
(2011) 07 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No's. 214 and 240 of 2011

Marmagoa Steel Ltd. and Another

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Constitution of India, 1950 — Article 141, 166(3), 226
Electricity Act, 1910 — Section 23, 51A
General Clauses Act, 1897 — Section 21

Citation : (2012) 1 BomCR 361

Hon'ble Judges : Reis F.M., J; Dharmadhikari S.C., J

Bench : Division Bench

Advocate : Shreehari Ancy with Ms. Tejaswini Shirodkar with Shivan Dessai, for the Appellant; S.S. Kantak, Gen. and Ms. Sapna Mordekar, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Dharmadhikari S.C., J.—Rule. Respondents waives service. By consent Rule made returnable forthwith. By this petition under Article 226 of the Constitution of India, the petitioner is impugning the demand notice dated 3rd March, 2011 under which a demand of Rs. 86,32,75,991/- has been raised. It is seeking a direction to the respondents to calculate the amount of 25% rebate due to it on the basis of the order dated 21st January, 1999 and 13th February, 2001 passed by this Court and the Supreme Court and refund the balance amount due to it. Prayer Clause (c) of the petition reads as under:

(c) to direct the respondent to reimburse the balance 25% rebate arrears amounting to a sum of Rs. 4 crore as the principal amount and Rs. 149 crore as the interest @ 24% per annum thereon i.e. a total sum of Rs. 153 crore approximately as on 1st October, 2010 as per the guidelines laid down in the judgment of this Hon'ble Court dated 21.1.1999;

2. The facts necessary to appreciate the challenge are that the petitioner is a

company registered under the Companies Act, 1956 and carrying on manufacture of speciality Steel for Automobile Sector, Defence, Railways etc. It claims to be a Sick Industrial Unit. The petitioner submits that at the Cabinet Meeting held on 16th June, 1991 the State Cabinet decided that water and power be supplied to new industrial units at a concessional rate on the commercial tariff. Based on this cabinet decision on 30th September, 1991, a notification was issued in exercise of the powers conferred by section 23 read with section 51A of the Indian Electricity Act, 1910. A copy of this notification is annexed as Annexure "P-2". On 2nd December 1991 the petitioner-company for the first time availed 24 MVA power supply to steel plant at Curtorim and thus became entitled for 25% rebate for five years under the aforesaid notification. On 30th May 1992 the petitioner applied to the respondent No. 2 for implementation of the rebate scheme. On 8th July, 1992 the petitioner was told to approach the Industries Department in the matter which it did on 17th August, 1992. The petitioner made certain representations for implementation and release of 25% benefit of tariff. It is the case of the petitioner that during the entire entitlement period of five years i.e. from 2nd December 1991 till 1st December 1996 the petitioner went on paying its full monthly bills whenever possible and sometimes after adjusting 25% rebate but never less than 75% of the total bill. Simultaneously, it requested the respondent to grant and adjust the 25% rebate benefit to it. On 31st March, 1995 another notification was issued by respondent No. 1 rescinding the earlier notification dated 30th September, 1991 with effect from 1st April, 1995. Thus, the rebate scheme was withdrawn for those industries who would avail power supply on or after 1st April, 1995. Reliance is placed on a copy of this notification which is annexed as Annexure "P-3". It is submitted that this aspect was further clarified by guidelines framed by respondents on the basis of which actual implementation of the rebate promised under the notification dated 30th September, 1991 was started from September, 1996. Reliance is placed on Clause IV of these guidelines and a certificate dated 6th August, 1996 issued by the Director of Industries and Mines. On 15th May 1996 the respondent No. 1 issued a notification to amend the above rescinded notification by substituting the words "High Tension", "Extra-High Tension" and "Low Tension" power supply in place of the words "High Tension" and "Low Tension" power supply. By another notification dated 1st August, 1996 the respondent No. 1 in supersession of the September, 1991 notification directed that all industrial units who applied or availed of power supply on or after 1st October, 1991 and were certified by the Electricity Department eligible for concessional tariff would be entitled to 25% rebate on prevailing energy charges only for a period of five years from the date of supply of electricity to them.

3. The petitioners submit that for the first time the 25% rebate benefit under the superseded notification of 1991 was given to the petitioner by correcting the same in the electricity bill of September, 1996. The petitioners were thus informed that the Electricity Department has unilaterally decided to disburse the 25% rebate benefit in 60 monthly installments spread over the future bills for

next five years. The petitioners in para 16 of the petition refer to various representations made so as to give the benefit of 25% rebate scheme. However, by a circular dated 31st March, 1998 the release of 25% rebate benefit to all industrial consumers was suspended. Further, the petitioners' power supply was disconnected on 20th April, 1998 ignoring its request for one time set-off of the accumulated rebate arrears. Against this also representations were made but finding that there was no favourable response, Writ Petition No. (244 of 1998)¹, was filed in this Court challenging the disconnection of the power supply and praying for its restoration. Further, by an interim order of this Court, the power supply was reconnected. However, on account of several factors including non-grant of rebate benefit, there were accumulated losses which eroded the total net worth of the petitioner which forced it to make a reference to the Board of Industrial and Financial Reconstruction (BIFR), New Delhi on 26th October, 1998. This was a reference made under Sick Industrial Companies (Special Provisions) Act, 1985. On 21st January, 1999 the above writ petition was disposed off with a judgment together with connected writ petitions in the following terms:

In view of the above conclusions, we pass the following order:

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. 239/98 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. 239/98 and 244/98 is held to be not proper.
7. The proper supply of the aforesaid two petitioner 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 installments shall be paid by the petitioners within a period of thirty days from today.

9. All the petitions are disposed of in 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.

4. Being aggrieved and dissatisfied with the judgment and order passed, the respondent Nos. 1 to 3 preferred a SLP before the Hon"ble the Supreme Court being SLP No. 6847-58 of 1999. The Hon"ble Supreme Court upheld the judgment of the Division Bench of this Court and disposed off this Special Leave Petition.

5. On 7th April, 1999, the respondent No. 3 issued a supplementary bill for an amount of Rs. 9.32 crores and it is urged that despite judgment of this Court the respondents calculated rebate due to the petitioner based on the tariff prevailing in 1988 and keeping it fixed for five years instead of calculating the same on the basis of the tariff as revised from, and, in force from time to time. The billing should be on the basis of the prevailing tariff. Therefore, according to the petitioner there is a bona fide dispute on the working of the charges and the computation. The petitioner, filed Civil Misc. Applications in the disposed off writ petition challenging the bill dated 7th April, 1999 and also made representations. The petitioner submits that in the meanwhile the reference was registered by BIFR as Case No. 175 of 1999 and on 20th August, 1999 the petitioner was declared as Sick Company. The BIFR then appointed an Operating Agency, namely. Industrial Finance Corporation of India (for short "IFCI"). The petitioners case, therefore, is that it is entitled to rebate under the notification dated 30th September, 1991 for full five years from December 1991 to 1st December 1996 and no delayed payment charges could be levied by the Authorities qua the petitioner. It is then urged that the petitioner could not get any favourable order in the Civil Misc. Applications and, therefore, the petitioners had to approach the Hon"ble Supreme Court. Moreover, a draft rehabilitation scheme was prepared by BIFR, yet, on 25th October, 2001 a notice was issued by respondent No. 3 to the petitioner to pay alleged arrears of Rs. 17 crores approximately. This notice was replied. Thereafter also several notices were issued to the petitioner with a threat of disconnection of electric supply. A meeting was convened to address the issue of arrears. The petitioner, therefore, withdrew their SLP challenging the order passed by this Court on the Civil Misc. Applications and were hopeful of amicable resolution of the dispute. The petitioner pointed out to the Authorities that it is undergoing a financial crisis because it is a sick company and scheme of its rehabilitation has been formulated. Such a stand was taken in the representations made from time to time. However, firstly the supply came to be disconnected on 6th July, 2007 for non-payment of alleged arrears of Rs. 69 crores and thereafter a "Billing Dispute Redressal Committee" (for short BDR) was formed and the Committee was called upon to decide the dispute. Since the Committee was not doing anything fruitful and even the petitioner's request for grant of rebate benefit was not considered, the petitioner had to file a writ

petition in this Court being Writ Petition No. 460 of 2008 seeking directions to the respondents to recalculate the supplementary bill dated 7th April, 1999. That writ petition was disposed off on 30th November, 2009 with a direction that the party should approach the BDR Committee and it should decide the issue within eight weeks. Thereafter, the meetings of BDR Committee were held and petitioner had presented to the said Committee several charts, representations and objections and gave clarifications to the queries raised as well. However, the BDR Committee arrived at certain calculations based upon which a demand notice dated 25th February, 2011 was issued which came to be replied. This demand notice and the controversy pertaining to the same is subject-matter of Writ Petition No. 240 of 2011. The petitioner thus received the impugned demand notice raising a demand of Rs. 86,32,75,991/-, a copy of which is annexed as Annexure "P-16". This demand notice was replied and it was pointed out that there is no liability. The petitioner requested that it be supplied with a copy of findings of BDR Committee.

6. In paras 54 and 55 of the writ petition, this is what is stated:

54. The Billing Dispute Redressal Committee gave a decision which was never communicated to the petitioner and all that was communicated was the impugned demand notice dated 3.3.2011.

55. That after the reworking and reconciliation of figures pursuant to the meetings before the respondent 4 Committee, the alleged arrears in the disputed supplementary bill dated 7.4.1999 of Rs. 9.32 crore has dwindled to an alleged amount of Rs. 5,87,19,681/- (Rs. 5.87 crore) as per the disputed chart dated 5.10.2010. This alleged amount of Rs. 5.87 crore which the petitioner company is not liable to pay includes Rs. 3.70 crore as interest calculated @ 24% per annum on compounded basis and levied as delayed payment charges, which cannot be levied in terms of the judgment and order dated 21.1.1999. Further the alleged amount of Rs. 81 crore frozen as on June, 2008 and communicated to the petitioner company in the July, 2008 bill (mentioned in para 42 herein above in this petition) has decreased to Rs. 52 crore as on June, 2008 in the disputed chart of 5.5.2010. This alleged amount of Rs. 52 crore again is inclusive of Rs. 50 crore as interest calculated @ 24% per annum on compounded basis and charged as delayed payment which levy is illegal as per this Hon'ble Court's judgment.

7. Thus, it is alleged that the impugned demand notice is erroneous as the Committee did not apply the correct method of calculation. The petitioner could not have denied the 25% rebate benefit which has been wrongfully done. Further, disconnection of the power supply also is untenable and unjustified.

8. It is on the above allegations that the instant writ petition has been filed, raising several grounds and also pointing out that there is no question of any interest much less at 24% being charged when the benefit of the rebate scheme has been denied. There is also no question of any delayed payment charges

being levied and collected.

9. On being served with the copy of this writ petition and its annexures, a reply affidavit has been filed by the respondents. The affidavit is affirmed by the Chief Electrical Engineer, Government of Goa who has pointed out that the various notifications have to be understood before appreciating the controversy. It is stated that the petitioner is entitled for rebate of five years from 2nd December 1991 despite the notification dated 30th September, 1991 being rescinded with effect from 1st April, 1995. It is stated that the dues payable by the petitioner by considering 25% rebate from 2nd December 1991 till 31st March, 1995 has been calculated and there is no grievance raised with regard to this calculation. It is stated that even the BDR Committee has calculated the dues payable by the petitioner by taking into account rebate of 25%. However, the reliance placed by the petitioner on the guidelines dated 10th December 1995 is misplaced. Once the rebate benefit was withdrawn with effect from 1st April, 1995, the guidelines in the nature of executive instructions cannot have effect of conferring any benefit on the petitioner. The notification dated 31st March, 1995 was issued pursuant to cabinet decision. Once it was decided not to continue the rebate beyond 1st April 1995, any further decision to grant the rebate would require a fresh cabinet decision as the same involves financial burden on the Government. In these circumstances, the guidelines are of no relevance. For all these reasons, it is submitted that there is no error committed by BDR Committee and its decision is legal and valid. Writ petition be, therefore, dismissed.

10. It is on the above material that we have heard this writ petition. Mr. Aney, learned Senior Advocate appearing on behalf of the petitioner submitted that the BDR Committee has committed three errors. It has not applied the notification dated 30th September, 1991 and granted rebate for five years as envisaged therein. It has granted rebate benefit at the rate stipulated in the notification but for a period of three years only. The first error committed is to ignore period of five years. The second error committed is that the rate of rebate is on the charges leviable in 1988. The charges as revised from time to time should have been taken into consideration. In this behalf, reliance is placed on condition Nos. 1 and 11 of the schedule to the notification published in the Official Gazette of Government of Goa on 28th June, 1988. Thirdly, the error committed is with regard to levy of delayed payment charges at 2% per month.

11. Mr. Aney submitted that the petitioner has raised a bona fide dispute. There was no neglect, no default committed by the petitioner, instead the State had agreed to grant refund in terms of the notification from the bills raised and paid from time to time. There is no question of any unlawful demand being made by the petitioner. Once their demand was legal and valid, then, the petitioner cannot be called upon to refund any, amounts. Alternatively and without prejudice, delayed payment charges at 2% are not justified because it is the respondents who have delayed the 25% rebate benefit. It is they who have delayed the refund. Once they delay the refund and if they are called upon to pay the same,

it is the State which will have to bear the interest burden. Thus, far from the petitioner paying any interest and/ or delayed payment charges, it is the respondents who should be called upon to refund the amount calculated in terms of the notification dated 30th September, 1991 and pay interest at 24% thereon. In such circumstances, according to Mr. Aney the impugned demand cannot be sustained and deserves to be quashed and set aside.

12. Mr. Aney has placed strong reliance on the decision of this Court in the Writ Petition No. 244 of 1998 filed by the petitioner and other similarly placed industries delivered on 21st January, 1999. He has also relied on a judgment of this Court reported in [1969]39 CC 238(Bom.) (Bank of India Ltd. Vs. Commissioner of Income Tax, Bombay City II)². Mr. Aney has also relied on a judgment of the Division Bench of this Court reported in Someshwar Sahakari Sakhar Karkhana Ltd. and others Vs. Union of India and others, ³. Mr. Aney has also relied on the chart and the communication dated 10th July, 1991 of the Government of Goa, Industries Department.

13. On the other hand, Mr. Kantak, learned Advocate General appearing on behalf of the respondents submitted that the arguments of Mr. Aney proceed on the misconception that the petitioner is entitled to the rebate at 25% from 2nd December 1991 to 1st December 1996. Mr. Aney's argument overlook the notification dated 31st March, 1995 which rescinds the earlier notification of September, 1991. This rescission is with effect from 1st April, 1995. The petitioner has never challenged the notification dated 31st March, 1995. That was the position even when it moved the Court earlier and sought relief when its power supply was disconnected as far back as in July, 1998. In the bunch of writ petitions that were filed and decided by this Court by common judgment none of the petitioners challenged the rescission of the rebate benefit which was effected from 1st April, 1995. In such circumstances, the petitioner is not entitled to five years rebate benefit as claimed. The learned Advocate General has invited our attention to paras 13 and 14 of the Division Bench judgment and submitted that the factual position as noticed therein, is that the notification dated 30th September, 1991 remained in force for 31/2 years and it was rescinded by the Government of Goa vide notification dated 31st March, 1995. While it may be true that the Division Bench noted that the notification dated 15th May 1996 intended to amend the rescinded notification dated 30th September, 1991 but the Division Bench has observed that it is pertinent to note that the amendment notification is issued without apparently reviving the notification dated 30th September, 1991. This 1991 notification stood rescinded with effect from 1st April, 1995 by virtue of the rescission notification dated 31st March, 1995. Therefore, the calculation as made by the BDR Committee is not erroneous.

14. Mr. Kantak then invited our attention to the judgment of the Division Bench of this Court in (Writ Petition No. 277 of 1999 and Writ Petition No. 364 of 1999)⁴, decided on 24th April, 2001 and submitted that the Division Bench had on that date decided another writ petition being Writ Petition No. 316 of 1998

(Manohar Parrikar Vs. Government of Goa)⁵, reported in 2003(Supp. 2) Bom. C.R. 755(P.B.) in which it held that the notifications dated 15th May 1996 and 1st August, 1996 cannot be termed as Government decisions and they are void ab initio. Therefore, the amendment made to the rescinded notification by the notification issued in May 1996 and August, 1996 was of no legal effect. These findings are clearly coming in the way of all the petitioners. The Court had clarified that in Writ Petition No. 316 of 1998 the issue regarding legality, validity, propriety of Notifications was not under consideration. That aspect was already dealt with and decided in the earlier batch of writ petitions which came to be disposed off on 21st January, 1999. Mr. Kantak, therefore, was at pains to point out that the petitioner cannot claim the benefit of 1996 notifications. They are entitled to 25% rebate in tariff on the basis of the notification dated 30th September, 1991 only from the date of supply of electricity till 31st March, 1995 and not beyond the same.

15. Mr. Kantak then took us through the judgment of the Hon'ble Supreme Court in the case of M.R.F. Ltd. Vs. Manohar Parrikar and Others, and companion appeals decided on 3rd May 2010. The learned Advocate General relied specifically on para 60 of this judgment and contended that the observations of the Hon'ble Supreme Court bind everybody. Thus, nothing much can be derived by the petitioners from the judgment dated 21st January, 1999 delivered in a batch of petitions by this Court. The learned Advocate General has also relied on paras 64 and 65 of the Supreme Court judgment and submitted that the factual position has been noted fully therein. Now, the petitioner cannot raise any factual pleas and that too for the first time. It has failed to challenge the legality of the notifications. In these circumstances, now there is no question of the plea of res judicata or other pleas being raised.

16. He, therefore, submits that the first contention of the learned Senior Counsel should fail. Inviting our attention to para 5, page 4 of the Writ Petition No. 214 of 2011, the learned Advocate General submits that the notification which is invoked by the petitioner makes it clear that tariff rate of 1988 is applicable. He submits that the notification dated 30th September, 1991 makes it very clear that the concessional tariff shall be based on rebate eligible for concessional tariff and the entitlement to rebate @ 25% is on the Tariff chargeable under the Government notification dated 27th June, 1988 which was published in the Official Gazette dated 28th June, 1988. In such circumstances, any reliance on the notification dated 28th June, 1988 and its wording and phraseology is completely misplaced. The rate as per the 1988 notification is the governing rate. The 25% rebate is to be computed on this rate. There is no scope, therefore, to read anything further. Mr. Kantak was at pains to emphasise the difference and distinction in the words used in 1991 and 1996 notification. He submits that the wording is different. That the wording is different is also noted in the petitioner's own case by the Division Bench of this Court and while granting relief to the petitioner it was clarified that 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. Therefore, it is now futile to urge that the 1991 notification contemplates grant of 25% rebate benefit on the energy charges prevailing and in force from time to time.

17. Mr. Kantak, learned Advocate General, therefore, submitted that the entitlement of the petitioner has been correctly computed in terms of the notification applicable and at the rate prescribed therein. There is no warrant to now re-open the factual conclusions. He submits that even on the third aspect, namely, delayed payment charges, there is no challenge, only the mode of calculation is challenged. He relies on the communication dated 11th March, 2010 addressed by the Executive Engineer IV, Margoa to the petitioner pointing out that the billing details and billing statements were forwarded for re-verification and opportunity was given to the petitioner to bring to the notice of the Authority any discrepancy. That discrepancy has to be brought to the notice of the Authority by producing documentary evidence. In such circumstances, when this opportunity was given and not availed of, now it is not open for the petitioner to dispute the computation. For all these reasons he submits that the petition is devoid of any merit and deserves to be dismissed. He also submits that the reliance placed on the other judgments of this Court is totally misplaced because in the first decision, namely, Bank of India Vs. The Commissioner of income tax, Bombay City II (supra), the only relevant passage is the concept of rebate. That has been explained by the Division Bench. While there cannot be any quarrel with the meaning assigned to the word "Rebate" and the concept as explained, yet, what is relevant to note is that how the rebate is to be granted and the benefit extended is wholly based on the terms of the Notification. Therefore, the observations of the Division Bench in paras 6 and 7 of this decision are of no assistance to the petitioner.

18. As far as the another Division Bench judgment of this Court is concerned, on the basis of the notification in the field and the judgment of the Delhi High Court, all that has been held is that the exemption notification therein required to be interpreted accordingly. However, it is pertinent to note that the Division Bench dismissed the writ petition of the assessee and applying the principle of estoppel, no relief was granted and the demand made by the Department was upheld. Even this judgment is, therefore, of no assistance to the petitioner.

19. Mr. Aney in re-joinder has only relied on para 52 of the judgment dated 21st January, 1999 in the writ petitions which included the petition by the present petitioner, namely, Writ Petition No. 244 of 1998. Mr. Aney submits that the date of power supply in the case of the petitioner being 2nd December 1991, the Division Bench held that the petitioner is entitled to be given rebate for a period of five years and its entitlement would be from 2nd December 1991 to 1st December 1996. In such circumstances, according to Mr. Aney now, the entitlement cannot be reduced to 3 1/2 years as urged by the learned Advocate General. He, therefore, submits that the computation is clearly erroneous and

contrary to the Division Bench judgment. He, therefore, reiterates his submission that petition be allowed.

20. With the assistance of the learned Counsel appearing for the parties, we have perused the petition and all annexures thereto. We have also perused the affidavit in reply. We have also perused the Division Bench judgment dated 21st January, 1999 in Writ Petition No. 239 of 1998 and connected petitions. We have also perused the Division Bench judgment in Writ Petition No. 316 of 1998. We have also carefully perused further Division Bench judgment of this Court dated 24th April, 2001 in Writ Petition No. 277 of 1999 and Writ Petition No. 364 of 1999. We have also perused the Supreme Court's decision dated 3rd May 2010. We have carefully scrutinised the computation made by BDR Committee. We have undertaken this exercise because we are conscious of the fact that the petitioner is a sick company and presently undergoing rehabilitation measures. Mr. Aney had repeatedly emphasised the fact that if the petitioner is called upon to pay the heavy sum as demanded, it would have to close down completely and there is no possibility of its rehabilitation and revival, then.

21. While it is true that the Division Bench judgment delivered in Writ Petition No. 244 of 1998 by this Court noted the entitlement of the petitioner to 25% rebate under the first notification dated 30th September, 1991 and held that it is to be given for a period of five years from the date on which the power supply is to be made available, yet, the Division Bench further noted that date of power supply is 2nd December, 1991. The entitlement to rebate is from 2nd December, 1991 to 1st December, 1996. The benefit was not given till September, 1996 (see paragraphs 56, 57, 60 and 61). In the judgment delivered on 19th/23rd & 24th April, 2001 in Writ Petition No. 316 of 1998 Manohar Parrikar Vs. State of Goa & ors., 2003(Supp. 2) Bom. C.R. 755(P.B.) the subsequent Division Bench restricted the benefit despite noticing the earlier judgment (see para 13 of the subsequent Division Bench judgment). The Division Bench had pointed out that these findings would come in the way of the petitioners in Writ Petition No. 277 of 1999 and Writ Petition No. 364 of 1999. The argument canvassed before us is that the present petitioner is not party to these judgments and they are not bound by these observations. While delivering our judgment in Writ Petition No. 157 of 2011 and other connected matters, we have dealt with this aspect elaborately. We are not impressed by the argument that the subsequent Division Bench judgment would not be of any legal effect and can never said to be covering any aspect of the controversy. The Division Bench has clarified that in view of its findings in Writ Petition No. 316 of 1998, the petitioner cannot claim benefit of the notifications dated 15th May, 1996 and 1st August, 1996. They are entitled for the benefit of 25% rebate in tariff only for the period from the date of supply of electricity till 31st March, 1995. These writ petitions are filed by Alcon Cement Company Ltd. & anr. Vs. State of Goa & anr. and M/s. MRF Ltd & anr. Vs. State of Goa & anr. The BDR Committee has made the calculations and computations on this factual basis according to the learned Advocate General.

22. In the affidavit in reply, it is pointed out that the Division Bench decision in W.P. No. 199/98 and connected matters dated 21st January, 1999 (G.R. Ispat Ltd. Vs. Chief Electrical Engineer & ors.)⁷, 1999(1) GLT 218 held that the petitioner is entitled for rebate for a period of five years from 2nd December, 1991 inspite of rescission of the notification dated 30th September, 1991 with effect from 1st April, 1995. However, this judgment was rendered by the Division Bench by taking into consideration notifications dated 15th May, 1996 and 1st August, 1996. The Division Bench held that the benefit of the rebate was withdrawn but the notification survived (see para 13 of the Division Bench judgment in G.R. Ispat Ltd. Vs. Chief Electrical Engineer & connected writ petitions decided on 21st January, 1999 and reported in 1999(1) GLT 218. However, this Court later declared that the Notifications dated 15th May, 1996 and 1st August, 1996 are void ab initio. Consequently, the finding rendered in the earlier Division Bench judgment of 1999 is of no assistance to the petitioner. It is based on the judgment in Manohar Parrikar's case (supra) that the Department calculated the dues payable by considering the rebate of 25% from 2nd December, 1991 till 31st March, 1995. The respondents clarified that once the rebate was withdrawn with effect from 1st April, 1995, neither the guidelines dated 1st April, 1995 or earlier decision of this Court is of any assistance to the petitioner. For all these reasons, the petition deserves to be dismissed. This is the submission of the State and other respondents as well.

23. In this behalf, para 13 of the decision in G.R. Ispat Ltd. (supra) would reveal that after setting out the notification dated 30th September, 1991, the Division Bench observes as under:

13. The benefit of rebate under this notification was available to all industrial units which applied for availing High Tension or Low Tension power supply on or after 1.10.91. This notification remained in force for 31/2 years and it was rescinded by the Government by -notification dated 31.3.95. This notification reads as under:

In exercise of the powers conferred by section 23 read with section 51A 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"

No reason has been assigned by the respondents as to what necessitated the rescission of the earlier Notification dated 30.9.91. It is further curious to note that thereafter the Govt. came out with a notification dated 15.5.96 which was intended to amend the rescinded notification dated 30.9.91. The said notification reads as under:

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 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(1) dated 30th September, 1991, published in the Official Gazette (Extraordinary), Series 1 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, Maria A. Rodrigues, Under Secretary (Power). Panaji 15th May, 1996.

(Emphasis added).

It will thus be seen that the amendment in effect is nothing but an addition of words "Extra High Tension". There is no other change. It is pertinent to note that this Notification is issued without apparently reviving the Notification dated 30.9.91 which was rescinded by Notification dated 31.3.95. In this connection Shri Shanti Bhushan made a twofold submission viz.; (i) that the Notification dated 30.9.91 was still subsisting and in force and (ii) that it was operative for those industrial units which had already become entitled to the benefit of rebate under it. On a careful consideration, we find much force in the submission. If the notification dated 30.9.91 was rescinded by the notification dated 31.3.95 for all purposes, then what was the necessity of amending it by a later notification and that too without reviving it? The rescission only means that the rebate scheme was given up from 1.4.95 and that the new industrial units could not apply after 1.4.95 to get the rebate benefit. The amendment of the notification dated 30.9.91 after its rescission on 31.3.95 clearly indicates that it was very much in existence and operation for those industrial units who had already become entitled to get the rebate benefit under it.

24. There is merit in the submissions of Mr. Kantak that the Division Bench rested its conclusion on the foundation that even if the 30th September, 1991 notification was rescinded with effect from 1st April, 1995, yet, the amendment post rescission vide notification dated 15th May, 1996, indicates that it was very much in existence and operation for those industrial units which had already become entitled to get benefit of rebate. The same conclusion is reiterated in para 35 of (sic) is judgment which reads thus:

35. (IV) Withdrawal of rebate scheme, whether barred by Promissory Estoppel or justified by Financial crunch?

The rebate scheme of granting 25% concession in power tariff to industrial units as declared by the Notifications dated 30.9.91 and 1.8.96 was withdrawn by the Government by issuing notification dated 31.3.95 and 24.7.98 respectively. We

pointed out in para 12 above as to how the notification dated 30.9.91 continued to be operative even after its recession by the notification dated 31.3.95. It is not necessary to repeat that discussion here. Under both the notifications the rebate benefit was intended to be given for a period of five years from the date of which supply of power was made available to the concerned units. However, the petitioner companies did not start getting the actual benefit from the dates of their respective availment of power supply. The grant of rebate remained on paper only till 12.12.95 when for the first time guidelines were framed inter alia for the actual giving of the 25% rebate. As pointed out the rebate was not to be given in cash but was to be adjusted against the electricity bills by installments for a period of five years. This adjustment was started from September, 1996 only and was discontinued with immediate effect as per the Circular dated 31.3.98. It will thus be seen that none of the petitioner companies could get the full amount of rebate and what was received by them was not more than 18 or 19 installments only. In respect(sic) of some of the petitioner companies w(sic) received the power supply after Sept(sic) 1996, the number of such installments (sic) be still lessee. Five things this (sic) from the above facts and (sic)

1. The actual benefit of the rebate scheme did not start from/on the date of availment of power supply by the concerned industrial units.
2. The actual implementation of the rebate scheme was started from September, 1996.
3. The scheme was withdrawn before the completion of five years period as stipulated in the notification.
4. The accumulated amounts of rebate due to the petitioner companies as on 1.4.98 were not adjusted fully.
5. The suspension of the rebate scheme thus operates with retrospective effect since the rebate accrued and due to the petitioner companies prior to 1.4.98 has been suspended.

25. In the subsequent judgment delivered in the case of Alcon Cement Company Vs. State of Goa and M/s. MRF Ltd. Vs. State of Goa, another Division Bench of this Court was considering the challenge to the withdrawal of the 25% rebate by the State and denial of the benefit of the earlier Division Bench judgment delivered on 21st January, 1999. The petitioners before this Court in the subsequent Division Bench judgment made a fresh demand for rebate and as they failed to obtain it, they sought directions for implementation of the judgment dated 21st January, 1999 for their remaining period of entitlement of five years i.e. upto 31st July, 1998. The same stand as in these matters, was taken by the State and while dealing with it, the Division Bench referred to the earlier judgment and the conclusions therein. In paras 12 and 13 of its judgment delivered on 19th/23rd and 24th April, 2001 and in paras 15 and 16 it held thus:

15. However, we are mindful of the fact that in Writ Petition No. 316/98, we have

today held that the Notification dated 15th May, 1996 and 1st August, 1996 could not be termed as Government decisions and they are void ab initio. The said findings thus come in the way of the present petitioners, even though, they have relied upon our earlier judgment which has merged with the order of the Supreme Court. We have noted in our judgment (sic) Petition No. 316 of 1998 that the is-(sic)ng the legality, validity and propriety of the said Notifications was not an issue raised and considered by this Court in the earlier batch of petitions and which was apparent in terms of the order passed by this Court in Miscellaneous Civil Application No. 637/99 on 27th January, 2000. In view of our findings in Writ Petition No. 316/98, we do hold that the petitioners cannot claim the benefit of these Notifications dated 15th May, 1996 and 1st August, 1996 and they are entitled for the benefit of 25% rebate in tariff on the basis of the Notification dated 30th September, 1991 only for the period from the date of supply of electricity till 31st March, 1995.

16. In the result, the writ petitions are partly allowed and it is held that the petitioners are entitled for rebate of 25% in tariff on the basis of the Notification dated 30th September, 1991 for the period from the date of supply of electricity till 31st March, 1995 and we direct the respondents to extend the said benefit if it has not been already done.

Rule made absolute accordingly with no order as to costs.

26. The Judgment of the Division Bench in Manohar. Parrikar's case, namely, Writ Petition No. 316 of 1998 came to be challenged before the Hon''ble Supreme Court and the Supreme Court in para 3 onwards of its judgment delivered on 3rd May, 2010, noted the factual position and in para 19 framed the questions of law and particularly, whether, the High Court by issuing directions to effect recovery of rebate granted on the basis of 1996 Notifications has over ruled decisions of earlier Division Bench. While dealing with the challenge and answering these questions, this is what the Hon''ble Supreme Court holds:

24) The High Court by its judgment impugned herein has elaborately dealt with each of the contentions of the parties before it Before the High Court the writ petition filed in public interest was opposed on various grounds. It was preliminarily objected to and opposed on the ground of maintainability which was dealt with by the High Court holding as under: -

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 were 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 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. 316/98 alongwith the other batch of writ petitions, but the said prayer was withdrawn. In the said batch 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. 316/98. 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. 316/98 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 initiation of 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. 316/98 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/ 98. 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 admitted that none of the declarations or directions in Writ Petition No. 316/ 98 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 present writ petition in question are 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.

28) The issue of merger has no bearing in the facts and circumstances of the present petitions, since, the issue that was decided by the High Court in the earlier batch of writ petitions and the issue that was raised and considered in the subsequent public interest litigation is entirely different Secondly, in our view, the

principles of res judicata is also not attracted since the issue raised and considered in the subsequent public interest litigation had not been raised and considered in the earlier round of litigation. It would be worthwhile to recall the observations made by this Court in the case of Madhvi Amma Bhawani Amma and Others Vs. Kunjikutty Pillai Meenakshi Pillai and Others, , wherein the Court has observed that in order to apply general principle of res judicata, Court must find, whether an issue in a subsequent suit, was directly and substantially in issue in the earlier suit or proceedings, was it between the same parties, and was it decided by such Court. Thus, there should be an issue raised and decided, not merely a finding on any incidental question for reaching such a decision. So, if such issue is not raised and if on any other issue, if, incidentally any finding is recorded, it would not come within the periphery of principle of res judicata. However, Shri K.N. Bhatt, learned Senior Counsel appearing for the former Power Minister, would submit that the principles of res judicata and constructive res judicata bars the exercise of jurisdiction by the High Court as there is a bar not only on issues directly raised in a previous list but the issue that ought to have been raised. It is further submitted that the record of decision culminating in notification dated 24.3.1998 was available and produced before the High Court in previous writ petitions and the same Finance Secretary who had opined in his cabinet note that Rules of Business stood violated due to non-consultation with Finance Department had filed affidavit in previous writ petitions on the decision to issue notification dated 24.7.1998. Therefore, the learned Senior Counsel would contend that the High Court has erred in deciding this issue against his respondent. In aid of this submission, the learned Senior Counsel has pressed into service the observations made by this Court in the case of (State of Karnataka Vs. All India Manufacturer Organization and ors.)⁹, 2006 DGLS (soft) 234 : (2006)1 S.C.C. 32.

29) We are not impressed by the submission of the learned Senior Counsel Shri K.N. Bhatt. In our view, the subject-matter of earlier writ petitions was completely different and distinct from the public interest litigation filed by Mr. Manohar Parrikar. In the earlier writ petitions, the challenge was against notification and the circulars issued by the State Government and in the present writ petitions the High Court was primarily concerned with validity or otherwise of the notifications dated 15.5.1995 and 1.8.1996. Therefore, we are of the view that the reasoning and conclusions reached by the High Court, on the aforesaid issue is in accordance with law and in accordance with the principles laid down by this Court. Therefore, we agree with the conclusion reached by the High Court.

27. Further, in paras 64, 65, 66, 67, 68, the Hon''ble Supreme Court held thus:

64) It is in this legal background that the issues raised before us have to be dealt with. The High Court has examined the files placed before it by the State Government and noted the facts reflected by the said records. As recorded by the High Court, the rebate of 25% in power tariff was sought to be withdrawn by the State Government with effect from 1.4.1995 pursuant to a Cabinet meeting

held on 21.7.1994 and a Notification dated 31.3.1995 was issued therefor. The 1st respondent's motion in the State Assembly for a calling attention notice evidently moved the State Government to evolve a Scheme for grant of rebate of 25% for the period between 1.10.1991 to 31.3.1995. The Power Minister therefore on 8.7.1995 called upon the Chief Electrical Engineer to formulate such a scheme who prepared accordingly a note regarding the propose scheme. Since the earlier Notification was rescinded by the notification dated 31.3.1995, a clarification was sought from the Law Department on the extension of the period of rebate of 25%. On 25.8.1995, a note was put up by the Law Department indicating that the 25% rebate would be available only for the period between 1.10.1991 to 31.3.1995 and industrial units supplied with power on/or after 31.3.1995 would not be entitled for the same. On 14.2.1996, the Chief Electrical Engineer submitted a note containing a proposal to amend the rebate notification requesting to extend the benefit of the rebate of 25% to Extra High Tension consumers and sought approval thereof. The said draft when referred to the Law Department for its opinion, it was opined thereon that it was legally impermissible to give retrospective effect to the proposed notification. However, though the said amendment was approved by the then Power Minister, the same was not given effect to in view of the elections scheduled on 2.5.1996. On 3.5.1996, the Power Minister passed an order to issue the amendment Notification as by then the elections were over and the notification dated 15.5.1996 was accordingly issued, though the subject-matter was never placed before the Council of Ministers or of the Chief Minister. The Notification was issued solely on the directions of the Power Minister despite the opinion of the Law Secretary that retrospective effect to the proposed amendment could not be given as it involved additional class of consumers of power, which is in violation of the Business Rules of Government of Goa. Therefore, the said notification is unsustainable and the High Court has rightly held it be non-est and as void ab initio.

65) The Power Department once again took up the subject of re-introduction of 25% of rebate in power tariff at the instance of the Industries Department and in view of the continued demands from the Industrial Units for such a rebate. This was considered by the Power Department and proposal therefor was called from the Chief Electrical Engineer. A query was also raised regarding the role of the Industries and Electricity Departments in issuing the eligibility certificates. A note dated 25.7.1996 submitted by the Chief Electrical Engineer indicated that such certificates shall be issued by the Electricity Department as it was that Department which was giving the subsidy. Thereafter, the Commissioner and Secretary (Power) submitted a detailed note on 30.7.1996 to the Minister of Power and the latter conveyed his approval with the substitution of words "all industrial units who apply for availing power on or after 1.10.1991" with the words "all industrial units who apply or avail on or after 10.1.1991" and the rebate was to be given on the energy charges on the prevailing tariff from time to time as against the earlier notification where the rebate of 25% was to be

given on tariff as per notification dated 27.6.1988. As per the decision/approval of the Power Minister, the notification dated 1.8.1996 came to be issued without there being any consultation with the Council of Minister or without the consultation with the Finance Department, though the draft of the notification was referred to the Law Department before its issuance.

66) It is also to be noted that by the notification dated 1.8.1996 the State Government intended to re-introduce the benefit of 25% rebate in power tariff. If the State Government as a policy decision desired to re-introduce the said rebate, it was imperative that the said decision complied with the requirement of a Government decision and that it did not remain a Departmental Order of Instruction. The High Court has recorded after verifying the notes on record that the re-introduction of rebate was initiated at the instance of Industries Department and that the proposal for re-introduction attracted the provisions of Rules 9 and 10 of the Business Rules and it did not seek the concurrence of the Finance Department. From the file produced before it the High Court has found that the decision was finalized by the Power Minister at his level without any reference to the Council of Ministers of the Chief Minister. The High Court has also referred to the Statement in writing given by the Chief Minister to the Investigating Officer during the course of investigation launched pursuant to the complaint given by the 1st respondent, that the Power Minister at no point of time had placed the proposal regarding decisions dated 15.5.1996 and 1.8.1996. This apart, from the records the High Court finds that the agency to certify the eligibility of industrial units for concessional tariff was yet to be identified and the issue whether the rebate for the period between 1.10.1991 to 31.3.1995 was to be made available as per the notification dated 27.6.1988 or with reference to the tariff prevailing from time to time. The note dated 8.7.1996 is referred to by the High Court. The High Court also refers to the reply of the Electrical Engineer dated 10.7.1996 wherein it was clarified that only the prospective industrial consumers who has applied and availed power supply on or after 1.10.1991 were eligible for concession. From the note of the Commissioner and Secretary, Department of Power dated 30.7.1996 the High Court records that the certification/verification of the industrial units could be done by the Electricity Department as the concession was to be extended by the said department to the consumers. The said note refers to the meetings held in the chamber of Minister of Power. The note also mentions about a constitution of a Screening Committee consisting of the Secretary of Ministry of Power, the Chief Electrical Engineer, Director of Industries and Joint Secretary, Finance to ensure that only genuine and bona fide claims are entertained and paid the rebate and also examine and verify all doubtful claims. The note also refers to a decision taken in one of such meetings to the effect that rebate should be given to 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 recommendations made by the Chief Electrical Engineer. The recommendations and/or the decisions did have bearing on the finances of the State Government and also amounted to change in policy

decisions. Even then neither did the Minister of Power think it is proper and appropriate to place the proposals before the Council of Ministers or the Chief Minister, nor did the Secretary concerned deemed it appropriate to do so. The proposals were finalized by the Power Minister at his level as per the modifications suggested by him on 30.7.1996 which in our opinion are in violation of the Business Rules. 67)

The High Court has perused the files relating to the issue and from them it has noticed that the file was forwarded to the Development Commissioner on or about 17.3.1998 as they were required for preparation of reply to a question in the Assembly and the Commissioner on 25.3.1998 submitted a note referring to the complaint filed by 1st respondent herein alleging illegalities and corruption in the matter of grant of rebate. The complaint of the 1st respondent was about the amendment of the notification dated 31.9.1991 which had been rescinded by the notification dated 31.3.1995 and he had alleged that the amendment was made with a mala fide intention of including a specific category of consumer and the amending notification had led to manipulation of records to the extent that some people had attempted to become beneficiaries of the Scheme within the notified period of 1.1.1991 and 31.3.1995. The note of the Commissioner raised certain issues relating to grant of rebate to industrial units after 31.3.1995. As per the objections raised in the note the cases of units which had applied for power but could not be supplied with power by 31.3.1995 were to be referred to the State Government. However, it was later decided to leave it to the Chief Electrical Engineer to allow release of said subsidy to all such units. The note of the Commissioner had also raised an issue touching upon the number of industrial units entitled to subsidy and the liability per month on that count and fixed the same at Rs. 80 lakhs per month and opined that the total amount of the subsidy by way of adjustment of bills would be in excess of Rs. 50 crores. Having regard to these aspects the note suggested suspension of the rebate scheme immediately until the legal issues were sorted out. On 3.4.1998, the Joint Law Secretary gave his clarification after examining the matter in the light of the provisions of the Electricity Act and opined that a Cabinet Decision was necessary for suspension of the rebate scheme and that before the notification dated 1.8.1996 was issued it required a decision of the cabinet and the concurrence of the Finance Department as it fell within the meaning of a policy decision involving financial applications. The note in conclusion said that the notification dated 1.8.1996 was not in accordance with law and this conclusion was agreed to by the Law Secretary. The Development Commissioner further felt that in view of this lacuna in the notification dated 1.8.1996, the matter required a review by the Cabinet and that it should be taken to the Cabinet for its ratification or otherwise. The note of the Commissioner was placed before the Power Minister as the Chief Secretary was away on tour and the Power Minister directed the matter to be placed before the Cabinet and also directed the files of the Finance and Industries Department on the subject to be placed before the Chief Minister for his perusal. The file was placed before the Chief Minister on 27.5.1998 for his

perusal who thereafter called for the opinion of the Finance Department and on the same day the Finance Secretary submitted the opinion of the Finance Department and the next day the matter was placed before the Cabinet. Ultimately, the State Government took a decision to withdraw the benefit of rebate and issued the notification dated 24.7.1998. This apart the material placed by the 1st respondent herein also indicated that there was an attempt to ratify the notification dated 1.8.1996 and the same could have been done but for the legal hurdle and the State Government realised the legal hurdles in continuing with the rebate scheme on the basis of the notification dated 1.8.1996. We fail to understand as to why the State Government did not bring these facts before this Court or the High Court in the earlier round of litigation where its power to withdraw the subsidy in exercise of its power u/s 21 of the General Clauses Act was upheld. Instead it chose to plead financial crunch faced by the State Government as the reason for withdrawal of rebate. It is further to be noted with regard to the notification dated 1.8.1996, that it reintroduced the benefit of rebate on tariff and made it available to units on the prevailing tariff in force from time to time at which the units were billed for a period of five years from the date of supply of power was made available to them and who had applied or availed power supply on or after 1.10.1991. The notification dated 30.9.1991 on the other hand made available the rebate on the basis of tariff set out in the notification dated 27.6.1988 and to Low and High Tension Power Consumers who had applied for supply of power and were given power supply on or after 1.10.1991. The notification dated 1.8.1996, it is seen, extended the scope of benefit of rebate as compared to the notification dated 30.9.1991 which had been rescinded by the notification dated 31.3.1995. It is on record and we notice from the judgment of the High Court that the State Government had paid as a result of the notification dated 1.8.1996 a sum of Rs. 8 crores in excess as compared to the benefit available under the notification of 1991 and the total amount of rebate would have been more than 30 crores had the benefit as made available by the 1996 notification been continued.

68) Thus from the foregoing, it is clear that a decision to be the decision of the Government must satisfy the requirements of the Business Rules framed by the State Government under the provisions of Article 166(3) of the Constitution of India. In the case on hand, as have been noticed by us and the High Court, the decisions leading to the notifications do not comply with the requirements of Business Rules framed by the Government of Goa under the provisions of Article 166(3) of the Constitution and the Notifications are the result of the decision taken by the Power Minister at his level. The decision of the individual Minister cannot be treated as a result of the decision of the individual Minister which are in violation of the Business Rules are void ab initio and all actions consequent thereto are null and void.

28. From these observations, it is apparent that the issue was of far greater and vital public importance. The Supreme Court had indicted the State for not having brought to the notice of the earlier Division Bench of this Court, which decided

the writ petitions of parties like the petitioners in January 1999, that the cabinet ratification was not on record. It had rescinded the notification in exercise of its powers u/s 21 of the General Clauses Act. There was no case of financial crunch but the reasons were otherwise as noted in the Supreme Court's decision. It is in this context that in Manohar Parrikar's case, the challenge to the notifications dated 15th May, 1996 and 1st August, 1996 succeeded and it was declared that these notifications were void ab initio. Once these notifications were void ab initio, then, conclusions based thereon as rendered in the earlier decision cannot have any binding legal effect. The notifications dated 15th May, 1996 and 1st August, 1996 were heavily relied upon as is clear from what we have reproduced above. Once these notifications could not have been relied upon as they were void ab initio, then, the judgment of the subsequent Division Bench in the Manohar Parrikar's case cannot be brushed aside and particularly because it was rendered by a Division Bench of this Court taking cognizance of PIL. The judgment in Manohar Parrikar's case has been upheld by the Hon'ble Supreme Court and its observations and conclusions have been reproduced by us above.

29. In view thereof, we have no hesitation in rejecting the contentions of Mr. Aney that the entitlement of the petitioner was for a period of five years and the rescission with effect from 1st April, 1995 cannot adversely affect them. We are of the view that the notification dated 30th September, 1991 has been rescinded with effect from 1st April, 1995 and, therefore, the petitioner cannot claim rebate benefit at the rate of 25% from 2nd December, 1991 till 1st December, 1996. Their entitlement has been rightly restricted to the period commencing from 2nd December, 1991 till 31st March, 1995. It will not be proper to ignore the judgment of the Division Bench in Manohar Parrikar's case and in Alcon's case (supra) on the spacious plea that the petitioner M/s. Marmagoa Steel Ltd is not a party thereto. To our mind, accepting this argument would mean that a judgment delivered by a Division Bench of this Court in a PIL and confirmed by the Supreme Court has no binding effect at all. The binding effect of such judgments cannot be decided on a technical consideration of the present petitioner being a party thereto or not. Once the judgment is rendered in a PIL which covered all aspects including entitlement of the parties like the petitioners and the conclusions are far reaching and of general public importance, then, we would be failing in our duty if we do not abide by the said judgment. Even otherwise, it will be contrary to judicial discipline.

30. Even if we were to accept the argument of Mr. Aney and other Counsel that the judgment in Alcon's case and MRF case will not bind the petitioners before us, yet, we cannot be unmindful of the fact that the view taken in Manohar Parrikar's case binds us, all the more because it has been upheld by the Supreme Court. That apart, by its own weight and by virtue of Article 141 of Constitution of India, the law laid down by the Supreme Court is binding on all. Article 141 of the Constitution of India states that the law declared by the Supreme Court shall be binding on all courts within the territory of India. In a decision reported in 2000 DGLS (soft) 1742 : AIR 2001 S.C. 499 (Government of

Andhra Pradesh & ors. Vs. A.P. Jaiswal & ors.)¹⁰, the Hon'ble Supreme Court while outlining the importance of consistency and judicial pronouncement observes thus:

24. Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedents, principle of stare decision etc. These Rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice, which we see in plenty in this case. This Court in the case of S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, held thus at pages 24-25 of AIR S.C.W:

At the outset, we must express our serious dissatisfaction in regard to the manner in which the Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law from the foundation of administration of justice under our system. This is a fundamental principle which ever Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A sub-ordinate Court is bound by the enunciation of law made by the Superior Courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to larger Bench if it disagrees with the earlier pronouncement.

31. In the light of these observations and principles laid down by the Hon'ble Supreme Court, we are of the view that independent of Division Bench judgment in Alcon and MRF's case, the findings and conclusions of the Supreme Court in Manohar Parrikar's case, to which our attention has been invited concludes the controversy.

32. We are of the view that the petitioner is not entitled to claim rebate at the rate of 25% beyond 31st March, 1995. The calculation and computation as made by the BDR Committee on this account does not require any alteration or interference by this court.

33. Further, we are of the view that the second submission of Mr. Aney also is

devoid of any substance. The rebate rate is of 25% on the power tariff as prescribed by the notification dated 27th June, 1988. It is this notification which is referred to in the Government notification dated 30th September, 1991. It is the rate specified in this notification which will be the governing rate and the rebate at 25% will have to be computed on that basis. Merely because it contains a stipulation that the tariffs are subject to revision by the Government from time to time, does not mean that the wording of the notification dated 30th September, 1991 should be given a go by. That notification shows that the rebate of 25% in the tariff chargeable under the Government notification dated 27th June, 1988 for a period of five years. Therefore, the tariff chargeable under this notification dated 27th June, 1988 is the relevant and governing rate and basis. In any view of the matter, it will not be possible to go into these arguments at such a belated stage and when the said notification has been rescinded with effect from 31st March, 1995. The guidelines and the 1996 Notifications do not survive. Therefore, the 1991 Notification above is relevant and decisive. Any opinion on this issue would be purely academic and in the light of the principle of finality of decisions and judgments, it is too late in the day to permit the petitioner to raise the contentions about the tariff.

34. Equally untenable is the argument with regard to the delayed payment charges. There may be some substance in this plea because the Division Bench judgment dated 21st January, 1999 holds that the petitioner raised a bona fide dispute and did not neglect to pay the power tariff, yet, we are determining the controversy in the backdrop of the challenge to the demand notice issued in 2011. That demand notice has been issued because the State promulgated Act VIII of 2002, That Act permits the State Government to recover benefits availed by certain consumers as 25% rebate under the Indian Electricity Act, 1910. The validity of that Act had been upheld by the Hon'ble the Supreme Court of India. The recovery is to be done in the manner provided by the Act. The benefits already availed of by certain consumers as 25% rebate in terms of the notifications dated 15th May, 1996 and 1st August, 1996 can be recovered. The petitioners are agitated by the fact that the benefits were not passed on to them in time. If they are not extended timely and expeditiously but belatedly, then, levy and recovery of delayed payment charges is arbitrary and unreasonable according to them.

35. The argument is that for this belated payment, the petitioners could have demanded interest at 24%. Therefore, the action initiated to recover the delayed payment charges is highly inequitable and it should not be permitted. The petitioners have pointed out the working of the delayed payment charges in this behalf.

36. On the other hand, the learned Advocate General has invited our attention to the billing details. He has emphasised the fact that the BDR Committee has computed the amount on the basis of the terms and conditions on which the electrical energy is supplied and which authorised the Department to levy and

recover the charges. Whenever the bills quantifying these charges were forwarded, on the own showing of the petitioners on some occasions, they deducted the rebate to the extent of 25% as permissible by the Notifications and then made payment. Therefore, the entire sum has not been remitted and paid. Now, any deduction is held to be impermissible. Infact, the law authorised recovery of the rebate already extended. Hence, according to the respondents, there is nothing illegal or arbitrary in levy and recovery of the delayed payment charges. That is permissible as per the terms and conditions of supply.

37. On perusal of the entire material, we are in agreement with the learned Advocate General. The dispute about the bills cannot be made subject-matter of these petitions. The petitions impugn the demand notice on the foundation that the benefit of 1991 Notification has not been extended in terms thereof. Once that aspect has been dealt with by us and we have found no substance in the contentions of the petitioners in that behalf, then, it will not be proper for us to scrutinise the bills. That would mean, that we can decide the disputes in relation to the bills and the amounts stated therein in writ jurisdiction. The bills have been raised long time back. The bills have been paid. The petitioners have not raised any dispute when the bills were raised and received. The petitioners have now sought to raise this dispute and that too by relying upon certain communications. From the petition and its annexures, it appears that on 20th February, 2010 the petitioner referred to their earlier replies and urged that they have perused and verified the charts given by the office of the Executive Engineer, vis-a-vis, the bills issued for the period commencing from December, 1991 to November, 2009. The first chart of bill shows the calculation of demand charges billed for the period of illegal disconnection. The period of disconnection is stated to be 24th June, 1998 to 14th August, 1998. They have raised a plea that the present status of arrears as actual billing is not correct.

There are certain discrepancies highlighted in red and the figures as per bills are marked in blue in corresponding column in chart includes this letter. This letter to the extent relevant reads thus:

The chart depicting the present status of arrears as actual billing, HT-74, is not correct. There are certain discrepancies therein which are highlighted in red and the figures as per the Bills are marked in blue in the corresponding column in our chart enclosed herein. The correction of these anomalies and discrepancies are material to arrive at correct figures. The Bill amount, alleged arrears, total bill amount and amount paid by MSL, mentioned in your said chart does not match/ corroborate the amount shown and paid as per the bills issued to us.

Also your chart shows adjustment of 1%/4% rebate benefit and part of the 25% rebate installment against the said alleged arrears. As per the notification issued granting the said 1%/4% rebate, the said rebate is to be given on the demand and energy charges mentioned in the bill. It is not to be adjusted against the arrears, if any. So also your office has adjusted the 25% rebate installments against the arrears. Since the said arrears are in dispute at every point of time

and your office has adjusted the rebate installments so far given against the said disputed arrears, you have taken away the entire rebate benefit of 1%/4% and 25% and we have not received any rebate benefit for the entire period from December 1991 to November, 2009.

All the remaining charts mentioned at serial Nos. 3, 4 and 5 above are prepared by taking the figures mentioned in the chart at serial No. 2 and since the chart at serial No. 2 itself does not have correct figures all the remaining charts have to be reworked as well.

38. In the petition the only averment with reference to Annexure P-9 is that the total bill amount and the amount paid since December 1991 by the petitioners is not tallying with the figures in the actual bills issued for the period December 1991 to January, 2010. Then, there is reference to Annexure P-10. However, in our limited jurisdiction we cannot go into the dispute as regards the alleged discrepancies in the bills. In writ jurisdiction, we cannot undertake an exercise which is completely factual in nature. The petitioners have not availed of any remedies which were available to them in law to challenge the bills nor raised any dispute otherwise. They have not pointed out the alleged discrepancies at any time prior to the communications referred to above. In such circumstances and when no relief can be claimed in writ jurisdiction and it is also not claimed in this petition, we cannot take any cognizance of the grievances as regards the errors in calculation to the extent of the delayed payment charges. The delayed payment charges, calculated as interest at 24% per annum, have been levied according to the respondents in terms of the powers conferred by the Electricity Act and in accordance with the terms and conditions on which the supply of energy was made. In these circumstances, we are unable to accept the contentions of Mr. Aney in this behalf in our limited jurisdiction. This is not a Court where a fact finding enquiry can be conducted. This Court cannot, merely on the basis of the version now raised by the petitioners, go into the details of the amounts mentioned in the bills and find out whether the calculation and computation is correct or not. The remedy to dispute calculations and computations lies elsewhere. In such circumstances in the peculiar facts of this case, the petitioners can approach the BDR Committee and point out the discrepancies and errors, if any, in the calculations and computations with regard to the delayed payment charges. The petitioners can approach the said Committee within a period of two weeks from the date of receipt of a copy of this order. If the petitioners so approach, the BDR Committee to consider their grievance with regard to the calculations, limited only to the extent of the delayed payment charges and if satisfied that there is substance in the said grievance, the Committee and the respondents to then make such changes as are necessary in the amount sought to be recovered under the demand notices. This exercise be completed by the BDR Committee within a period of four weeks from the date the petitioners approach it. This will take care of the apprehension, if any, of the respondents that the petitioners may utilise this concession to stall the recovery under the subject demand notices. Needless to further add that the

Committee shall also ascertain the actual period of the delayed payment and consider whether the rate of interest and the manner of such calculation is in accordance with the relevant provisions of law including the provisions of The Goa (Prohibition of Further Payments and Recovery of Rebate Benefits) Act, 2002 after giving an opportunity to the petitioners of being heard. All contentions in that regard are left open.

39. As a result of the above discussion and subject to the above, we do not find any substance even in the third contention. We are of the view that even the judgments cited by Mr. Aney cannot be considered in the peculiar facts of this case. There is no controversy as far as the interpretation of the notifications in question. Therefore, the learned Advocate General is right in urging that these decisions are clearly distinguishable.

40. In the result, subject to the above direction, the writ petition fails. Rule is discharged accordingly but without any orders as to costs. In view of the dismissal of this petition, for the same reasons Writ Petition No. 240 of 2011 also fails. The same is dismissed accordingly.