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**(1997) 01 MAD CK 0065**

**In the Madras High Court**

**Case No :** Writ Petition No"s. 7829 of 1991 and 2081, 2082 of 1996, etc. etc.

K.A.S. Senthilnathan

APPELLANT

Vs

Union of India and others

RESPONDENT

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**Date of Decision :** 28-01-1997

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19(1), 226, 299

Evidence Act, 1872 — Section 115, 28

Telegraph Act, 1885 — Section 4(1), 7(4)

**Citation :** AIR 1997 Mad 208

**Hon'ble Judges :** K.A. Swami, C.J;Ar. Lakshmanan, J

**Bench :** Division Bench

**Advocate :** R. Krishnamurthi and K.P. Sivasubramaniam, for the Appellant; V.T. Gopalan and R. Santhanam, Addl. Central Government, for the Respondent

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## **Judgement**

AR. Lakshmanan, J.—Three batches of writ petitions have been filed by the STD/PCO operators challenging the revision in the rates of

commission payable for STD/ PCO operators. The first batch of writ petitions have been filed against the orders in No. 6-1/90-PHB dated 2-5-

1991. The second batch of writ petitions have been filed challenging the proceedings No. 131-13/91-PHB dated 24-7-1993 and the third batch

of writ petitions have been filed questioning the correctness of the proceedings No. 31-50/95-PHB dated 26-12-1995.

2. For a better understanding of the issues involved in the above writ petitions the respondents through their counsel Mr. R. Santhanam, learned

Addl. Central Govt. Standing Counsel have filed a typed set of documents in W.P. No. 3039/91 etc., batch (1st batch) wherein an analysis of the

STD/ PCO commission rates for the relevant period has been given by way of a tabular statement.

3. Originally a distinction was maintained between the coin/card operated machines and the private STD phones in justification of the different rates

of commission, the reason being that in respect of coin/card operated machines the investment is higher whereas in respect of the other type of

privately attended STD phones the investment was very much lesser than the former. However, the said distinction between the coin/card operated

machines and the privately attended STD phones was not continued from 1-6-1991 and earlier for a short duration between 1-9-1989 and 31-

12-1989. However, the bulk franchise phones operators have mistakenly construed that the concession shown to coin/card operated machines

should also be applicable to them, irrespective of whether they possess coin/card operated machines or not. Such a claim, according to the learned

Sr. Central Govt. Standing Counsel, was unwarranted.

4. Mr. R. Krishnamurthi, learned senior counsel appearing for the petitioners in W.P. Nos. 7829/91 etc., raised the following contentions : The

revision of rates of commission impugned in the respective, writ petitions was violative of Art. 14 of the Constitution of India and that the

petitioners would be entitled to invoke the principle of promissory estoppel by which the Government should be estopped from revising the rates of

commission from time to time. He further submitted that the petitioners in the said writ petitions have executed agreements on 24-5-1990 and for

commencing their business have invested huge amount of Rs. 1,25,000/- for putting booths with A/C etc. He further contended that unequals were

treated as equals in that a bulk franchise phone operator has to make huge investment when compared to the individual licensee and that once the

rates of commission have been fixed when the contract was entered into, the same could not be altered to the prejudice of one of the contracting

parties unilaterally. and that in any event, the principle of promissory estoppel will come into play. In support of his contention, the ruling reported

in the The Union of India and others Vs. Rizwan International, was cited.

5. Mr. N. R. Chandran, learned senior counsel appearing for the petitioners in W.P. Nos. 4524 and 4525 of 1996 relied on the following

decisions : (1) LIC of India and Another Vs. Consumer Education and Research center and Others, ; (2) State of Andhra Pradesh and Another

Vs. Nalla Raja Reddy and Others, ; and 1995 2 M LJ 57.

6. Mr. A. L. Somayaji, learned senior counsel appearing for the petitioners in W.P. Nos. 13073 of 1991 etc., has filed certain bills and contended

that the petitioners were not treated equally in the matter of payment of commission and unequals are treated alike. He has filed certain bills and

contended on that basis that there was substantial reduction in the income of the petitioners on account of the revision of the slab rates.

7. Mr. R. Gandhi, learned senior counsel appearing for the petitioners in W.P. Nos. 12164/92 etc., submitted that the petitioners in those writ

petitions did not execute any agreement and that in the absence of such agreement, the respondents would not enforce the revision of rates effected

from time to time against the said writ petitioners. Learned senior counsel further contended that there could be a judicial review even on policy

matters so far as they relate to the manner of such exercise. He relied upon the decision reported in Delhi Science Forum and others Vs. Union of

India and another, .

8. Mr. Mohan Parasaran, learned counsel appearing for the petitioners in W.P. Nos. 11586/91 etc., also filed certain bills evidencing the loss of

the petitioners on account of the slab revision. He adopted the arguments of the other learned senior counsel who argued earlier to him.

9. Mr. S. Viswanathan, Mr. V. Anantha-raju and Mrs. N. Rajalakshmi, learned counsels appearing for some of the writ petitioners also adopted

the arguments of Mr. R. Krishnamurthi, learned senior counsel.

10. Mr. V. T. Gopalan, learned senior counsel appearing for the Department in answer to the above contentions raised by the counsel for the

petitioners, submitted that as a matter of fact all the writ petitioners have executed agreement to the Department. In fact, they were produced in

original after serving xerox copies of the same to the respective petitioners at the time of hearing. It was also found that some of the petitioners had

executed a number of agreements on different dates for different phones whereas in respect of some, there was only one agreement in which all the

phone numbers were mentioned.

11. Our attention was drawn to various clauses in the agreement, the standard form of which is at page 23 of the typed set of documents and in

particular to clauses 1, 8, 10, 14 and 19, which are as follows :

Agreement Form For The Public Call Office (STD/ISD).

....

....

Now it is hereby agreed to by and between the parties here to as follows:

1. The party of the second part hereby confirm that it/he/they has/have gone through the Indian Telegraph Rules and agree(s) to abide by the rules

in respect of Public Call Office (STD/ISD).

2. to 7. ....

8. The party of the second part shall deposit a minimum for the due fulfilment and performance by party of the Second part of the terms and

conditions herein contained and also the Indian Telegraphic Rules. The amount of Security Deposit can be increased, if warranted by the Govt., at

their discretion. In the event of the party of the second part committing a breach of any of the terms and conditions herein contained or as

contained in ITRs and their part to be observed and performed the Government call, without prejudice to the rights and remedies be entitled to

forefeit the security deposit or any part thereof and normally the contract will be terminated forthwith. Normally on the termination of the

Agreement the Govt. shall the security deposit or such part thereof which has not been appropriated by the government as aforesaid to the party of

the second part without interest after deducting all sums of money payable to the Government under the terms and of the Agreement, This will be

without prejudice to the Rules framed under the provision of Indian Telegraphs Act 1885 and as amended from time to time.

9. ....

10. The party of the second part shall be liable to pay the Government call charges as per the number of calls metered at the local rate of one

rupee or as amended from time to time.

11. to 13. ....

14. This agreement is determinate by either party giving to other part one month's notice in writing to that perfect provided always in case of

breach of any of the rules contained in ITR or any of the terms and conditions of this agreement of which the Government shall be the sole

authority, the Government reserves the right to withdraw the facility of the call office at any time without assigning any reason whatsoever by giving

one week's notice to the party of the second part.

15. to 18. ....

19. The second part will provide and maintain his/her own coin/token/card operated pay phone duly approved by the DOT and operate it. The telephone connection will be maintained by the Department.

The respondents have also filed the terms and conditions for the installation, maintenance and operation of the MSD and ISD Public Call Office

which is at page 29 of the typed set. Clause Nos. 8 and 25 would be very pertinent. It was contended by Mr. V. T. Gopalan that the petitioners

having agreed to such a clause with their eyes wide opened, it would not be open to them to question the correctness of the terms and conditions

or to challenge the revision of slab rates after the contracts have been entered into, and on this account alone, the above writ petitions are liable to

be dismissed as not maintainable.

12. Mr. V. T. Gopalan, learned senior counsel appearing for the Department placed reliance on the decision reported in Radhakrishna Agarwal

and Others Vs. State of Bihar and Others, , wherein the Supreme Court held as follows (at p. 1500, para 10):

It is thus clear that the Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, involved discrimination at the very threshold

or at the time of entry into the field of consideration of persons with whom the Government could contract at all. At this stage, no doubt, the State

Act purely in its executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every

transaction entered into in exercise of its constitutional powers. But, after the State or its agents have entered into the field of ordinary contract, the

relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the

parties inter se. No question arises of violation of Art. 14 or of any other constitutional provision when the State or its agents, purporting to act

within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the

contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart

from contract.

Relying on the above ruling, learned senior counsel for the Department contended that once a contract has been entered into, the same would be binding and governing the parties and that there would be no question of invoking Art. 14 or 226 of the Constitution of India by filing the writ petitions in question. We see much force in this contention.

13. It is further contended on behalf of the Department that the revision of slab rates was on the strength of the power vested with the Government by the first proviso to S. 4(1) and also under S. 7(4) of the Indian Telegraph Act. Section 4(1) of the Indian Telegraph Act reads thus:

4. Exclusive privilege in respect of telegraphs and power to grant licences: (1) Within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs;

Provided that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person

to establish, maintain or work a telegraph within any part of India:

Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such

restrictions and conditions as it thinks fit, the establishment, maintenance and working -

(a) of wireless telegraphs on ships within Indian territorial waters and on aircraft within or above India or Indian territorial waters; and

(b) of telegraphs other than wireless telegraphs within any part of India.

Section 7 of the said Act deals with the power to make rules for the conduct of telegraphs. Under this section, the Central Government may, from

time to time, by notification in the Official Gazette, make rules consistent with (his Act for the conduct of all or any telegraphs, established,

maintained or worked by the Government or by persons licensed under this Act. Section 7(4) reads as follows :

Nothing in this section or in any rules made hereunder shall be construed as -

(a) precluding the Central Government from entering into an agreement with a person for the establishment, maintenance and working by that

Government on terms and conditions specified in the agreement, of any telegraph line, appliance or apparatus for the purpose of affording means of

telegraphic communication, where having regard to the number of the lines, appliance or apparatus required by that person for telegraphic

communication, it is necessary or expedient to enter into such agreement with him, or

(b) subjecting the Central Government to any obligation to provide any telegraph line, appliance or apparatus for the purpose of affording means of

telegraphic communication.

14. Thus, it is seen that the various conditions for the grant of such a licence as well as the agreement entered into with the licencces would pertain

to the realms of contract besides the same would also be the policy of the Government with reference to the STD/ PCO operators. The

Government would be entitled to keep on changing its policy according to the socio-economic needs from time to time and the Government cannot

be bound by a particular policy for all the time to come. So long as the policy is not unreasonable and arbitrary and when such policy is being

uniformly applied, there could be no question of Art. 14, being violated as contended by the petitioners.

15. Even assuming that in a given case, there was no written agreement as sought to be contended by some of the petitioners and particularly Mr.

R, Gandhi and Mr. N. R. Chandran, learned senior counsels, they cannot escape their liability in view of the decision reported in A. Damodaran

and Another Vs. State of Kerala and Others, , wherein the appellant mainly contended that as no agreement was executed between them and the

Government in the manner prescribed by Art. 299 of the Constitution, they are not liable to pay the amounts sought to be recovered. They further

contended that they had not become ""grantee"" of any privilege without the execution of contracts complying with the requirements of Art. 299 of

the Constitution of India. In that case, the Supreme Court was concerned really with the legality of proceedings under S. 28 quoted above of the

Act. The Supreme Court observed that it is not condition precedent to recovery of an amount due and recoverable that it should be due under a

formally drawn up and executed contract. In the concluding portion of this judgment, tne Supreme Court has held in para 13 as under (at p. 1536)

:

The appellants became entitled to get licenses from the Government which had to perform its duty to execute written agreements and grant

licenses as soon as the appellants fulfilled required conditions by paying up the

remainder of the amounts due. The Government had performed its part of the bargain and even allowed the appellants to start selling liquor. The appellants also became liable and bound to perform their corresponding obligations under the conditions of the auctions imposed in pursuance of statutory provisions. This reciprocity of obligations, quite apart from its basis in agreement, had thus acquired an operative force resting on statutory sanction and equity.

16. It is also brought to our notice that the impugned revision of rates payable to the STD/PCO operators have already been upheld by the

judgment of the Division Bench of the Calcutta High Court reported in *Union of India and others Vs. M/s. Binani Consultants (P) Ltd. and another*,

. It was an appeal before the Division Bench against the judgment of learned single Judge allowing the writ petition and directing the Union of India

to reconnect the telephone lines of the respondents which were disconnected for nonpayment of pay phone bills, and to accept the call charges on

the basis of original agreement. The Union of India were also restrained from reducing the rate of commission of the writ petitioners. Further they

were restrained from reducing the billing period from monthly to fortnightly and from charging any additional security deposit except in accordance

with the terms and conditions of the agreement in question. The Division Bench while setting aside the order of the learned single Judge dismissed

the writ petition and observed in para 15 as follows (at p. 243) :

In our view the relationship between the parties is 3s principal and agent, it has nothing to do with a citizen's right to carry on trade or business.

Trade or business or profession contemplated by Article 19(1)(g) of the Constitution means an independent business, trade or profession. The

Agent who is accountable to the principal as the agent realises charges after deducting his commission. Such a relationship is beyond the scope and

ambit of Article 19(1)(g) of the Constitution of India and accordingly, it cannot be said that the Operating Agent is carrying on a trade or business

independently under Article 19(1)(g) of the Constitution of India and the principal has no right to vary the terms and conditions of the agency.

Accordingly, the acceptance of the notification dated 2nd May, 1991 and making payment on the basis of such notification for sometime does and

thereafter, applying for instalments with the Telephone Authorities to pay by



instalment of the dues on the basis of revised rate of commission is certainly a factor to be taken into consideration while entertaining and granting relief to the writ application in the facts and circumstances of the case.

17. The decision reported in *Rajiv Kesavan Vs. Union of India (UOI) and Another*, , was cited by the learned senior counsel appearing for the Department. In the said decision which was rendered by a learned single Judge of the Kerala High Court, the question that arose was the quantum of commission payable to the licencees who have the STD/PCO booths. According to the petitioners therein, they were entitled to 20% of unit call charges without any slab system. In other words, they contended that they were entitled to 20% of Rs. 1.25, which is the tariff per unit call metered in the exchange and there cannot be any reduction in the commission, even if the number of unit calls go beyond 10,000 a month. On this basis, they prayed for the issue of a writ of mandamus directing the respondents to give a commission of 20% of unit call charges on STD/ISD calls. The respondents Union of India filed a counter affidavit and contended that at no point of time the Department contracted with the petitioners allowing them to retain 20% of the call charges in the case of STD/ISD and 40% of the unit call charges in the case of non-STD public phones and therefore, the question of percentage of unit call charges does not arise under any circumstances or under any of the notifications issued by the Government of India or under the agreement entered into between the operators and the Department.

18. The Supreme Court in the decision reported in *Jagdish Chand Radhey Shyam Vs. The State of Punjab and Others*, , while holding that the courts have no jurisdiction under Art. 226 to go into the reasonableness of the rates, held that the rates are decided as a policy matter in fiscal planning. There is a legislative prescription of the rates and that such rates are matters of legislative determination and not for judicial determination.

19. In the decision reported in *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, it was clearly held that after the State Or its agents enter into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question

arises of violation of Art, 14 or of any other constitutional provision

when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by

contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the

State on the contractual field which is apart from contract.

20. The fact that the writ petitioners have already entered into contract with the Department cannot be disputed when the Department have

produced such contracts entered into by the petitioners in original and it is therefore that the petitioners are bound by such contracts. Even

assuming for a moment that there was no written contract, then, as has been held in the decision reported in A. Damodaran and Another Vs. State

of Kerala and Others, in as much as admittedly the Government had provided them with the telephone lines to enable them to operate the

STD/PCOs which the petitioners are operating, the Government had performed their part of duty and therefore, the reciprocity of obligation quite

apart from its basis for agreement had thus acquired an operative force resting on statutory obligation and equities. Therefore, a person to whom

the Department has provided a telephone line to operate STD/PCOs cannot wriggle out their obligation to abide by the rates of commission fixed

or revised by the Government from time to time.

21. According to the standard form of the agreement for Public Call Offices, the petitioners/licensees have in clause 1 confirmed that "they have

gone through the Indian Telegraph Rules and agreed to abide by the rules in respect of Public Call Office. Again in clause 8 it has been specifically

provided that "this will be without prejudice to the Rules framed under the provisions of the Indian Telegraphs Act 1885 as amended from time to

time.

22. Clause 10 of the said form is quite specific in that it provides that the party of the second part shall be liable to pay the Government call

charges as per the number of calls metered at the local rate of one rupee or as amended from time to time. Further, clause 25 of the Terms and

Conditions for the Installation, Maintenance and Operation of NSD/ISD Public Call Office, provides thus:

The PCO Licensee will have to abide by the policy of the Department as revised/

modified from time to time without any prior notice to the licensee in respect of matters including the amount of security Deposit, Minimum Guarantee Amount, call charges, to be levied and commission payable to the PCO licensee.

23. The petitioners have agreed to abide by these conditions without a demur and with their eyes wide open and in the face of such conditions, it is clearly not open for the petitioners to now contend that the revised rates of commission payable to the licencees from time to time impugned in these writ petitions should be set aside on any of (he pleas such as Art. 14 or promissory estoppel which certainly do not come into play in the realms of contract between the parties.

24. Even otherwise, the contention of the petitioners that the fundamental rights under Art. 14 of the Constitution of India are violated by the revision of rates, is without substance, In the decision reported in Union of India and others Vs. M/s. Binani Consultants (P) Ltd. and another, while negating the challenge to the rates impugned in the writ petitions, the Division Bench of the Calcutta High Court has held that the relationship between the Department and the PCO operators is as principal and agent and it has nothing to do with a citizen's right to carry on trade or business. It is further held in the said decision that the revision in the rates of commission is a policy decision of the Central Government and that a change in the rates of commission gets reflected in the Budget and as such indirectly approved by the Parliament. It is not for the Court exercising jurisdiction under Art. 226 of the Constitution of India to interfere with such matters of policy.

25. In the decision reported in Rajiv Kesavan Vs. Union of India (UOI) and Another, , the Kerala High Court has also upheld the impugned revision of rates on the ground that the challenge could not be countenanced in view of the decision of the Supreme Court in S. Narayan Iyer Vs.

The Union of India (UOI) and Another, and being a policy decision could not be submitted to judicial review in exercise of the powers under Art.

226 of the Constitution of India. It is further held by the learned single Judge that the licence does not give them any vested right to claim any

percentage of commission on the basis of call for charges nor are they entitled to question flat system of commission fixed by the Government. We

agree with the view expressed in the aforesaid two decisions.

26. The courts would not bind the Government to stick to its policy decision for all time to come irrespective of the satisfaction of the Government

that a change in the policy is necessary in public interest. This is well settled in the decision reported in *Kasinka Trading and another, etc. etc. Vs.*

*Union of India and another*, it has been held as follows at page 878; of AIR:

The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the doctrine

represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to

the other party an unequivocal promise, or representation by word or conduct, which is intended to create legal relations or effect a legal

relationship to arise in the future, knowing as well as intending that the representation, assurance of the promise would be acted upon by the other

party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding

on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to

the dealings, which have taken place or are intended to take place between the parties. It has been settled by this Court that the doctrine of

promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The

doctrine, however, cannot be pressed into aid to compel the Government or the 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. ""There is

preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear and sound and positive foundation must be laid in the

petition itself by the party invoking the doctrine and that bald expression, without any supporting material, to the effect that the doctrine is attracted

because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid

the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects

including the results sought to be achieved and the public good at large, because

while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation.

The said principle has also been reiterated by the Supreme Court in the decision reported in P.T.R. Exports (Madras) Pvt. Ltd. and others Vs.

Union of India and others, as follows at page 3463; of AIR: .

In the light of the above policy question emerges whether the Government is bound by the previous policy or whether it can revise its policy in

view of the changed potential foreign markets and the need for earning foreign exchange? It is true that in a given set of facts, the Government may

in the appropriate case be found by the doctrine of promissory estoppel evolved in Union of India (UOI) and Others Vs. Indo-Afghan Agencies

Ltd., . But the question revolves upon the validity of the withdrawal of the previous policy and introduction of the new policy. The doctrine of

legitimate expectation again requires to be angulated thus: whether it was revised by a policy in the public interest or the decision is based upon any

abuse of the power? The power to lay policy by executive decision or by legislation includes power to withdraw the same unless in the former

case, it is by mala fide exercise of power or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role

when the appropriate authority is empowered to take a decision by an executive policy or under law. The court leaves the authority to decide its

full range of choice within the executive or legislative power. In matters of economic policy, it is a settled law that the court gives the large leeway

to the executive and the legislature. Granting licences for import or export is by executive or legislative policy. Government would take diverse

factors for formulating the policy for import or export of the goods granting relatively greater priorities to various items in the overall larger interest

of the economy of the country. It is, therefore, by exercise of the power given to the executive or as the case may be, the legislature is at liberty to

evolve such policies. (Para 3)

It would, therefore, be clear that grant of licence depends upon the policy prevailing as on the date of the grant of the licence. The court, therefore, would not bind the Government with a policy which was existing on the date of application as per. previous policy. A prior decision would not bind the Government for all times to come. When the Government are satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The Court, therefore, would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same. Equally, the Government is left free to determine priorities in the matters of allocations or allotments or utilisation of its finances in the public interest. It is equally entitled, therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved. We, therefore, hold that the petitioners have no vested or accrued right for the issuance of premits on the MEE or NQE, nor the Government is bound by its previous policy. It would be open to the Government to evolve the new schemes and the petitioners would get their legitimate expectations accomplished in accordance with either of the two schemes subject to their satisfying conditions required in the scheme. The High Court, therefore, was right in its conclusion that the Government are not barred by the promises or legitimate expectations from evolving new policy in the impugned notification." (para 5)

27. It has also been followed by the Supreme Court in the decision reported in S.B. International Ltd. and Others Vs. Asstt. Director General of Foreign Trade and Others, that the mere fact that the appellant is likely to suffer from loss or prejudice (assuming that the said plea is factually true) cannot be a ground either for invoking the rule of promissory estoppel or to otherwise bind the Government to apply and adopt the value addition on norm in force on the date of application. This decision provides a complete answer to the claim of the petitioners that they suffer losses on account of such revision in the rates of commission. The contention of the petitioners that rates of commission in force at that time the contracts were entered into, are unalterable and that the rule of promissory estoppel or the legitimate expectation will come into play, cannot at all be sustained. The contract between the parties are concluded ones which itself provides that such revision in rates in future from time to time would be

binding on the licensee. There is no question of Arts. 14 or 19(1)(g) of the Constitution of India being violated either generally or even in such

contractual matters. The question of promissory estoppel also will not arise on the facts and circumstances of the case.

28. The decision cited by Mr. R. Krishnamurthy, learned Senior counsel reported in *The Union of India and others Vs. Rizwan International*, will

not be of any avail particularly in view of the aforesaid decision of the Supreme Court and on the facts of the case on hand; and also the decisions

of the Supreme Court referred to *supra viz., Kasinka Trading and another, etc. etc. Vs. Union of India and another, and S.B. International Ltd.*

and *Others Vs. Asstt. Director General of Foreign Trade and Others*,

29. We shall now consider the case of the petitioners and of the respondents on the factual aspects. It was submitted (on facts) that the department

of the Telecommunications intended to expand the "pay phone" services in cities and towns subject to certain terms and conditions. A pay phone

may be of coin/token/card operated type at choice of the operating agency. The terms, conditions and tariff relating to pay phones are contained in

Department of Telecommunication letter No. 31-10/88/ PHB dated 6-7-1988. The terms and conditions *inter alia* provides the following:

1. Each such organisation or private agency may franchise for a minimum of 5 pay phones in a city or town.

2. The pay phone may be of the coin/ token/card operated type at the choice of the party of the operating agency.

3. For each pay phone the department will provide a telephone connection with an appropriate termination at the location of pay phones.

4. The operating agency will provide and maintain its own coin/card/token operated pay phone duly approved by the Department of

Telecommunications.

5. The operating agency will charge Re. 1/-per unit call from public. The agency will pay to the Department 80 paise and retain 20 paise for each

unit call as commission.

30. It is a fact that the Department of Telecommunications proposed to provide pay phone with STD/ISD call facility for use of the general public

and the target is one pay phone for a population of 10,000. In order to achieve this, it was decided to franchise voluntary organisations as well as

private entrepreneurs to operate such pay phones, subject to certain terms and conditions. The conditions regarding payment of commission which

existed up to 31-5-1991 are as follows:

20 paise per unit call up to 10,000 calls; 10 paise per unit call between 10,000 and 15,000 calls; and,

5 paise per unit call over and above 15,000.

This rate was applicable to the hirers who had not provided their own card/coin/token operated instrument for the PCO. Wherever the hirers

under franchise scheme had provide their own card/coin/token operated instrument (hereinafter termed as ""the instrument"") they were entitled to an

uniform rate of 20 paise commission on the metered calls. Between 1-9-1989 to 31-12-1989 (4 months) Slab rate i.e. 10,000 calls 20 paise/unit,

10,000 to 15,000 calls 10 paise/unit and beyond 15,000 calls 5 paise/unit only was applicable for both private STD PCO as well as for bulk

franchised pay phones. From 1-1-1990 to 31-5-1991, for bulk franchised pay phones commission at 20/unit call for the metered call was

restored. This however was revised with effect from 1-6-1991 as per the decision of the department of Telecommunications, Government of India

and as per the decision both the hirers of individual pay phones as well as hirers under franchise scheme are allowed uniform rate of commission

irrespective of the type of instrument used by them. The revised rates are:

20 ps. per unit call up to 10,000 calls in a month;

10 ps. per unit call thereafter in a month;

It is submitted that the aforesaid revision was in accordance with the policy decision taken by the department of Telecommunications by virtue of

the Indian Telegraph Act and the rules thereunder. It is further admitted that the revised rates were communicated to the petitioners.

31. The Department of Telecommunications advertised in the newspaper proposing to open large number of STD/ISD public Telephones, the

details regarding the same were also duly published and requirements to be satisfied for eligibility to obtain at the rates specified had also been

published. Inter alia it was provided that those who want to provide equipment can do so by procuring a suitable equipment approved by the

Department provided they take minimum of 5 STD public office connections under franchise scheme in which event they will get an uniform



commission of 20 paise per metered call. This condition had further been elaborated in the Telephone Directory of Madras Telephones as per

which the operating agency will have to install, maintain and operate its own coin/ card/token operated instrument duly approved by the

department of Telecommuni-cations. Futher details regarding minimum guarantee and security diposit had also been made public to enable the

applicants to acquaint themselves with the condition and to acquire the eligibility to obtain a uniform rate of 20 paise commission. The petitioner

was also fully aware of the conditions before he made application to install STD/ ISD telephones under franchise scheme. It will be relevant to note

that in the petitioner's affidavit they had admitted that they were aware of the condition stipulated.

32. The averments in the petitioners affidavits that on the petitioners providing the attachments "inteltract attachment" they would be entitled to

uniform rate of 20 paise commission was denied as not correct. It is the contention of the Department that there was no such representation at any

time. The claim of the petitioners for entitlement to receive 20 paise uniform rate of commission is also denied as not correct. As stated above the

prerequisite for the entitlement of commission at 20 paise uniformly is the installation of coin/card/token operated instrument, without establishing

the same, and even by establishing other devices the petitioner cannot claim uniform rate of commission at 20 paise. The claim of the petitioners

that they had expended amounts will not confer any rights on them.

33. It is submitted that the petitioners were provided licences to run the STD public call office based on an agreement entered between the parties.

As per the terms of the agreement they shall be liable to pay the Government call charges as per the number of calls metered at local rate of Re.

1/- or as amended from time to time. Nowhere in the hiring agreement the department has guaranteed a commission of 20 paise per metered call

uniformly as alleged by the petitioners. The petitioners are provided with the STD public call office free of installation and rental charges. Further

the facilities to be provided by the license does not require any huge investment as STD/PCO's are basically meant for unemployed persons. It is

also to be noted that STD PCO licensee's have been allowed to collect Rs. 2/- per STD/ISD call as service charges as per guidelines. The

commission was always based on a slab system which ensured that the licensee got a rate of return as the 20 paise per unit call retained for the first

10,000 calls in a month which assures that he got a minimum of Rs. 2000/- per month. At no time the department had instructed the petitioners to

install interfact attachment as alleged by the petitioners and promised that they will be entitled to the uniform rate of 20 paise commission if the

above specified instrument was installed. This is only a "call charge monitor".

34. It is submitted that the department had introduced two schemes namely 1. private attendant STD public telephones hired by individual. 2. Bulk

franchise for establishing public pay phones by voluntary organisations and private agencies. In respect of the private attendant STD, public phone

the tariff is regulated in accordance with Department of Telecommunications Letter No. 6-5/87 PHB dated 1-9-89 which prescribed a slab rate of

commission.

#### COMMISSION

##### PAYABLE

1. For the first 10,000

calls in a month 20 paise/unit call

2. For Calls between

10,000 and 15,000 10 paise/unit call

3. For Calls beyond

15,000 in a month 5 paise/unit call

In respect of the bulk franchise public pay phones the terms and conditions are as follows :

1. Each such organisation or private agency may be franchised for a minimum of 5 pay phones in a city or town.

2. The pay phones may be of coin/card/ token operated type at the choice of the party of the operating agency.

3. For each pay phones the Department will provide a telephone connection with an appropriate termination at the location of pay phones.

4. The operating agency will provide and maintain its own coin/card/token operated pay phone duly approved by the Department of

Telecommunications.

5. The operating agency will charge Re. 1/- per unit call from public. The agency will pay to the Department 80 paise and retain 20 paise for each as commission.

Therefore, the terms and conditions and commission rates in both the scheme are, entirely different. An analysis of STD/PCO Commission Rates is as detailed below :

#### ANALYSIS OF STD PCO COMMISSION RATES

DoTs Order No. Date Private STD PTs Bulk Franchised Pay phone (coin & and Date of Card operated)

Effect

No. 3I-10./ 88- 06-07- 80 paise/ unit to Department &20

PHB dated 6-7-88 88 paise/unit retained by the agency.

N0.6-S/87-PHB 01-09- First 10,000 calls 20 paise per Unit call

Dated 1-9-89 89

10,000-15,000 calls 10 paise per Unit call Same as Private STD PTs.

Beyond 15,000 calls 5 paiseper Unit call.

No. 6-5/87-PHB 01-01- 20 paise per unit up to 10,000 calls 80 paise per unit to Department and

Dated 22-12-89 90

10 paise per unit from 10001 to . 15,000 calls 20 paise as commission.

5 paise per unit beyond , 15,000 calls-

No. 6-I/90- 01-06- 20 paise per units up to 10,000 calls in a month Same rates as per private STD PTs.

PHBDated 2-5-91 91 .

10 paise per unit thereafter in a month.

No. 31-I3/91-PHB 24-7- 20 paise per 10,000 calls unit up to

Dated 24-7-93 93

15 paise per unit of 10,000-20,000 calls Same rate as per Private STD PTs.

10 paise per unit beyond 20,000 calls.

No. 31-50/95- 01-01- 16% of the call charges up to a gross turnover of

PHBDated 26-12- 96 Rs. 20.000/- p.m.

15% of the call charges on gross turnover same rate as per private STD PTs.

between Rs. 20,000/- and Rs. 50,000/- per month.

12% of the call charges on Cross turnover beyond Rs, 50,000/-p.m.

It was also clearly stated in DOT letter No. 6-5/87 PHB, dated 22-12-89, that different rate of commission is being prescribed for coin collection

box type STD pay phones as there is considerable difference in this scheme as compared to private STD PCOs. In the case of the former (coin

collection box STD pay phones), the equipment is financed by the franchisee who also to look after maintenance, security and provision of coins

etc., whereas in the case of STD PT licensees like the petitioner, these do not apply. The petitioners have not been provided with the license for

operating coin collection box STD pay phones nor they provided coin/token/ card operated STD pay phone and hence his claim for 20 paise per

unit call commission uniformly is not maintainable. The petitioners had not provided any pay phones and accordingly they were not given

commission under the pay phone franchise scheme. The inteltract instrument is a metering devise to enable the petitioners to bill the public for the

usage of STD/ PCO and is not a pay phone.

35. It is submitted that the revision of commission was in accordance with the policy decision taken by the department by virtue of the power

vested with the Government under the provisions of the Indian Telegraph Act and the rules made thereunder. It is submitted that the petitioners

were never entitled to uniform rate of commission as alleged. It is also incorrect to state that the rate of commission has been reduced, on the other

hand the rates of commission have actually been increased vide order dated 2-5-1991. Similarly it is also denied that the Notification No. 31-

12/91-PHB, dated 24-7-1993 is applicable only to the new allottees. It has been clarified in DOT Notification No. 31-13/91-PHB dated 5-10-

1993, that the revised guidelines including revised slab rate of commission were applicable to existing STD PTs.

36. The petitioners were never entitled to 20 paise uniform rate of commission

per unit call as alleged. The commission payable to the petitioners can be revised by the Government at any time without any notice. Accordingly, as and when the tariff was revised by the Government, bills were issued as per the revised tariff. The Telegraph Authority is vested with full powers to revise the tariff, at present, the petitioners are eligible for the commission as per the notification No. 31-50/95-PHB dated 26-12-1995. The following rates of commission as mentioned in the counter are therefore payable to the petitioners with effect from 1-1-1996,

1. 16% of the call charges up to a gross turnover of Rs. 20,000/- p.m.
2. 15% of the call charges on gross turnover between Rs. 20,000/- and Rupees 50,000/- p.m.
3. 12% of the call charges on gross turnover of beyond Rs. 50,000/- p.m.

37. The department has reiterated that at no point of time they promised uniform rate of commission to the petitioners. The petitioners had not

installed coin/card/token operated pay phone as per DOT's specification. Without establishing a pay phone instrument in any of the STD PTs

hired by the petitioners they cannot claim uniform rate of commission. When such being the case, the contention of the petitioners that the

Department is interfering with the entitlement of the petitioners for claiming uniform rate of commission is not at all justifiable and tenable.

38. As already seen, the provision of license to the petitioners is governed by a contract and Madras Telephones has acted in accordance with the

terms and conditions of the contract. The terms and conditions governing all STD PCO are the same and there is no question of treating unequals

as equals. The revised policy is uniformly applicable to all STD PT licensees existing and future. The contention that the petitioners are limning pay

phone with coin/card/token operated instrument is denied as false. The department in our opinion, has acted in accordance with the provisions of

the license and has in no way violated the principles of natural justice and fair play.

39. We are of the view that the revision of commission being a policy decision of the Government, cannot also be open to attack under the

provisions of Constitution. Further, the order revising the rate is not violative of any of the provisions of the Constitution. The allegations that the

revision would amount to variance of the contract under the supposition or

assumption that such a contract to pay commission at the rate of 20 paise uniformly existed even without the petitioner providing the "instrument" is erroneous. The revision was made as stated above consistent with the policy of the Government the revision was neither capricious nor arbitrary. It is made in public interest. Being a policy decision and being a reasonable revision there is no question of violation of the principles of natural justice nor could thereby be any question of applying the said principles.

40. The writ petitions filed by the petitioners are totally misconceived and untenable. The contention that the revision amounts to violating the terms and conditions of contract is not a matter to be gone into in a petition under Article 226 of the Constitution of India. Further, the revision squarely lies within the power of the Government of India. Apart from the fact that such power vests in the Government of India, the very agreements entered into by the petitioners enable the Government of India to revise the rates and the policies from time to time. The case involves the interpretation of contract and contractual obligations of the parties and the question as to what amount of commission the petitioners are entitled to, are the matters relating to contract. There is no breach of statutory obligation. Hence the Writ petitions are liable to be dismissed. The petitioners who had voluntarily accepted the conditions of the agreement are bound by the contract.

41. The revision of commission being the policy decision of the Government, in our view, cannot be open to attack under the provisions of the Constitution as long as it does not suffer from caprice, unreasonableness and actuated by ulterior motives and is in public interest. The rates of commission are decided as policy matters in fiscal planning and the Writ Petitions challenging the same and claiming the uniform rate of commission are not at all justifiable and tenable.

42. These writ petitions are devoid of merit both on facts and in law, hence, dismissed. However, there will be no order as to costs.

43. Petitions dismissed.