
(2001) 04 BOM CK 0002
In the Bombay High Court
Case No : Writ Petition No. 316 of 1998

Manohar Parrikar

APPELLANT

Vs

State of Goa and others

RESPONDENT

Date of Decision : 24-04-2001

Acts Referred:

Constitution of India, 1950 — Article 136, 141, 154, 156, 160
Electricity Act, 1910 — Section 23, 51A
General Clauses Act, 1897 — Section 21
Penal Code, 1860 (IPC) — Section 177, 182, 34, 403, 405
Prevention of Corruption Act, 1988 — Section 10, 11, 15, 7, 9

Citation : (2001) 04 BOM CK 0002

Hon'ble Judges : B.H. Marlapalle, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : V.P. Thali, for the Appellant; A.N.S. Nadkarni, Advocate General with H.R. Bharne, Government Advocate, M.J. Rane, F.N. Tavora, Additional Government Advocate and S.K. Kakodkar with Y.V. Nadkarni, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—The petitioner, who was at the relevant time a Member of the Legislative Assembly of Goa, has, by this petition filed under Article 220 of the Constitution of India, brought in question the legality, validity and propriety of two Government Notifications, i.e. 15th of May, 1996 and 1st of August, 1996 issued in respect of 25% rebate to be granted to the Low Tension, High Tension and Extra High Tension industrial consumers as a policy of the State Government. This petition was moved before us on or about 12th of August, 1998 and it came to be admitted by Order dated 1st February, 1999. The petitioner claims that he has approached this Court in public interest so as to save the exchequer from the liability of crores of rupees that would be payable to the industrial units in terms of the impugned Notifications by way of rebate. Before we examine the merits of the challenge, it would be desirable to set out some of the undisputed facts relevant for our considerations.

2. On 30th of September, 1991, the State Government issued a Notification granting 25% rebate in the tariff in respect of the power supply to the Low Tension and High Tension industrial consumers and this Notification was purportedly issued by invoking the powers u/s 23 read with section 51-A of the Indian Electricity Act, 1910 (Electricity Act, for short). The said Notification is reproduced hereunder:

"GOVERNMENT OF GOA Department of Power Notification 3/24//90-IND-Part (I)

In exercise of the powers conferred by section 23 read with section 51-A of the Indian Electricity Act, 1910 (Central Act 9 of 1910), the Government of Goa hereby directs that all Industrial Units who apply for availing High Tension or Low Tension Power supply on or after the 1st October, 1991, for bona fide industrial activities and certified by the industries Department. Government of Goa, as eligible for concessional tariffs, shall be entitled to a rebate of 25% in the tariffs chargeable under the No. 2/20/86-PS & WD dated 27-6-1988 published in the Official Gazette. Series I, No. 12, dated 28-6-1988, for a period of five years from the date on which, supply of electricity is made available to such units.

By Order and in the name of Governor of Goa. V. G. Manerkar, Under Secretary (Power) Panaji, 30th September, 1991."

3. A number of industrial units were thus assured rebate of 25% in the tariff for electrical energy supply so as to attract more industries for the development of the State and this rebate was available to the units which were given electric supply on or after 1-10-1991. This Notification was issued by following the stipulated procedure under the Business Rules formulated under Article 166(3) of the Constitution of India and the Cabinet decision so taken had finally culminated in it issued by order and in the name of the Governor of the State as per the Rules of Authentication framed under Article 166 (2) of the Constitution. Though this Notification was in subsistence, except the case of one industrial unit, none approached the State Government claiming the benefits arising out of it for a long period of time and, in fact, no such application was submitted admittedly till the 31st of March, 1995 on which date it came to be rescinded by the State Government by invoking the powers u/s 21 of the General Clauses Act read with section 23 and 51-A of the Electricity Act. This Notification of withdrawal of the benefits of 25% rebate was also issued in strict compliance of the Business Rules as well as the Rules of Authentication as framed under Article 166 of the Constitution and pursuant to the Cabinet decision and was also issued by order in the name of the Governor of the State. The same Notification is reproduced hereinbelow :

"GOVERNMENT OF GOA Department of Power Notification 2/23/03-Power

Read : Government Notification No. 3/24/90-IND-Part

(I) dated 30-9-1991 published in the Government

Extraordinary Gazette, Series I, No. 27 dated 3-10-1991.

In exercise of the powers conferred by section 23 read with section 51-A of the Indian Electricity Act 1910 (Act 9 of 1910) and section 21 of the General Clauses Act 1897 (Act 10 of 1897), the Government of Goa hereby rescinds the Government Notification

No. 3/24/90-IND-Part (I) dated 30-9-1991 published in the Official Gazette, Series I No. 27. dated 3-10-1991 (Extraordinary) with effect from 1-4-1995.

By order and in the name of the Governor of Goa. R.T. Khorjuvekar, under Secretary (Power) Panaji, 31st March, 1995"

4. Even after the Notification dated 31-3-1995 was issued, a number of industrial units approached the State Government and claimed benefit of 25% rebate on the basis of the Notification dated 30-9-1991 for the period from the date of supply of electricity till 31-3-1995. Some of these applications came to be rejected by the Chief Electrical Engineer on the grounds that these claimants were not covered by the Notification dated 30-9-1991 as they were falling in the Extra High Tension category of consumers which were not covered by the said Notification. The present Petitioner also brought in a Calling Attention Notice in the Legislative Assembly on 29th of June, 1995 seeking clarification from the State Government as to whether these industrial units were entitled for the benefit of 25% rebate upto 31st March, 1995 and the Minister for Power gave a specific reply to the said Calling Attention Notice No. 19 in the following words :

"As a part of incentive for setting up of industries in the State, the Government decided in 1991 to grant rebate at 25% in the tariff to bona fide Industrial Units and certified by the Industries Department as eligible for concessional tariff. This Government is committed to honour this concession already granted to the eligible industrial units. The above concession has however been withdrawn with effect from 1-4-1995 as per the Government Notification No. 2/23/03-Power dated 31-3-1995. The concessional tariff will be given to the consumers who apply for High Tension and Low Tension powers on or after 1-10-1991 to date of withdrawal 1-4-1995. The Government is considering the 25% rebate only on energy charges and not on other components of tariff such as.....charges."

"Now that the Government is seized of the problem that the concession was, in fact, not actually given to the eligible industrial units, detailed procedure for applying for the concession will be laid down and notified.

5. The Under Secretary in the Department of Power issued clarificatory note addressed to the Chief Electrical Engineer on 1-11-1995 on the lines of the reply given on the floor of the Assembly to the Calling Attention Motion moved by the petitioner. Such guidelines were again reiterated by the said Under Secretary vide communication dated 12-12-1995. At some point of time, the Government was satisfied that there was some difficulty in clearing the cases of the claim of rebate for the period upto 31-3-1995 and, therefore, there was a necessity to issue clarifications. However, the State Government came out with the first impugned Notification dated 15-5-1996 purportedly to amend the earlier

Notification dated 30-9-1991, which was already rescinded as per the Notification dated 31-3-1995. The said Notification dated 15-5-1996 read as under :

No. 2/23/93-Power Government of Goa Power Department, Secretariat, Panaji-Goa. Date : 15-5-1996. NOTIFICATION

In exercise of the powers conferred by section 23 read with section 51A of the Indian Electricity Act, 1910 (Central Act 9 of 1910), and section 21 of the General Clauses Act, 1897 (Central Act 10 of 1897), the Government of Goa hereby amends the Government Notification No. 3/24/90-IND-Part(I). dated 30th Sept., 1991, published in the Official Gazette (Extraordinary), Series I No. 27, dated 3rd October, 1991 (hereinafter referred to as the "said Notification"), as follows:

In the said Notification, for the words "High Tension or Low Tension power supply", the words and figure "High Tension/Extra High Tension or Low Tension power supply" shall be substituted.

By Order and in the name of the Governor of Goa,

Sd/- (Maria A. Rodrigues) Under Secretary (Power) Government of Goa."

6. The State Government further proceeded to issue the second impugned Notification dated 1-8-1996 restoring the facility of giving 25% rebate to the industrial units which were categorised in three groups, namely, Low Tension, High Tension and Extra High Tension consumers. This Notification also stated that the benefit of 25% rebate would be available from 1st August, 1996 to all those industrial units who had either applied or availed power supply as on that day. The said Notification reads as under :

"EXTRAORDINARY GOVERNMENT OF GOA Department of Power Notification 2/23/93/Power.

In exercise of the powers conferred by section 23 read with section 51A of the Indian Electricity Act, 1910 (Central Act of 1910) and in supersession of the Government Notification No. 3/24/90-IND/Part(I) dated 30-9-1991 published in the Official Gazette Series I No. 27 dated 3rd October, 1991 the Government of Goa hereby directs that all Industrial Units who apply or avail of Extra High Tension, High Tension or Low Tension power supply on or after the 1st October, 1991, for bona fide industrial activities and certified by the Electricity Department, Government of Goa as eligible for concessional tariffs shall be entitled to a rebate of 25% on energy charges only as per the prevailing tariff, in force, from time to time at which they are billed, for a period of five years from the date on which the supply of Electricity is made available to such units.

By order and in the name of the Governor of Goa. Smt. A Menezes, Under Secretary (Power). Panaji, 1st August, 1996."

7. There appears to have been some re-thinking in the Government's mind regarding its power to grant such rebate on the tariff and, therefore, by Order

dated 31-3-1998 passed by the Chief Electrical Engineer the benefit of rebate came to be withdrawn. This decision resulted in a spate of Petitions filed before this Court and they are Writ Petitions No. 199, 200, 239, 241, 242, 245, 246, 260, 262 to 279 of 1998. The petitioners, who were the industrial units, had mainly contended that the rebate facility granted by the Government as a policy decision could not be withdrawn by way of an administrative order dated 31st March, 1998 and, therefore, they were entitled for the benefit of the said rebate so long as the Notification dated 1-3-1996 was not withdrawn by following the proper procedure by the State Government and, more particularly, by issuing a specific Notification. During the pendency of these Petitions, the State Government addressed itself on the issues raised before this Court and the Cabinet passed a Resolution to withdraw the benefit of 25% rebate. This decision culminated in a Notification dated 24th July, 1998 thereby withdrawing this facility with effect from 1-8-1998. This group of Petitions came to be decided by this Court (Batta and Patil, JJ.) by Judgment and Order dated 21st January, 1999 and the operative part of the said Order reads as under:

"ORDER

1. It is hereby held that the Circular dated 31st March, 1998 issued by respondent No. 2, suspending release of rebate with immediate effect as well as suspension of rebate agreed to be given in sixty monthly installments has no legal efficacy and it is invalid and inoperative.
2. The Notification dated 24th July, 1998, published in the Official Gazette dated 27th July 1998 which is challenged by the petitioner in Writ Petition No. 238/1998 is held to be legal, valid and operative. It does not suffer from any infirmity.
3. All the petitioners are entitled to 25% rebate in power tariff for the periods as indicated in paragraph 56 of this judgment.
4. The rebate shall be adjusted in sixty equal installments minus the installments which have already been adjusted.
5. The rebate in all cases with effect from 1st August, 1996 till 24th July 1998 shall be on energy charges only as per the prevailing tariff in force from time to time at which they were to be billed during the said period.
6. The disconnection of electric connection of the petitioners in Writ Petition No. 239/1998 and 244/1998 is held to be not proper.
7. The power supply of the aforesaid two petitioners shall be restored (in case it is not already restored) by working out the dues of rebate payable to them as aforesaid in installments.
8. The dues, in any, minus first installment shall be paid by the petitioners within a period of thirty days from today.
9. All the petitions are disposed of to the abovementioned terms and Rule is

made absolute accordingly.

10. In the circumstances of the cases, we leave the parties to bear their respective costs."

8. The Judgment of this Court was carried in SLP Nos. 6847-58 of 1999 and leave to appeal was granted by Order dated 12th May, 1999. Finally, by Order dated 13th of February, 2001, these cross-appeals came to be dismissed by the Apex Court in terms of the following Order:

"The High Court by the impugned judgment has held that the circular dated 31st March, 1998 issued by the Government of Goa suspending the release of rebate with immediate effect as well as suspension of rebate agreed to be governed in sixty monthly installments has no legal efficacy and is, therefore, invalid. The High Court has further held that the notification dated 24th July, 1998 is legal and valid. Consequently the High Court directed that the writ petitioners are entitled to 25% rebate in power tariff till 26th July, 1998. This has been challenged by means of the present appeals. Second set of appeals have been filed by the writ petitioners against the judgment of the High Court whereby and whereunder the High Court has held that notification dated 27th July, 1998 is valid.

We have heard counsel for the parties and perused the record. The High Court has taken the aforesaid view after taking into consideration overall facts and circumstances and inasmuch as public interest which, according to us, is very balanced view of the matter. We, therefore, are not inclined to interfere with the matters.

Both the sets of appeals fail and are accordingly dismissed. There shall be no order as to costs."

9. In the meanwhile, the present Petitioner had moved Miscellaneous Civil Application No. 637 of 1999 on or about 8-12-1999 praying for leave to withdraw the Petition with liberty to approach afresh to challenge the legality of the impugned Notifications after the pending Appeals were decided by the Supreme Court. This Application came to be rejected by Order dated 27th January, 2000 by this Court (Batta and Khandeparkar, JJ.). It appears from the said Order dated 27th January, 2000 that at one point of time the Petitioner also had moved a motion for hearing of this petition along with earlier group of petitions, i.e. the writ Petition No. 199 of 1998 and others and this prayer was withdrawn.

10. Coming to the challenge raised in this Petition, it would be desirable to reproduce the prayers made by the Petitioner :

(a) An order declaring 1996 Notification as also notification dated 15-5-1996 as null and void and to nullify any effect given to the same.

(b) An order declaring the guidelines as framed by letter dated 12-12-1995 as illegal to the extent it goes beyond the scope of 1991 Notification.

(c) A writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction to quash and set aside the guidelines dated 12-12-1995 to the extent they go beyond the 1991 Notification.

(d) An order or direction to call for the status of investigation report by the anti-corruption cell of the CID branch of Panaji Town Police and direct the said agency to complete the investigation as early as possible.

(e) A Writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction to direct the respondents to initiate the recovery proceedings in respect of all those units to whom the 25% rebate has been actually paid or adjusted illegally and in breach of the original 1991 Notification, and fix the personal accountability on the concerned public servants or authorities for causing loss to the State Exchequer.

(f) To pass an order or direction to call for the statue of investigation report by the anti corruption cell of the CID branch of Panaji Town Police and direct the said investigating agency to complete the investigation as early as possible."

11. It is also required to be noted that before the Petitioner moved the instant Petition, he had filed a written complaint on 11-5-1998 under various provisions of the Indian Penal Code as well as the Prevention of Corruption Act against the respondent No. 2 as well as the Chief Electrical Engineer in the matter of 25% rebate on tariff. This complaint was registered at Panaji Town Police Station under Crime No. 106 of 1998 for offences punishable under sections 7, 9, 10, 11, 15 of the Prevention of Corruption Act, 1988 as well as sections 177, 182, 403, 405, 409, 463 read with section 34 of the Indian Penal Code, on 13-5-1998. The case was subsequently handed over to the CID Anti Corruption Branch on 4-12-1998 and the investigation report come to be submitted before this Court on 1st February, 1999 when the Petition was admitted.

12. At the outset, we make it clear that we are limiting the scope of this Petition only to the extent of the challenge to the impugned Notifications dated 15th May and 1st August, 1996 and so far as the other reliefs prayed for are concerned, the petitioner may, if so advised, resort to an alternative remedy before a competent forum. In support of his challenge to these Notifications, the Petitioner has contended that (a) these Notifications have not been issued in compliance with the requirements of Article 154 read with Article 166 of the Constitution and the Business Rules framed thereunder by the Governor, (b) the retrospective effect of the benefit of availing rebate in tariff given by these Notifications is illegal and is not bonafide; (c) there was no budgetary provision made for these benefits to be extended during the relevant financial years, (d) the Notifications were not issued by the Government as is contemplated within the meaning of Articles 154 and 166 of the Constitution of India and, in fact, they were issued only at the instance and as per the orders passed by respondent No. 2, i.e. the Minister for Power at the relevant time and, therefore, these Notifications could not be termed as the decisions of the State

Government, (e) in the Notification dated 1-8-1996, the amendment of the expression "apply for availing" and substituting the same by expression "apply or avail" has overridden the very scope of the Notification dated 30th September, 1991 which was not permissible in law, (f) the Notification dated 15-5-1996 could not have been issued when the earlier Notification dated 30-9-1991 was already rescinded by Notification dated 31-3-1995 and life could not have been infused in the Notification which never existed, (g) any addition to the said Notification, like the addition of Extra High Tension consumers with retrospective effect from 1-10-1991 was beyond the scope of the Notification dated 30-9-1991.

13. The respondent No. 2 has filed an Affidavit-in-reply and opposed the Petition. It has been contended that the impugned Notifications have been issued in keeping with the well-established procedure and the allegations that these Notifications are illegal have been denied. The Notifications have been issued in the normal course of the Government business and for bona fide purposes, namely, to promote the industrial growth of the State so as to generate more opportunities of employment and there is nothing improper or illegal in that exercise. Shri Kakodkar, the learned Senior Counsel appearing for the respondent No. 2, submitted that even if the said Notifications are held to be contrary to the Business Rules framed under Article 166 (3) of the Constitution, the said Rules are only directory and failure to comply with these Rules would not in any way vitiate the authenticity of these Notifications and in any case if it was realised by the Government at any point of time that these Notifications were issued without following the procedure as laid down, nothing came in the way of the Government to withdraw the said Notifications and the mere fact that there was no such action taken by the Government for almost two years would itself indicate that the Government was satisfied that these Notifications were issued properly and legally. The learned Senior Counsel has also taken a preliminary objection regarding the maintainability of this Petition on the ground that once the impugned Notifications have been authenticated as per the Business Rules, they are immune from any challenge, and the petitioner is presently the Chief Minister of Goa and there cannot be a situation where the petitioner and the contesting respondents State Authorities are together, the intentions in filing this Petition were not bona fide and the Petition was moved only for settling political scores and to gain political mileage, the contradictory stand taken by the Government by filing two different affidavits under the signature of the Chief Electrical Engineer itself goes to show that the Government has virtually walked into the shoes of the petitioner and the Government cannot support the challenge to the Notifications issued by it. Even if the Petition was pro bono when it was filed, it did not remain to be so after the petitioner has taken over the reigns of the State Government, the judgment rendered by this Court on 21st January, 1999 in Writ Petition No. 199 of 1998 and the other connected matters has conclusively decided the issue regarding the legality of both these Notifications and, therefore, it is not open for this Court to re-examine the said point, specially when the said judgment has been confirmed by the Apex Court

by rejecting the Appeals vide Order dated 13th February, 2001.

14. Shri Kakodkar has referred to the observations made by this Court in its Judgment dated 21st January, 1999 wherein it has been observed that the Notification dated 30-9-1991 was deemed to be in existence and the Notifications dated 15-5-1996 and 1-8-1996 were only clarificatory in nature, and they did not deal with any new benefits to the power consumers. The learned Senior Counsel also referred to the observations in Para 25 of the said Judgment and urged before us that the petition is required to be dismissed and this Court should not invoke its extraordinary powers under Article 226 of the Constitution when the issues raised have been finally concluded in the earlier Judgment. In support of these contentions, reliance has been placed on the following Judgments of the Supreme Court:

State of Assam and another vs. Raghava Rajgopalachari, (1972) 7 SLR 44, Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, , The State of Bihar Vs. Rani Sonabati Kumari, , R. Chitralekha and Another Vs. State of Mysore and Others, and I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, . He has also relied upon a Judgment of the Full Bench of this Court in the case of Chandrakant Sakharam Karkhanis and Others Vs. State of Maharashtra and Others, and of Kerala High Court in Ramadas Movies House Vs. Trichur Municipal Council and Others, .

15. Shri Pereira, the learned Senior Counsel, who addressed us pursuant to our Order dated 11th April, 2001 in Writ Petition No. 254 of 1999 and his oral application as an intervenor on behalf of the Petitioners in Writ Petitions Nos. 277, 254 and 364 of 1998, while supporting the arguments advanced by Shri Kakodkar, has expanded the preliminary objections regarding the maintainability of this Petition on the grounds of res judicata and the concept of merger of our earlier Judgment dated 21st January, 1999. He contended that the issues which have been raised by the Petitioner have been considered by this Court in the Judgment dated 21st January 1999 and the findings recorded therein have been confirmed by the Apex Court and, therefore, it is not open for the State Government now to raise the challenge to the impugned Notifications and especially when the Appeals before the Supreme Court were purportedly considered on the basis that the Notification dated 1-8-1996 was upheld by this Court. He has also referred to the contradictory affidavits filed by the State Government and followed the arguments of Shri Kakodkar not to exercise the inherent powers under Article 226 of the Constitution in favour of the Petitioner. In support of these contentions, he has relied upon the Judgments of the Supreme Court in the case of (1) Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another, , (2) Keshav Ram and Co. vs. Union of India, 1989 (3) SCC 131, (3) Ambika Prasad Mishra vs. State of Uttar Pradesh, AIR 1980 SC 1762, (4) T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others, , (5) Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and

Others, , (6) Chimajirao Kanhojirao Shirke and Another Vs. Oriental Fire and General Insurance Co. Ltd., (7) K. C. P. Ltd vs. Commissioner of income tax, Bangalore, (2000) 6 SCC 667 and (8) Kunhayammed and Others Vs. State of Kerala and Another, . It would, therefore, be appropriate for us to deal with these preliminary objections before we proceed to decide the challenge to the impugned Notifications.

16. We have no hesitation to hold that the Petition is not required to be dismissed on the ground of merger of the earlier decision dated 21st January, 1999 with the Order of the Apex Court or on the ground of res judicata. There is no dispute that the illegality of these Notifications was not challenged in the Petitions which came to be decided on 21st January, 1999 and, in fact, the said challenge could not have been raised for the simple reason that the Petitioner's claim was entirely based on the existence of these two Notifications. When the Petitioner moved miscellaneous Civil Application No. 637 of 1999 with the prayer to allow him to withdraw the Petition for the reasons stated therein, this Court while rejecting the said application by Order dated 27th January, 2000, gave the following reasoning :

"It appears that at one stage the applicant had prayed for taking up the Writ Petition No. 316/1998 along with the other batch of Writ Petitions, but the said prayer was withdrawn. In the said bath of Writ Petitions, challenge had been thrown to the decision of Government of Goa communicated by the Chief Electrical Engineer vide Circular dated 31st March, 1998 to suspend the release of 25% rebate of power tariff to the industrial consumers. There was no challenge whatsoever to Notification dated 15th May, 1996, or Notification dated 1st August, 1996, or that the said Notifications were null and void and to nullify any effect given to them in the earlier batch of Writ Petitions which declaration is now sought by the Writ Petition No. 316/1998. There was also no challenge to the guidelines framed by letter dated 12th December, 1995, which is sought to be challenged in the Writ Petition No. 316/1998 on the ground that it is illegal to the extent it goes beyond the scope of 1991 Notification. No direction had been sought in the earlier batch of Writ Petitions for investigation into the grant of rebate, or for initiating recovery proceedings against those units to whom 25% rebate had actually been paid, or adjusted, or to fix accountability of the concerned public servant, or authorities for causing loss to the State exchequer. After taking us through the Judgment, learned advocate for the applicant himself admitted that none of the declarations or directions claimed in Writ Petition No. 316/1998 had been sought in the earlier batch of Writ Petitions. Therefore, it cannot prima facie be said that the controversy in the earlier batch of Writ Petitions and the Writ Petition in question is the same.

In the circumstances, in our opinion, there is no case made out for permitting the applicant to withdraw the Writ Petition No. 316/1998. Accordingly, the application is hereby dismissed."

There was no challenge whatsoever to the Notifications dated 15th May, 1996

and 1st August, 1996 and the declaration now sought in the instant Writ Petition was not in issue in the earlier batch of Petitions. After taking us through the Judgment, the learned Senior Counsel himself admitted that none of the declarations or directions in Writ Petition No. 316 of 1998 had been sought in the earlier batch of Writ Petitions. Therefore, it cannot be said that the controversy in the earlier batch of writ petitions and the writ petition in question is the same. This Order dated 17th January, 2000 has now become final though it was an interlocutory order rejecting Miscellaneous Civil Application No. 637 of 1999. This Court was more than convinced that the challenge raised in Writ Petition No. 316 of 1998 was not an issue for consideration before it while handing down the Judgment dated 21st January, 1999. It is for these reasons, the principle of *res judicata* will not be applicable in the instant case.

17. It is true that the Appeals challenging the Judgment dated 21st January, 1999 have been dismissed by the Apex Court and the findings of this Court on the relevant issues have been impliedly confirmed by the Apex Court. In the case of *Kunhayammed vs. State of Kerala* (supra) the Supreme Court has elaborately dealt with the issue of the concept of merger of a lower Court's decision with the Order passed by the Higher Court and in Para 44 of the said Judgment, the conclusions have been recorded. It would be appropriate to reproduce the said conclusions :

"(i) Where an appeal or revision is provided against an order passed by a Court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the SLP is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content of subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does" not attract the doctrine of merger. An order

refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the Court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the Court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the SLP or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47, Civil Procedure Code."

This judgment is squarely applicable on the issue of merger and it is clear that the judgment dated 21st January, 1999 delivered by this Court is merged with the Order of the Apex Court passed on 13th February, 2001. Notwithstanding this legal position, we must observe that the concept of merger will not come in our way in deciding the issues involved in this petition for the simple reason that these issues were not raised and, therefore, were not required to be decided in the earlier Judgment dated 21st January, 1999 as is clear from the Order passed in Miscellaneous Civil Application No. 637 of 1999 on 27th January, 2000. There was no occasion for the Government in the earlier batch of Petitions to address itself on the challenge raised to the impugned Notifications in this petition and the earlier batch of Petitions, proceeded solely against the challenge to the Order dated 31-3-1998 and the subsequent Notification issued by the State Government on 24th July, 1998. The State Government opposed those petitions without examining the legality of the Notifications dated 15-5-1996 and 1-8-1996 and contended that the benefit of rebate was withdrawn as the State Government was facing financial crunch. The State Government had also contended that this benefit of rebate on tariff was introduced as a policy of the State Government and when the State Government realised that it was facing financial difficulty to extend the benefit of rebate/concession, it decided to withdraw the same. The decision to withdraw the benefits pursuant to the Notification dated 24th July, 1998 has been upheld by this Court. Under these

circumstances, it cannot be now said that the State Government cannot take a stand that the impugned Notifications were issued without following the mandatory provisions or that they were issued illegally or they were not Notifications issued by the State Government in the eyes of law. If the State Government had no occasion to address itself on the legality of these Notifications, it is not estopped from either raising a challenge or supporting the challenge at an appropriate time. Even otherwise, the petitioner was not a party in the earlier batch of petitions and his application to hear the Writ Petition No. 316 of 1998 along with the said batch of Petitions was withdrawn. He is not estopped from continuing with his challenge against the Notifications dated 15-5-1996 and 1-8-1996, in the circumstances noted hereinabove.

18. Shri Pereira, the learned Senior Counsel appearing for the intervenors, also urged before us that the two different affidavits filed by the Chief Electrical Engineer in this petition are conflicting with each other and the State Government cannot be allowed to take such a contradictory stand. This is highlighted more so because there has been a change in the Government during the intervening period and the present Petitioner himself is the Chief Minister of the State as at the present. We have abundantly made it clear that the challenge raised in the petition cannot be decided on the touchstone of such affidavits even if they are contradictory in nature and the challenge has to be decided on its own merits as well as by examining the record qua the Constitutional mandate. In a democratic set-up, the decisions of the Government decide the destiny of the people and, therefore, the validity of such decisions must be examined not on the basis of the affidavits filed by the Government Officers or incomplete or inadequate information made available, but on the basis of the Constitutional provisions and the Business Rules as have been framed by the Government. This Court is dutybound to examine the record to reassure itself that the decisions purported to have been taken by the Government are, in fact and in law, the decisions of the Government and they are in conformity with the mandate of the Constitution. We, therefore, find no merit in the preliminary objections raised regarding the maintainability of the Petition and there is no bar which operates against our powers under Article 226 to decide the issues raised in the instant Petition. This is more so when the affidavit filed by the State Government under the signature of the Chief Electrical Engineer demonstrates that the State Exchequer is likely to suffer a financial loss to the tune of about 40 to 50 crores of rupees and even if the State Government had already granted the subsidy for some period based on these impugned Notifications, that itself will not be a reason for us to detain ourselves in examining the challenges raised in this petition.

19. Under Article 154 of the Constitution, the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through Officers subordinate to him in accordance with the Constitution. Article 162 states that subject to the provisions of the Constitution, the executive power of the State shall extend to the matters with respect to which the Legislature of

the State has power to make laws. Under Article 160, the President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in Chapter II, of Part VI. As per Article 163, there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under the Constitution required to exercise his functions or any of them in his discretion. As per Article 164, the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the Governor. The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. Article 166 sets out the procedure for conduct of business of the Government of a State and states that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor and Clause (2) of the said Article states that Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in the rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. Under Clause (3), the Governor is required to frame Rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under the Constitution required to act in his discretion. Article 167 casts duty on the Chief Minister for furnishing information and it reads that it shall be the duty of the Chief Minister to communicate to the Governor of the State all the decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for and if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

20. The State Government has framed the Rules of Authentication as required under Article 166(2) and the Governor has framed Business Rules under Article 166(3). As per the Rules of Authentication, the Under Secretary in any Department of the State Government is a competent Officer to sign the Government Notifications "by Order and in the name of the Governor". The Rules of Business of the State Government as well as the Authentication Rules have been placed before us. These Rules have been issued in exercise of the powers conferred by Clauses (2) and (3) of Article 166 of the Constitution of India and in supersession of all the previous Rules made in that behalf. Rule 2(c) of the Business Rules defines the term "Council" and it means "the Council of Ministers constituted under Article 163". For the purpose of our decision in this petition, it would be appropriate to reproduce the relevant Business Rules and they are as under:

"3. The business of the Government shall be transacted in accordance with these

Rules.

4. The Business of the Government in relation to matters with respect to which the Council is required under Article 163 shall be transacted and disposed of in accordance with the provisions of Chapter III.

6. (1) The Council shall be collectively responsible for all executive orders issued from any department in the name of the Governor or contracts made in exercise of the powers conferred on the Governor or any officer subordinate to him in accordance with these Rules, whether such orders or contracts are authorised by an individual Minister on a matter pertaining to the Department under his charge or as the result of discussion at a meeting of the Council or howsoever otherwise.

(2) Without prejudice to the provisions of sub-rule (1), the Minister in charge of a Department shall be primarily responsible for the disposal of the business pertaining to that Department.

7. (1) Unless the case is fully covered by the power to sanction expenditure or to appropriate or re-appropriate funds conferred by any general or special orders made by the Finance Department, no Department shall, without the previous concurrence of the Finance Department, issue any order, which may

(a) involve any abandonment of revenue or involve any expenditure for which no provision has been made in the appropriation Act;

(b) involve any grant of land or assignment of revenue or concession, grant, lease or licence in respect of mineral or forest rights or rights to water, power or any easement or privilege;

(c).....

(d) otherwise have a financial bearing whether involving expenditure or not.

(2) No proposal which requires previous concurrence of the Finance Department under this rule, but in which the Finance Department has not concurred, may be proceeded with unless a decision to that effect has been taken by the Council.

9. Subject to the orders of the Chief Minister under rule 10, all cases referred to in the Schedule shall be brought before the Council in accordance with the provisions contained in this Chapter :

Provided that no case in regard to which the concurrence of the Finance Department is required under Rule 7 shall, save in exceptional circumstances and under the directions of the Chief Minister, be discussed by the Council unless the Finance Minister has had opportunity of considering it.

10. All cases referred to in the Schedule shall be submitted to the Chief Minister after consideration by the Minister in charge, with a view to obtaining his orders for the circulation of the case under Rule 11 or for bringing it up for consideration at a meeting of the Council.

11. (1) The Chief Minister may direct that any case submitted to him under rule 10 may, instead of being brought for discussion at a meeting of the Council, be circulated to the Ministers for opinion, and if all the Ministers are unanimous and the Chief Minister thinks that a discussion at a meeting of the Council is unnecessary, the case shall be decided without such discussion. If the Ministers are not unanimous or if the Chief Minister thinks that discussion at a meeting is necessary, the case shall be discussed at a meeting of the Council.

13. When it has been decided to bring a case before the Council, the Department to which the case belongs shall, unless the Chief Minister otherwise directs, prepare a memorandum indicating with sufficient precision the salient facts of the case and the points for decision. Copies of the memorandum and such other papers as are necessary to enable the case to be disposed of shall be forwarded to the Secretary to the Council who shall arrange to circulate the memorandum to the Ministers and simultaneously send a copy thereof to the Governor.

14. In case which concern more than one Department, the Ministers shall attempt by previous discussion to arrive at an agreement. If an agreement is reached, the memorandum referred to in rule 11 of rule 13 shall contain the joint recommendations of the Ministers; and if no agreement is reached, the memorandum shall state the points of difference and the recommendations of each of the Ministers concerned.

16. The decision of the Council relating to each case shall be separately recorded and after approval by the Chief Minister or the Minister presiding, shall be placed with the records of the case. Extract of the decision shall be sent to the Secretary of the Department who will then take necessary action thereon.

17. Except as otherwise provided by or under these Rules, cases may be disposed of or under the authority of the Minister-in-charge who may, by means of standing orders, give such directions as he thinks fit for the disposal of cases in the Department. Copies of such standing orders shall be sent to the Chief Minister and the Governor.

19. Every Monday (or if is a holiday, on the next working day) the Secretary shall submit to the Minister-in-charge a statement showing the particulars of the important cases if any disposed of in the Department by the Minister and the Secretary and other officers during the preceding week. A copy of the said statement shall be simultaneously submitted also to the Chief Minister and the Governor.

20(1) When the subject of a case concerns more than one Department, no order shall be issued (nor shall the case be laid before the Council) until it has been considered by all the Departments concerned, unless the case is one of extreme urgency.

27. The Finance Department shall be consulted in all cases in which its previous

concurrence is necessary under these Rules.

28. When the Finance Department is consulted under these Rules, the views of that Department shall be brought on to the permanent record of the Department to which the case belongs and shall form part of the case.

43. Whenever it is proposed in any Department (other than the Law Department):

- (i) to issue a statutory rule, notification or order;
- (ii) to sanction under a statutory power the issue of any rule, bye-law, notification or order by a subordinate authority; or
- (iii) to submit to the Central Government any draft statutory rule, notification or order for issue by them the draft shall be referred to the Law Department for opinion and for revision where necessary.

44. (1) All administrative Departments shall consult the Law Department on :

- (a) the construction of statutes, Acts, regulations and statutory rules, orders and notifications;
- (b) any general legal principles arising out of any case;
- (c) the institution or withdrawal or any prosecution at the instance of any administrative Department; and
- (d) the preparation of important contracts to be entered into by the Government.

46. The Chief Secretary and the Secretary of the Department concerned are severally responsible for the careful observance of these Rules and when either of them considers that there has been any material departure from them, he shall personally bring it to the notice of the Minister-in-charge, the Chief Minister and the Governor.

21. As required under Rules 9 and 10, there is a Schedule annexed to the Rules listing out various items and Items No. 5, 9 and 30, which are relevant for the present purpose, read as under:

"5. Any proposal which affects finances of the State which has not the consent of the Finance Minister.

9. Proposals involving any important change in policy or practice.

30. Proposals to vary or reverse a decision previously taken by the Council."

22. We are, therefore, required to examine whether the impugned Notifications have been issued in compliance with the provisions of Article 154 read with Article 156 of the Constitution of India and the Rules of Business of the Government of Goa. Before we proceed further, it would be also necessary to deal with the issue regarding the Rules being mandatory or directory in nature in

the instant case. Article 154 mandates that the executive power of the State shall be vested in the Governor and it has to be exercised by him either directly or through Officers subordinate to him in accordance with the provisions of the Constitution. The Council of Ministers with the Chief Minister at its head is required to advise the Governor in exercise of his functions except those specifically stated, in discharge of his functions as the Head of the State and the Council of Ministers is collectively responsible to the Legislative Assembly of the State. The Rules framed under Article 166(3) are for the more convenient business of; the Government and for allocation amongst the Ministers of the said business. The decision of the State is required to be authenticated as per Rules framed under Article 166(2). The scheme of the Constitution, therefore, envisages that any decision taken by the State Government reflects the collective responsibility of the Council of Ministers, which impliedly means the participation of the Council of Ministers in such decision-making process. The Chief Minister as the Head of the Council of Ministers is answerable not only to the State Legislature, but also to the Governor and the Council of the Ministers functions under his tutelage. The Governor being the Head of the State, is required to act on the advice of the Council of Ministers headed by the Chief Minister. The Rules framed under Article 166(3) of the Constitution are in aid to fulfill the Constitutional mandate as embodied in Chapter II of Part VI. It would be, therefore, imperative that the decisions taken by the State Government meet the requirements of these Rules as well. It has been contended before us that the Rules framed under Article 166(3) are only directory in nature and failure to comply with such Rules does not nullify the decision taken by the State Government. A number of decisions of the Apex Court as referred to hereinabove have been cited in support of this proposition. In the case of *Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, , the Supreme Court (majority) held :

(a) Strict compliance with the requirements of Article 166 gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that Article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself;

(b) Article 166 directs all executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity. Therefore, all that the procedure established by law requires is that the appropriate Government must take a decision;

(c) Article 166 of the Constitution which purports to lay down the procedure for regulating the business transacted by the Government of a State should be read as a whole. Under Clause (3), the Governor is to make rules for the more convenient transaction of such business and for allocation of the same among the Ministers in so far as it does not relate to matters in regard to which the

Governor is required to act in his discretion. It is in accordance with these rules that business has to be transacted.

23. In the case of *Gulabrao Keshavrao Patil and Others Vs. State of Gujarat and Others*, , the scope of Article 166 of the Constitution came up for examination before the Apex Court and it held, *inter alia*, that

(a) the decision of a Minister under the Business Rules is not final or conclusive until the requirements in terms of clauses (1) and (2) of Article 166 are complied with;

(b) Under Article 166(3), the Governor is authorised to make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under the Constitution required to act in his discretion. In other words, except in cases when the Government in his individual discretion exercises his constitutional functions, the other business of the Government is required to be conveniently transacted as per the Business Rules made by Article 166 (3) of the Constitution. If the decision of the Government is duly authenticated as per Article 166(2) and the Business Rule 12, conclusive and irrebuttable presumption arises that the decision was taken according to Rules.

(c) the business of the State is a complicated one and has necessarily to be conducted through the agency of large number of officials and authorities. The action must be taken by the authority concerned in the name of the Raj Pramukh. The Minister is no more than an advisor and as the head of the State, the Governor or the Raj Pramukh has to act with the aid and advice of the Council of Ministers. Until the advice is accepted by the Governor, whatever the Minister or the Council of Ministers may say with regard to a particular matter, does not become the action of the State until the advice of the Council of Ministers is accepted by the head of the State.

The Apex Court further referred to the Constituent Assembly Debates, Vol. VIII, page 546 and observed :

"The object of allotment of the subject to a Minister is for the convenient transaction of the business at various levels through designated officers. The ultimate object is to secure an impartial, pure and efficient administration as propounded by Dr. Ambedkar....."

24. In the case of *Common Cause, A Registered Society Vs. Union of India and Others*, , it has been held that the authenticity, validity and correctness of an Order made under Article 154 read with Article 166 can be examined in spite of the order having been expressed in the name of the Governor.

25. If the decision of the Government is not in conformity with the mandate of Articles 154 and 166 of the Constitution as well as the Business Rules framed thereunder, such decision would not have the form of a Government decision and

it will be a nullity in the eyes of laws. If it is held otherwise, the implication would be disastrous. The word "convenient" as used under Article 166(3) carries a larger meaning and it has to be read in the context of the Government Business. As per Black's Law Dictionary, the term "convenient" means "proportionate, just, suitable, fit adopted, becoming appropriate". The convenient transaction of the business of the Government would, therefore, imply that the business is transacted in a just and fit manner in keeping with the Business Rules framed and as per the requirements of Article 154. If a decision is taken by an individual Minister and the Council of Ministers or the Chief Minister has not been a party to such a decision, there is no doubt that the decision of the individual Minister cannot be a decision of the State Government. The decisions which do not comply with the requirements of Business Rules could be non est and void ab initio.

26. In the case of Haridwar Singh Vs. Bagun Sumbrui and Others, , the Supreme Court had an occasion to deal with such issues and, more particularly, the implications of non-compliance of Business Rules. In Paragraphs 14 and 15 of the said Judgment, the Apex Court observed :

"14. Where a prescription relates to performance of a public duty and invalidate acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, such prescription is generally understood as mere instruction for the guidance of those upon whom the duty is imposed.

15. Where however, a power or authority is conferred with a direction that certain regulation or formality shall be complied with, it seems neither unjust nor incorrect to exact a rigorous observance of it as essential to the acquisition of the right or authority."

The Apex Court further went to observe in Paragraph 16 thus:

"Further, Rule 10(2) makes it clear that where prior consultation with the Finance Department is required for a proposal, and the department on consultation, does not agree to the proposal, the department originating the proposal can take no further action on the proposal. The cabinet alone would be competent to take a decision. When we see that the disagreement of the Finance Department with a proposal on consultation, deprives the department originating the proposal of the power to take further action on it, the only conclusion possible is that prior consultation is an essential pre-requisite to the exercise of the power."

These observations were made while examining the Business Rules framed by the State of Bihar under Article 166(3) of the Constitution and they must equally apply in the instant case as well. We, therefore, have no hesitation to hold that the Business Rules framed under Article 166(3) of the Constitution must be strictly adhered to and any breach of such Rules will render the Government decision as a nullity in the eyes of law.

27. We have gone through the files produced before us and it is necessary for us to record certain events as are reflected in the said files. The Cabinet meeting held on 21-7-1994 decided to withdraw the rebate of 25% in the power tariff with effect from 1-4-1995 and, accordingly, this decision culminated into the Notification dated 31-3-1995. The reply given to the Petitioner's Calling Attention Notice apparently moved the State Machinery to formulate a scheme for granting the rebate of 25% for the period from 1-10-1991 to 31-3-1995 and, therefore, the Chief Electrical Engineer was called upon to formulate a scheme by the Minister of Power on 8-7-1995. Pursuant to these directions, a note was prepared in respect of the proposed scheme. Clarifications were sought from the Law Department on the extension of the period of 25% rebate policy since the earlier Notification was rescinded by Notification dated 31-3-1995. A note put up by the Law Department on 25-8-1995 clearly suggested that the rebate of 25% would be available only for the period between 1st October, 1991 to 31st March, 1995 and the industrial units who were given supply on or after 31st March, 1995 would not be entitled for the same.

On 14-2-1996, the Chief Electrical Engineer submitted a note proposing to amend the rebate notification requesting to extend the benefit of 25% rebate to Extra High Tension consumers and, accordingly, the draft of such an amendment was placed for approval. When this draft was referred to the Law Department, it was specifically opined that it will not be legally permissible to give retrospective effect to the proposed notification. In view of the elections scheduled on 2nd May, 1996, the proposed amendment was not effected though it was approved by the Minister for Power. On 3-5-1996, the Minister passed an Order to issue the amendment notification as the elections were over and, accordingly, the Notification dated 15-5-1996 came to be issued, though the subject-matter was never placed before the Council of Ministers or before the Chief Minister and the Notification was issued solely as per the directions of the Minister for Power, in spite of the fact that the Secretary in the Department of Law had opined that the retrospective effect in the proposed amendment could not be given as it involved additional class of power consumers.

28. The subject of re-introduction of 25% rebate was again taken up by power Department at the instance of the Industries Department and in view of the continued demands for such a rebate from the industries. This was considered by the Power Department and the Chief Electrical Engineer was called upon to submit a proposal. A query was also raised regarding the role of the Industries Department as well as the Electricity Department in issuing the eligibility certificates. The note submitted by the Chief Electrical Engineer on 25th July, 1996 indicated that such certificates shall be given by the Electricity Department as that was the department giving the subsidy. The Commissioner and Secretary (Power) submitted a detailed note on 30th July, 1996 to the Minister for Power and the Minister conveyed his approval with the minor changes, namely, the words "all industrial units who apply for availing power on or after 1-10-1991" were to be substituted by the words "all industrial units who apply or avail on or

after 10-1-1991" and the rebate was to be given on energy charges on the prevailing tariff from time to time as against the earlier Notification where the 25% rebate was to be given on the tariff as per the Notification dated 27-6-1988. As per the said decision given by the Minister, the Notification dated 1-8-1996 came to be issued without there being any consultation with the Council of Ministers or without the proposal being placed before the Council of Ministers or the Chief Minister as well as the consultation by the Finance Department, though the draft was referred to the Law Department before the Notification was issued.

29. In the case of Chandrakunt S. Kharkanis and others (supra), a Full Bench of this Court was, inter alia, required to examine Business Rules framed by the Governor of Maharashtra under Article 166 of the Constitution and Rule 9 of the said Rules was held to be only directory. Rule 9 of the said Rules stated that all cases referred to in the Second Schedule shall be brought before the Council (i) by the directions of the Governor under Article 167(c) (ii) by the directions of the Chief Minister or the Minister in-charge of the case with the consent of the Chief Minister. The proviso thereunder stated that no case with regard to the Finance Department is required to be concerned under Rule 11 shall, save in exceptional circumstances under the directions of the Chief Minister, be discussed by the Council unless the Finance Minister has had opportunity for giving suggestions. In the instant case, Rule 7 (2) of the Rules of Business states that no proposal which requires previous concurrence of the Finance Department under the said Rule, but in which the Finance Department has not concurred, may be proceeded with unless a decision to that effect has been taken by the Council. The wording of this Rule is different from the provisions as are contained in Rule 9 in the Rules of Business framed by the Government of Maharashtra and these provisions are to be read in context with the provisions of Rule 3, which states that the business of the Government shall be transacted in accordance with the Business Rules. The Rule 7(2) puts a condition precedent regarding previous concurrence of the Finance Department. Similarly, Rule 6 states that the Council shall be collectively responsible for all executive orders issued from any Department in the name of the Governor or contract made in exercise of the powers conferred on the Governor or any Officer subordinate to him in accordance with the Rules, whether such orders or contracts are authorised by an individual Minister on a matter pertaining to the Department under his charge, or as the result of discussion at a meeting of the Council or howsoever otherwise. This Rule envisages that all executive orders issued from any Department in the name of the Governor shall have to be known to the Council of Ministers so as to fulfill the collective responsibility of the Council of Ministers so as to fulfill the collective responsibility of the Council of Ministers. Rule 7(1) requires that no Department shall without the previous concurrence from the Finance Department issue any order which may involve any abandonment of revenue or involve any expenditure for which no provision has been made in the appropriation Act; involve any grant of land or assignment of revenue or

concession, grant, lease or licence in respect of mineral or forest rights or rights to water, power or any easement or privilege; or otherwise have a financial bearing whether involving expenditure or not. If the scheme of Rule 7 in its entirety is read with the provisions of Rules 3 and 6, it is evident that any proposal likely to be converted into a Government decision involving abandonment of revenue or expenditure for which there is no provision made in the appropriation Act or an issue involving concession or otherwise has a financial bearing on the State, is required to be processed only after the concurrence of the Finance Department and such a proposal cannot be finalised at the level of the concerned Minister in-charge alone. The proposal, after the Finance Departments' concurrence, is required to be placed before the Council of Ministers and/or the Chief Minister and the decision so taken will ultimately culminate into a decision by the State Government. The scheme of the Rules of Business of the Government of Goa is akin to the scheme of the State of Bihar, which came to be considered by the Apex Court in the case of Haridwar Singh (supra). We are afraid, the reliance of Shri Kakodkar on the Judgment of this Court in the case of Chandrakant Kharkanis (supra) is misplaced. The scheme of the Rules is framed in such a way that the mandate of the constitution as envisaged within the meaning of Article 154 read with Articles 163 and 166 of the Constitution is fulfilled. If it is accepted that the non-compliance of these Rules does not vitiate the decisions which were taken by the concerned Minister alone, the result, as observed a little earlier, would be disastrous and in no case such a decision could be termed as a decision of the State Government. In a democratic set-up, the decision of the Government must reflect a collective wisdom of the Council of Ministers or at least the Chief Minister, who heads the Council of Ministers. The mere fact that such decisions are taken by the Minister alone and acted upon by issuing the Notification, cannot by itself be treated to be the decision of the Government even if the Government itself remained silent for a sufficient period of time or the concerned Secretary did not act under Rule 46 of the Business Rules. If such decisions taken by an individual Minister without complying with the requirement of Rules are treated to be the Government decisions within the meaning of Article 154 of the Constitution, the result would be that every Minister is free to act on his own by keeping the Rules on the hold and the Chief Minister would remain only a figure head. How would the Chief Minister discharge his constitutional responsibility of advising the Governor under Article 163? We have applied our mind to these Business Rules and upon consideration of the submissions made by Shri Kakodkar, we hold that the compliance of these Rules is mandatory and the decision taken by a Minister contrary to the provisions of Rules 3, 6, 7 and 9 of the Business Rules cannot be termed as the Government decision.

30. Rule 10 states that all cases referred to in the Schedule shall be submitted to the Chief Minister after consideration by the Minister in charge, with a view to obtaining his orders for the circulation of the case under Rule 11 or for bringing it up for consideration at a meeting of the Council. Rule 13 further provides that

when it has been decided to bring a case before the Council, the Department to which the case belongs shall, unless the Chief Minister otherwise directs, prepare a memorandum indicating with sufficient precision the salient facts of the case and the points for decision and the copies of memorandum so prepared shall have to be circulated to the Council by the Secretary. In Rule 14 it is provided that in a case which concerns more than one Department, the Minister shall attempt by previous discussion to arrive at an agreement and if an agreement is reached, the memorandum referred to in Rule 11 or Rule 13 shall contain the joint recommendations of the Ministers, and if no agreement is reached, the memorandum shall state the points of difference and the views submitted by each of the Ministers concerned. In the Schedule to the Rules, Items Nos. 5, 9 and 30 deal with the proposals which affect finances of the State and which do not have the consent of the Finance Minister, proposals involving any important change in policy or practice and proposals to vary or reverse a decision previously taken by the Council. As per Rule 16, the decision of the Council relating to each case shall be separately recorded and after approval by the Chief Minister or the Minister presiding, shall be placed with the records of the case and extract of the decision shall be sent to the Secretary of the Department who will then take necessary action thereon. Rules 17 to 44 deal the Departmental Disposal of Business and Rules 17, 19 and 20 in the said Chapter are relevant for our purposes, which have been reproduced hereinabove. As per Rule 20, when the subject of a case concerns more than one departments, no order shall be issued (nor shall the case be laid before the Council) until it has been considered by all the departments concerned, unless the case is one of extreme urgency. Rule 17 permits a Minister-in-charge of a department on the basis of standing orders, to give such directions as he thinks fit for the disposal of cases in his department. The decisions impugned in the instant Petition concern not only the department of power, but also the industries department as well as the finance department and, therefore, even as per Rule 20, it was not within the purview of the Minister for Power to finalise the said notifications at his level alone and without placing the proposals before the Chief Minister or before the Council of Ministers. Even if the Minister-in-charge gives certain directions pertaining to his department under Rule 17, it is obligatory for the Secretary of such a Department to submit the statement simultaneously to the Chief Minister and the Governor showing the particulars of the important cases, if any, disposed of in the department by the Minister. We are, therefore, required to examine the challenge raised by the petitioner on the touchstone of these Rules.

31. By notification dated 29th June, 1993 issued in exercise of the powers conferred by section 23 read with section 51A of the Electricity Act, published in the Gazette on 30th June, 1993, the State Government had framed the revised electricity tariff for the State as specified in the Schedule appended to the said notification. Under the heading "B-High Tension Supply", there was no separate category of Extra High Tension consumers and for the first time by notification dated 6th December, 1993, such a category was created after Item No. 9 in the

said revised tariff dated 29th June, 1993. The bifurcated category reads thus:

"10. EHTI/Industrial - Applicable to bulk supply of power at 110 KV and above for industries, factories, water and sewage pumping and other industrial purpose as may be decided by the Chief Electrical Engineer."

32. Pursuant to the said Notification dated 8th December, 1993, the power department of the State Government took a stand that the notification dated 30th September, 1991 did not cover the Extra High Tension consumers and had covered only the Low Tension and High Tension consumers and the claims of such category i.e. Extra High Tension consumers were rejected by specific orders passed in October 1995 itself, i.e. after the initial notification dated 30-9-1991 was rescinded as per the notification dated 31-3-1995 and these orders remained unchallenged by the concerned industrial units. It was, therefore, felt desirable by the State Government and in accordance with the reply furnished by the Minister for power to the Calling Attention Notice moved by the petitioner that certain clarifications were required to be given even to process the claims for grant of rebate of 25% for the period from 1-10-1991 to 31-3-1995. However, while doing so, it was required to be observed that any clarifications proposed to be issued and involving additional burden on the exchequer was processed in keeping with the requirements of the Business Rules. When the notification dated 31-3-1995 was issued rescinding the rebate/concession, the fact remained that such rebate was available only to the Low Tension and High Tension supply lines and the Extra High Tension supply category got deleted pursuant to the notification dated 6th of December, 1993. Any new decision seeking inclusion of this third category for the benefit of 25% rebate in the tariff ought to result in additional burden to the State Treasury even if the benefit was confined upto the period 31-3-1995 and in the absence of such an additional burden, we agree that the impugned notification dated 15th May, 1996 would have remained only clarificatory in nature and, therefore, such clarifications could have been issued by the department concerned or by the Minister in-charge, but when the decision proposed was coupled with an additional financial liability on the State Government and more so, creating a new category of electricity consumers retrospectively, i.e. at least from 6th December, 1993, it was imperative that the decision was not finalised at the level of the Minister alone and it ought to have been placed before the Council of Ministers or the Chief Minister, in addition to the previous consultation/concurrence of the finance department as well as the industries department. The impugned notification dated 15-5-1998, had imposed an additional financial liability on the State Government retrospectively by creating a new category of Extra High Tension electricity supply industrial units and, therefore, the submissions of the respondent No. 2 that the said notification was only clarificatory in nature and it was finalised at his level are unsustainable. It was incumbent upon the respondent No. 4 or the power department to ensure that the proposal for the decision culminating in the notification dated 15th of May, 1996 was placed before the Council of Ministers or the Chief Minister and when they had not

complied with this requirement, the Business Rules have not been followed and, therefore, the said decision is non est. Even assuming and without accepting that it was a clarificatory decision taken at the level of the power department, the same did not comply with the requirements of Rule 19 of the Business Rules and this stand taken during the course of arguments on behalf of respondent No. 2 does not impress us in any case and on record, there is nothing to indicate that the department concerned had sought or attempted for ratification of the decision taken by the respondent No. 2 before the notification dated 15-5-1996 was issued.

33. Coming to the second impugned notification dated 1-8-1996, it is clear that the State Government's intention to re-introduce the benefit of 25% rebate in the power tariff is reflected therein. However, if it was the desire of the State Government by way of a policy decision to re-introduce this benefit which was withdrawn with effect from 1-4-1995, it was a prerequisite that the decision satisfied the requirements of a Government decision and did not remain a decision in the form of an instruction/order of one particular department, namely, the power department in the instant case. The Notes which are on record for re-introduction of 25% rebate speak of such an intention of the State Government initiated at the instance of the industries department and even then the proposal did not seek the concurrence of the finance department and it was not processed as per the Business Rules. This proposal also attracted Item 5, 9 and 30 listed in the Schedule framed under Rules 9 and 10 of the Business Rules. The decision was finalised by the respondent No.2 without any further reference to the Council of Ministers or to the Chief Minister as is seen from the file produced before us. We must also note at this stage that during the course of investigations carried out pursuant to the complaint filed by the petitioner, the then Chief Minister had appeared before the Investigating Officer on 14-1-1999 and submitted a written statement which stated that at no point of time, the respondent No. 2 had placed before the Chief Minister the proposals regarding the impugned decisions dated 15-5-1996 as well as 1-8-1996. The note dated 8-7-1996 prepared by the Under Secretary (Power) had stated that two issues arising out of the notification dated 30-9-1991 were raised and those were :

(1) On what ground the Industries Department, Government of Goa, should certify a particular industrial unit to be eligible for concessional tariff (the Industries Department has been seeking clarification on this point)?

(2) Should the 25% rebate be calculated for all the years (from 1-10-1991 to 31-3-1995) with reference to the Notification dated 27-6-1988 or is it to be calculated with reference to the tariff prevailing/billed?

34. This Note clearly indicated that the Certifying agency regarding the eligibility for concession of tariff was required to be identified and the issue whether the 25% rebate for the period from 1-10-1991 to 31-3-1995 was to be available on the tariff as per the notification dated 27-6-1988 or with reference to the tariff prevailing/billed, from time to time. The Electrical Engineer in his reply dated

10-7-1996 made some clarifications and very clearly stated that the prospective industrial consumers who had applied and availed power supply on or after 1-10-1991 are only eligible for concession. Then comes the note of the Commissioner and Secretary (Power) dated 30-7-1996 and it refers to the meetings held in the chamber of the Minister for Power. This Note indicated that the certification/verification of the industrial units could be done by the electricity department since the rebate of 25% on energy charges was to be paid by the said department. In order to ensure that only genuine and bonafide claims are entertained and paid the rebate, a screening committee consisting of Secretary (Power), the Chief Electrical Engineer, Director of Industries and Joint Secretary (Finance) may be constituted which would examine and verify all doubtful claims, was one of the proposals in the said note. It also referred to a decision in one of such meetings to the effect that the concessional rebate should be given to the industrial units on energy charges only as per the prevailing tariff in force from time to time on which they are billed, for a period of five years on the basis of the recommendations made by the Chief Electrical Engineer. All these recommendations put up by the Commissioner and Secretary (Power) were certainly affecting the financial liabilities of the State Government, were amounting to the change in policy decision and were seeking to change the role of the industries department. Even then, the respondent No. 2 did not deem it appropriate nor the Secretary concerned deemed it appropriate to place the proposal before the Council of Ministers or the Chief Minister and the proposal was finalised by the respondent No. 2 as per the modifications suggested by him, on 30-7-1996.

35. The files placed before us indicate that it was forwarded to the Development Commissioner on or about 17th of March, 1998 as they were required in connection with a reply to be prepared to an Assembly question and the Development Commissioner submitted a note on 25th of March, 1998. This note referred to the complaint filed by the Petitioner alleging irregularities/illegalities/corruption in the matter of rebate of power raising two grounds, namely,

(i) That the gazette notification granting subsidy was issued on 3rd October, 1991 and rescinded on 31st March, 1995. Subsequently, in another gazette notification of 1st August, 1996, a new category of consumers was included in the notification.

Amending of a rescinded notification is illegal and is made with a mala fide intention of including a new specific consumer;

(ii) The notification had led to manipulation of the records insofar as people have tried to become beneficiaries of the scheme within the notified period of 1st October, 1991 and 31st March, 1995 to avail of the benefits.

36. Paragraphs 2, 3 and 4 of this note are material for our considerations. The first objection raised was regarding the eligibility of the industrial units to claim rebate after 31-3-1995. As per the first objection dated 30-9-1991, the industrial

units which applied for power connection and could not be released power connection by 31-3-1995 would be referred to Government, but subsequently this issue was decided and it was left to the Electrical Engineer to allow the release of the said subsidy to all such units. The second issue raised in the same note is also equally important and it reads thus :

"As per the records maintained in the Department of Electricity, 538 consumers are entitled to the subsidy, of which 88 are having 88 connection, 448 LT connection and 2 EHT connection i.e. Binani consumers and Mormugao Steel. The liability has been worked out as approximately Rs. 80.00 lakhs per month and the release of subsidy started with effect from September, 1996. The total subsidy by way of adjustment of bills would be in excess of Rs. 50.00 crores."

The third objection was regarding the inclusion of High Tension consumers in the list of beneficiaries for rebate and it is stated that this decision to include the EHT consumers was taken after the scheme had expired and, therefore, the legal implications were required to be examined which also included financial liability. The note, therefore, suggested the suspension of the scheme immediately until the legal issues were sorted out as the total financial liability towards the said scheme was in excess of Rs. 50.00 crores.

37. The Joint Secretary (Law) gave his clarifications on 3-4-1998 after examining the matter in the light of the provisions of the Electricity Act and he stated that even for suspension of the scheme the Cabinet decision would be necessary and even for the earlier notification dated 1-8-1996 such a decision was required as it fell within the meaning of policy decision involving financial implications. It also indicated that before the notification dated 1-8-1996 was issued, concurrence of the finance department ought to have been obtained. The Note finally concluded to say that the notification dated 1-8-1996 was not in conformity with the legal sanctity. The Secretary (Law) agreed with this opinion by specific endorsement of the same date. The Development Commissioner on 4-4-1998 observed that the notification dated 1-8-1996 was non est as there was no Cabinet clearance and therefore, it was necessary to review the entire matter and take it to the Cabinet for a decision either for ratification or otherwise. The note could not be placed before the Chief Secretary as he was on tour and, therefore, it was placed before the Minister for Power, who directed that the matter be placed before the Cabinet as announced in the House. He also directed that the file of Finance and Law Department on the subject be also attached and placed before the Chief Minister for his perusal. The file was placed before the Hon''ble Chief Minister on 27th of May, 1998 and at his directions the opinion of the finance department was called. The Finance Secretary gave detailed submissions on 27th May, 1998 to the Chief Minister. The file was placed before the Cabinet meeting on 28th of May, 1998 and ultimately, the Government decided to withdraw the benefit of rebate and the notification dated 24th of July, 1998 was issued.

The documents brought on record by the Petitioner also indicate that there was some attempt to ratify the Notification dated 1-8-1996 and, but for the legal

dissent, this could not be done and the Government in its wisdom realised the legal flaws in continuing with the benefit of subsidy to the industrial consumers on the basis of the impugned notification dated 1-8-1996. We wonder why the State Government failed to bring before this Court these facts in the earlier batch of Writ Petitions decided on 21st January, 1999 wherein this Court upheld the power of the State Government to withdraw the subsidy by invoking the provisions of section 21 of the General Clauses Act vide notification dated 24-7-1998 and the only justification given in support of this decision for discontinuing the rebate in power tariff was financial crunch as faced by the State Government.

38. The notification dated 1-8-1996 re-introduced the benefit of 25% rebate and stated that it would be available on the prevailing tariff in force from time to time at which these units are billed for a period of five years from the date on which the supply of electricity is made available to such units and who had applied or availed power supply on or after 1st October, 1991. Whereas the earlier notification dated 30-9-1991 had stated that the rebate would be available on the basis of the tariff set out in the notification dated 27th June, 1988 and to the Low Tension and High Tension consumers, who had applied for power supply on or after 1-10-1991 and were given electric supply after 1-10-1991 and the benefit would be made available for a period of five years from the date of such power supply. It is, therefore, clear that the scope of the benefit of rebate was further expanded by the notification dated 1-8-1996 as compared to the original notification dated 30-9-1991, which came to be withdrawn on 31-3-1995. The learned Advocate General has placed on record a Confidential communication dated 20-9-1998 addressed to the Chief Secretary of the State of Goa by the Inspector General of Police in which it has been stated that this change brought about by the notification dated 1-8-1996 resulted in additional financial liability and the Power Secretary had estimated the total liability in 1994 at about Rs. 3.5 crores, which could have gone upto Rs. 8 to 10 crores till the time the eligible consumers at that point of time availed the benefit for a period of five years as stipulated in the 1991 notification. Consequent to the issue of 1996 Notification, about Rs. 14 crores were paid in approximately one and half year period between September 1996 to March, 1998 when the payment of power subsidy was suspended. It emerged during the course of investigation that about Rs. 8 crores were paid in excess as a result of the 1996 notification as compared to the said benefit available under the 1991 notification and the total amount paid in excess would have been more than Rs. 30 crores if the benefit had been continued to be given for five years. The Chief Electrical Engineer in his affidavit submitted on 12th April, 2001 has also reiterated that the rough estimate of the total liability of the State was likely to be Rs. 40 to 50 crores on the basis of the impugned notification dated 1st August, 1996 as compared to the earlier Notification dated 30th September, 1991.

39. This Court in its earlier Judgment dated 21st January, 1999 in Paragraph 22 observed :

"22..... In our opinion, the expression "who apply for availing" used in the Notification dated 30-9-1991 and the expression "who apply or avail" used in the Notification dated 1-8-1996 mean one and the same thing. The emphasis in both the expressions is on the date of availing of the power supply rather than on the date of applying for supply. The Notification dated 30-9-1991 states "who apply for availing.... power supply on or after the 1st of October 1991" and not who apply on or after the 1st of October 1991 for availing... power supply.....". Therefore, the application for supply of power may be of a date prior to 1-10-1991 but the availment of supply must be of a date subsequent to 1-10-1991. The crucial expressions are "who apply for availing.....on or after 1st October 1991....." and rebate of 25% is extended for a period of five years from the date on which supply of electricity is made available. The object of this Notification therefore, clearly appears to be to exclude those industrial units from the beneficial zone of the rebate scheme which have already been supplied power prior to 1-10-1991. The benefit is, in our view, intended to be extended to those consumers who having already set up their industrial plants are ready to go with production after power supply is made. So far as the Notification dated 1-8-1996 is concerned it clearly states "apply or avail.....power supply on or after 1-10-1991. "It spells out two situations namely; either the applications may be after 1-10-1991 or availment may be after that date. Therefore, what was implicit in Notification dated 30-9-1991 has been made explicit vide Notification dated 1-8-1996 by using expression "apply or avail.""

On the basis of these observations, the learned Counsel for the respondent No. 2 as well as for the intervenors urged before us to treat this Notification dated 1-8-1996 only as clarificatory and it did not create any additional financial liability on the State Government thereby warranting Cabinet approval or the compliance of the Business Rules as framed by the Government before it was brought into effect. We are afraid, these submission do not find favour in our view and the figures which have been quoted earlier in respect of the additional financial liability that was imposed on the State Government by this Notification, falsify the submissions so made. The said Notification cannot be treated to be only clarificatory and it is a Notification ostensibly in terms of a Government decision as is clear from the file that has been placed before us by the State Government. The Notings in the file indicate that it was a Government decision, but finalised at the level of the Minister for Power and in utter disregard to the scheme of the Business Rules as framed under Article 166(3) of the Constitution. It cannot be called a Government decision within the meaning of Article 154, even though the requirements under the Rules of Authentication are satisfied. The mere authentication by the Deputy Secretary, who is one of the competent officers under the Authentication Rules framed Under Article 166(2) of the Constitution would not make it a Government decision or validate an illegal decision which is void ab initio. As observed earlier, we have to be guided by the record, the Constitutional provisions and the Business Rules and not by the form

or substance of these notifications.

40. The learned Counsel for the respondent No. 2 as well as the intervenors have also agitated the issue of estoppel against the State Government. To amplify this argument, it was submitted that even after the Judgment dated 21st January 1999 in the earlier batch of Petitions, the validity or legality of the Notifications dated 15-5-1996 and 1-8-1996 was not raised before the Apex Court in the SLP filed by the State Government and, in fact, the State Government proceeded on the basis that the validity of these Notifications was upheld by this Court in its Judgment impugned before the Supreme Court. Our attention has been invited in this regard to the averments made in ground (iii) of the Appeal Memo, which read thus :

"While upholding notification dated 1-8-1996 the High Court erred in striking down circular dated 31-3-1998, without appreciating fully that 31-3-1998 circular was issued by the Petitioners only with regard to the consequential payments etc. which are being suspended."

However, as noted earlier, the issue regarding the legality/validity of the Notifications dated 15-5-1996 and 1-8-1996 was not raised in the earlier batch of Petitions decided on 21st January, 1999 and there was no occasion for this Court to address on the same issues. Even in the Judgment dated 21-1-1999 the same issues have not been considered and decided. The learned Advocate General is, therefore, right in his submissions that the issue of estoppel would not operate against the State Government, merely because it failed to agitate the point of legality of these Notifications in its challenge before the Apex Court against the Order dated 21st January, 1999 when it had an opportunity to expand the scope of its challenge and the State Government cannot be deemed to have accepted the legality of these Notifications and waived its challenge to them. Even otherwise, the petitioner was not a party in the earlier batch of Petitions decided on 21st January, 1999 and the principle of estoppel or res judicata will not be operative, against him. In any case, we are satisfied that the principle of estoppel would not operate against the Government while examining the legality of the impugned notifications in the instant petition. We, therefore, overrule the objection raised in this behalf.

41. The Notification dated 15-5-1996 has been challenged by the Petitioner on the additional ground that it has infused new life to the notification dated 30-9-1991, which was rescinded by notification dated 31-3-1995. However, it is obvious from the notification dated 1-8-1996 that the policy of granting 25% rebate on tariff was re-introduced and the Notification dated 15-5-1996 cannot be treated to have given fresh lease of life to the notification dated 30-9-1991. Our observations in Para 32 of this judgment are amply clear about the notification dated 15-5-1996 and we need not say anything further on the same. There is one more point which has been raised by the petitioner and that is the authority of the State Government to extend the benefit of 25% under the provisions of section 23 of the Electricity Act. The Calling Attention Notice moved

by the Petitioner in the Assembly itself indicated that the rebate granted by the State Government was available to the industrial units covered under notification dated 30-9-1991 and the Petitioner presumed that such power was vested in the State Government to extend the benefits. It is too late for him to challenge the State Government's authority to extend such a benefit to the industrial consumers by invoking the powers u/s 23 of the Electricity Act and we do not wish it necessary to advert on this issue any further in view of the observations made by this Court in Para 12 of the Judgment dated 21st January, 1999. These observations are merged with the order dated 13th February, 2001 passed by the Apex Court and therefore it is not open for the Petitioner to agitate that issue before us now.

42. In the result, we allow the petition partly and hold that the Notifications dated 15-5-1996 and 1-8-1996 cannot be termed as Government decisions on account of non-compliance of the Rules of Business as framed under Article 166(3) of the Constitution of India and, therefore, these decision are non est and void ab initio and the consequential actions based on these Notifications are null and void.

Rule made absolute accordingly. Costs in cause.

43. At this stage, Shri Kakodkar, the learned Senior Counsel, made an oral application for certified copies of the documents we have referred to from the original file as well as the copy of the status report submitted by the investigating agency. Under the Goa Right to Information Act, the petitioner had obtained the copies of almost all the documents and they have been annexed to the Petition Memo itself. If there are any additional documents required by respondent No. 2 for any purpose whatsoever, he is at liberty to approach the State Government and make an application and the same thing applies for Status Report submitted by the Police. We need not consider this prayer and hence the oral application is rejected. The learned Senior Counsel then submitted an oral application for stay of our Judgment. We do not see any merit in this prayer and, more so there is no relief granted against respondent No. 2. The oral application is rejected.

Certified copy expedited. Original record as submitted by the Advocate General be returned forthwith.

44. The learned Advocate General sought leave to proceed for the recovery of rebate benefit granted on the basis of the notifications dated 15-5-1996 and 1-8-1996. We need not consider the said prayer as this order in no way curtails the Government's power to act as per Rules in that respect.