Apex Court reiterated the said dicta. In D.C.M. v. UNION OF INDIA, 1996 AIR SCW 3672, the Apex Court, as regards the applicability of promissory estoppel against the Government in exercise of its governmental public or executive functions, observed:

"....It is well settled that the doctrine of promissory estoppel 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, proved to its form, stepped in to mitigate the rigour of strict law. It is equally true that the doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. This doctrine is applicable against the Government in 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 this doctrine. It is further well-established that the Doctrine of Promissory Estoppel must yield when the equity so require. If it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be unequitable 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 (vide Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., ."

54. Yet again in Jalandhar Improvement Trust Vs. Sampuran Singh, , the decision of the Apex Court is to the same effect.

55. In SAIRINDHRI DOLUI v. STATE OF WEST BENGAL, 2000 [1] SLR 803, a Division Bench of the Calcutta High Court noticed:

"Furthermore, it is a well settled principles of law that there can be no estoppel against statute. See Dr. Ashok Kumar Maheshwari Vs. State of U.P. and Another, as also in Shabi Construction Company Vs. City and Industrial Development Corporation and Another, wherein it the law has been laid down in the following

terms:-

"Whether Promissory Estoppel, which is based on a "promise" contrary to law can be invoked already been considered by this Court in *Kaniska Trading v. Union of India*, (1995)1 SC 274 as also in *Shabi Construction Company Vs. City and Industrial Development Corporation and Another*, wherein it is laid down that the Rule of Promissory Estoppel" cannot be invoked for enforcement of a "promise" or a "declaration" which is contrary to law or outside the authority or power of the Government or the person making that promise.

Applying the above principles to the instant case, even if it is accepted that the State Government of the Director, Medical Education & Training, assured the appellant or any of his colleagues that they would be promoted to the posts of Lecturer, such a "promise" cannot be enforced against the respondents as the avenue of promotion for demonstrators to the post of Lecturers was not provided either under the Statute or any executive instruction. Moreover, if the post of Lecturer was filled up by promotion of Demonstrator, it would defeat the existing mode of recruitment, namely that it can be filled up by direct recruitment only and not by promotion. It may also be stated that the appellant did not make any clear, sound and positive averments as to which officer of the Government, when and in what manner gave the assurance to the appellant or any of his colleagues that they would be promoted as Lecturers. It was also not stated that the appellant had, at anytime, acting upon the promise, altered his position, in any manner, specially to his detriment. Bald pleadings cannot be made the foundation for invoking the Doctrine of Promissory Estoppel."

56. In the instant case, the financial burden was thrust upon the societies and the Banks, although they did not want the same and thus the State could not have asked the society to pay the salaries at higher rates to the Paid Secretaries contrary to their financial state of affairs and contrary to the statutory regulations. Financial health of the society must be taken into consideration. Therefore, the financial burden cannot be imposed on it.

57. For the reasons aforementioned, we are of the opinion that the decisions of the Apex Court whereupon reliance has been placed by the learned counsel appearing on behalf of the writ petitioners in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, and *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, , cannot be said to have any application.

58. It is now a well-settled principle of law that if the State can take a policy decision, it can also amend the same. In *K.P. PERUMAL v. A & N ADMINISTRATION*, 2000 [1] CHN 866, it has been held:

"The Lieutenant Governor is merely a person delegated with functions of an Administrator in terms of Article 239 of the Constitution of India. He had not been conferred any power to make any law which is exclusively within the

domain of the President. However, he can issue executive instructions in such fields and in respect of the matter which is not covered by any legislation. An executive instruction issued or a policy decision taken in favour of a trespasser would be subject to fulfilment of the conditions imposed thereby. Undoubtedly, the same can be modified, amended or rescinded. A policy decision taken may even be withdrawn."

59. A change in policy decision by itself would not be a subject matter of judicial review, unless the same is unconstitutional. The Court in such matters has a little role to play.

60. In *V. Srihari Vs. State of A.P.*, , a Division Bench of this Court held that the writ Court in exercise of its jurisdiction under Article 226 of the Constitution of India will not normally interfere with a policy decision, particularly affecting the fiscal measures adopted by the State. In *R. Rambabu Vs. APSRTC, Musheerabad, Hyderabad* and another, , a Division bench of this Court has also held that a policy decision adopted by the State, unless held to be arbitrary, cannot be interfered with.

61. The submission of Mr. S. Ramchandra Rao to the effect that as the State entered into the aforementioned purported understanding, despite its knowledge as regards the existence of Sections 116-AA and Section 116-C, which had come into the statute book in the year 1985, and thus it is not permissible for it to resile therefrom, is stated to be rejected.

62. It may be that the State entered into the aforementioned understanding, but as noticed hereinbefore, that the same was contrary to the provisions of the statute and in any event, contrary to the principles of natural justice so far as District Cooperative Central Banks and Primary Agricultural Cooperative Societies are concerned. It also may be that the Registrar of Cooperative Societies proceeded to implement the said understanding, but by reason of such action on the part of the Registrar, who has a statutory authority, and thus whose functions must be confined within the four corners of the statute, the illegality cannot be directed to be legalised.

63. The submission to the effect that the byelaws of all societies are made at the instance of the Registrar of Cooperative Societies and thus the Registrar had the rights to frame the service Rules of the Paid Secretaries is again besides the point. The Registrar of Cooperative Societies must act in terms of the provisions of the statute and not in terms of the agreement. It may have some say as regards framing of byelaws but even such byelaws must be commensurate with the provisions of the Act and the Rules made thereunder. Byelaws, even if they have received the sanction of the Registrar of Cooperative Societies, would be ultra vires if the same are inconsistent with the provisions of Sections 116-AA and 116-C of the Act. Further more, the contention of the writ petitioners to treat all cooperative societies equally could not be accepted inasmuch the size and the financial resources of the societies vary from society to society. If the spending of

the societies or salaries of their employees are to be the same for all the societies irrespective of their resources, the society in smaller size would wound up early as their expenses would eat away their capital. Only the bigger societies might be capable of paying higher salaries to its employees.

64. By reason of Section 116-AA and 116C, the service conditions of all the Paid Secretaries are effected. Expressly or by necessary implication, the conditions of service of the existing Paid Secretaries are also effected. It will, therefore, not be correct to contend that the said provisions would only apply to the Paid Secretaries, who were to be appointed in future. It is not that the societies cannot appoint the Paid Secretaries, but the matters relating fixation of staffing pattern of the society, prescription of qualifications and determination of pay scales and other allowances for its employees have to be left to the concerned society itself inasmuch as it is the society which, keeping in view its size, volume of work and its resources, could pragmatically manage its affairs.

65. G.O.Ms. No. 314 dated 26-12-2000 has been issued in terms of the provisions of Section 116C of the Act. The same, thus, cannot be permitted to be assailed on a ground, which would indirectly invalidate a statute.

66. It must be borne in mind that by reason of Section 116-AA, the common cadre has been abolished and the validity of Section 116-AA has been upheld by this Court.

67. The history of litigation, in the instant case, shows that payments to the Paid Secretaries at par with Supervisor Category-V of District Cooperative Central Bank, as also the revised pay scales, were being made only pursuant to the orders of this Court and not by reason of any policy decision, except the said purported understanding dated 14-10-1991. The writ petitioners, therefore, cannot be heard to say that there would be violation of principles of natural justice if they are deprived from the said benefit. The principles of natural justice cannot be applied in derogation to a statute. The State while enacting a statutory provision is not required to give an opportunity of hearing. The principles of natural justice are required to be complied with when there does not exist any statutory interdict.

68. As noticed hereinbefore, this Court had directed constitution of a Committee only having regard to the fact that it may make recommendations upon giving an opportunity to all concerned upon examining the legal issues involved. It is not in dispute that the civil consequences will ensue to the cooperative societies in the event the bipartite agreement between the State and the Association of Paid Secretaries is thrust upon them. In that view of the matter, in our opinion, the said Agreement was void and inoperative so far as the Cooperative Societies are concerned. It must also be borne in mind that the Paid Secretaries are not be appointed in relation to all the Societies having regard to Rule 29 of the A.P. Cooperative Societies Rules.

69. Further more, the directions in the writ petitions are not in tune with the

provisions contained in Section 116-AA and Section 116-C of the Act. If the prayer of the petitioners is to be granted, the same would run counter to the power of the State as contained in Section 131 of the Act. By reason of Section 131, the Government cannot issue any directions which are contrary to the Act and the Rules as held by a Division Bench of this Court in *M.A.R.V.S. Sai Babu Vs. Commissioner and Registrar of Co.op. Societies, Government of Andhra Pradesh, Hyderabad and others*, .

70. Further more, it is trite that discretionary jurisdiction of High Court under Article 226 of the Constitution shall not be exercised while setting aside an illegal order whereby another illegal order would revive. In that circumstances, the Court shall either refuse to exercise such jurisdiction or quash both the orders. In the event the impugned G.O. is directed to be set aside, the same would revive the memorandum dated 14.10.1991. The writ Court is required to exercise its vigil at the time of grant of contract or distribution of largess and has a duty to see that the State is for public goods and in public interest. (see *IN RE: P.P. RAJA REDDY*, 1997 [1] CLJ 41).

71. We may also refer to the decisions in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, and *Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI)*, .

72. It stands admitted that in the event the writ petitions are allowed, heavy financial burden will be placed upon the concerned Cooperative Societies. The Cooperative Societies are not run as Government organisations. They are not meant for carrying out welfare activities of the State. While promoting the thrift movement, it is supposed to earn the profit for its members.

73. The Scheme and the purport of the Act as regards the recruitment of staff is envisaged in terms of Section 116-C of the Act. Expenditure to be incurred on the staff has direct nexus with the profit earned by the Cooperative Societies or the working capital. In that view also, we are of the opinion that the prayer made in the writ petition cannot be granted.

74. For the foregoing reasons, we are of the opinion that no case has been made out for granting any relief to the writ petitioners. The writ petitions are therefore dismissed and the writ appeals viz., Writ Appeal Nos. 424, 425 of 2000 preferred against the interlocutory orders are allowed. No costs.