

(1991) 02 KAR CK 0088

In the Karnataka High Court

Case No : Writ Petition No"s. 19028 and 19029 of 1990 etc. and W.A. No. 78 of 1991

N. Giriyappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 05-02-1991

Acts Referred:

Constitution of India, 1950 — Article 166

Citation : (1991) ILR (Kar) 3484

Hon'ble Judges : Mohan, C.J.;Shivaraj Patil, J

Bench : Division Bench

Advocate : Gangadhar R. Gurumath, V.T. Rayareddy and Mohd. Ather, for Kesvy and Co., D.L. Jagadeesh, F.V. Patil, Kaleemulla Shariff, A.A. Angadi, B.M. Gangadharaiah, G. Gangi Reddy, Vigneshwar S. Sastri, M.R. Shailendra, B. Rudragouda, T.R. Rangaraju, Santesh Gureddi, N.K. Ramesh, G.M. Raghunath, H.M. Nagmohandas, S.A. Kalagi, R.B. Anneppanavar, P.S. Mali Patil and C.S. Shanthamallappa, for the Appellant; T.R. Subbanna, Government Advocate for R-1, K. Lakshminarayana Rao, for R-2 and M.T. Nanaiah, R-3, for the Respondent

Judgement

Mohan, C.J.—Since all these Writ Petitions and the Writ Appeal raise identical questions, they are dealt with under common order.

2. The facts which do not admit of any controversy lie in a narrow compass. We will take up W.Ps.Nos. 19028 and 19029 of 1990. The facts of these cases would be sufficient. The petitioners are agriculturists. They obtained loan facilities from the 2nd respondent -the Primary Co-operative Agricultural and Rural Development Bank Ltd., Hospet. The object of the loan was to purchase Tractors for agricultural operations. They bear Tractor Loan Nos. TR/6 and TR/23 respectively. As per the agreement entered into by the petitioners with the Bank, they undertook to pay the interest at 12.5 per cent per annum. A Subsidy Scheme was introduced by the Government of Karnataka in G.O.No. RDC 132 CLS 83 (II) Bangalore, dated 11-4-1983. The instalments for repaying the loan with interest fell due on 30th September and 31st March of every co-operative

year. The petitioners have been regularly paying the same both the principal and interest without default. When the petitioners approached the 2nd respondent and wanted to pay the instalment due as on 30th September 1990, they were orally intimated that the interest subsidy of 5.5 per cent was no more in vogue. They were, therefore, required to pay interest at the rate of 12.5 per cent.

The petitioners, on enquiry learnt that the action of the 2nd respondent in demanding the interest at 12.5 per cent as stipulated was due to the withdrawal of the Notification dated 11-4-1983 by G.O.No. CMW 260 CCB 88 dated 11-1-1990. The withdrawal was with effect from 28-3-1989 in a retrospective manner. Being aggrieved of the demand of interest at 12.5 per cent as a sequel to the Government Order dated 11-1-1990 the present Writ Petitions and the Writ Appeal have been preferred.

3. Two points are raised before us for consideration by all the petitioners.

The first contention that is urged is it is on the basis of the Government Order dated 11-1-1990 the petitioners borrowed loan for agricultural purpose. Where, therefore, on the strength of the representation made in the Government Order, they were obliged to borrow and they had to their detriment acted on that representation, it is not open to the Government to withdraw the subsidy scheme under which concessions were granted on 11-4-1983. Therefore, this is a clear case of promissory estoppel. The same is not permissible in law. Hence the withdrawal is bad. In support of this submission reliance is placed on the Decisions in Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, ; UNION OF INDIA v. ANGLO AFGHAN AGENCIES, AIR 1968 SC 718 @ 726: Para 18 and Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,

The second contention that is urged is, in any event, a Government Order cannot have retrospective application. It can have only prospective application. Only a Legislative has power to pass retrospective legislation. An administrative Government Order can never have retrospective operations. In support of this reliance is placed on Justice G.P. Singh's "Principles of Statutory Interpretation at page 545 as well as the Decisions in Income Tax Officer, Alleppey Vs. M.C. Ponnose and Others, and Sri Vijayalakshmi Rice Mills, New Contractors Co. and Others Vs. State of Andhra Pradesh, . Thus it is contended that the petitioners are entitled to succeed.

4. The learned Government Advocate meets these points by stating that it is true a promise was held out on 11 -4-1983. The effect of it is the Government would be obliged to bear interest of. 5.5 per cent. This is only an incentive for prompt payment. A careful reading of the Government Order dated 11-4-1983 would clearly indicate two important aspects of the matter, namely;

1) To the loans advanced prior to the passing of the Government Order namely, prior to 11-4-1983, this Government Order held out that should the loanees clear off the arrears on or before 30th June, 1983 promptly, this benefit would be

applicable. Therefore, such loanees cannot contend that the principle of promissory estoppel would not apply.

2) In such of those cases where the borrowing was after 11-4-1983, no doubt the Government would be bound by the representation made in the Government Order dated 11-4-1983, but it cannot be contended that this Subsidy Scheme should prevail till such time as the loanees discharge their obligations under the loan. It is well open to the Government to withdraw the earlier Scheme which was nothing more than a concession. The plea of promissory estoppel can be got over by showing valid reasons as to how the continuance of the concessions would not be possible. In so far as the Reserve Bank of India and National Bank for Agriculture and Rural Development (for short NABARD) have clearly indicated that the Subsidy Scheme was against the directive and the Government have no other option but to withdraw. In fact the Reserve Bank of India had written to the Government of Karnataka on 23rd March 1989 that this was not permissible. It was this which obliged the State to withdraw the scheme. Certainly if it is inequitable, if the Government is obliged to extend this concession, the Court will not enforce such a promise. This has been succinctly laid down in *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, . The ratio of this Decision squarely applies to the instant cases".

The further argument of the learned Government Advocate is the petitioners must be deemed to have waived the concession contained in the Government Order dated 11-4-1983 because in spite of the Government Order they entered into a contract with the Bank agreeing to pay 12.5 per cent interest which they could have avoided. In support of this, reliance is placed on the Decision in *Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another*, .

Lastly, it is submitted that an administrative order issued on 11-4-1983 could well be withdrawn even in a retrospective fashion since the petitioners cannot claim the concessions granted under the Government Order dated 11-4-1983 as a matter of right. Therefore, it is submitted that there are no merits in the Writ Petitions and they are liable to be dismissed.

5. As an ameliorative measure to relieve the burden of agriculturists, Government Order dated 11-4-1983 came to be passed. It cannot be gainsaid that the agriculturists throughout India have been bearing heavy burdens. As a matter of fact, we may even describe their position in the celebrated lines of Edwin Markham poetry which epitomise their condition:

Bowed by the weight of centuries he leans,
Upon his hoe and gazes on the ground,
The emptiness of ages on his face,
And on his back the burden of the world.

(Man with Hoe)

6. In order to relieve the financial burden of agriculturists, concessions had been given: One such is the Government Order No. RDC 132 CLS 83 (II) Bangalore,

dated 11-4-1983. From a reading of this Government Order, it is clear that the Scheme was envisaged for subsidising the interest and the concession shown to such of those farmers as an incentive for prompt payment of the dues. It postulates two things which would be evident from the following:

a) Such of those loans which fell due between 1-7-1982 and 30-6-1983, the payment was to be made not later than 30-6-1983.

b) This incentive subsidy will continue to be given to all those who repay their current dues within the due dates fixed by the financing institutions even after 30-6-1983.

7. The distinction between the two kinds of loans will have to be kept in the background since that will have a bearing to determine the applicability of the Doctrine of Promissory Estoppel.

8. Thereafter, what happened was on 29-11-1988 NABARD wrote the following letter;

"Ref No. NB.POD.I.OPR/2465/A.126-88/89. Circular No. NB.POD.I.OPR.25/1988.

29 November 1988 08 Agrahayana 1910(S)

The Managing Director, State Co-operative Banks/ State Land Development Banks All States & Union Territories.

Dear Sir,

Refinance from the National Bank for various purpose -compliance with instructions and policy directives of Reserve Bank of India/National Bank.

As you are aware, National Bank has been providing refinance for (a) short-term/ medium-term loans to SCBs for both agricultural and non-agricultural purposes viz., SAO, approved MT agricultural purposes, conversion of ST loans into MT loans and financing production and marketing activities of handloom and other industrial societies and (b) term loans to SLDBs and SCBs for schematic investment purposes.

The refinance is being made available on highly concessional terms. It has, however, been observed that instructions guidelines issued by Reserve Bank of India/National Bank relating to loan policies and procedures to be adopted by the credit institutions with regard to issue and repayment of loans, interest rates thereon, period of repayment, provision of relief in case of distress, etc., are not being invariably followed by the institutions and many deviations have occurred. Despite repeated requests to desist from such deviations credit institutions have continued to disregard such instructions/guidelines. This has not only vitiated the climate for the smooth flow of credit but has also placed the health and profitability of institutions in jeopardy.

In the interest of credit discipline and the health of credit institutions, it has been decided that refinance for short/medium term loans and long term loans from

National Bank will henceforth be subject to the following conditions.

(a) The regulations and instructions laid down by RBI/National Bank relating to issue and repayment of loans and interest rates thereon are complied with fully and are not contravened directly or indirectly by the refinanced institution or any institution financed by the refinanced institution and;

(b) The instructions issued by RBI/National Bank relating to conversion/rescheduling/deferment of loans or other reliefs are not deviated from.

Refinance will not be available if there is non-compliance with any of the aforesaid conditions.

You are requested to kindly ensure that RBI/National Bank instructions and guidelines are complied with.

Yours faithfully, Sd General Manager."

In pursuance of the above, on 13-12-1988 NABARD wrote as follows to the Karnataka State Co-operative Agriculture and Rural Development Bank Limited, Bangalore:

"COOP/1303/H-1/88-89 13 December 1988 Agrahayana 1910.

Dear Sir

Refinance for short/medium/long term loans.

In continuation of our letter DO No. NB(BL) COOP/1978/H-1 88-89 dated 30 November 1988 on the above subject and also the telephonic conversation our Deputy General Manager, Dr. K.P. Agrawal, had with you on 10th December 1988, we have to observe as under.

It has come to our notice that your bank has not been giving effect to instructions/guidelines issued by RBI/National Bank relating to issue and repayment of loans and interest rates thereon. We are, therefore, discontinuing refinance to your bank with immediate effect unless you provide a written undertaking to us that henceforth you shall abide by the following conditions stated in our Circular letter No. POD- I.OPR.25/1988 dated 29 November 1988;

(a) The regulations and instructions laid down by RBI/National Bank relating to issue and repayment of loans and interest rates thereon are complied with fully and are not contravened directly or Indirectly by the refinanced institution or any institution financed by the refinanced institution; and

(b) the instructions issued by RBI/National Bank relating to conversion/rescheduling/deferment of loans or other reliefs are not deviated from.

Refinance facilities would be restored after receipt of the undertaking. However, non-compliance of any of the aforesaid conditions will result in discontinuance of refinance from us.

If there are any short recoveries as a result of past non-compliance with the instructions issued by RBI/National Bank you will be required to make full recoveries before the end of the calendar year 1989, failing which you will be considered as not complying with the above said conditions and further refinance will be discontinued from 1st January 1990.

Kindly inform us of the action taken by you in this regard.

Yours sincerely, Sd/-."

The Government gave instructions on 28-3-1989 to the Managing Director, Karnataka State Co-operative Apex Bank Ltd., Chamarajpet, Bangalore and to the Managing Director, Karnataka State Co-operative Agriculture and Rural Development Bank Ltd., Tippu Sulthan Palace Road, Bangalore, as under:

Government of Karnataka

No. CMW 260 CCB 88 Date 28-3-1989 From

The Secretary, Co-operation Department, Government of Karnataka, Bangalore

To

1. The Managing Director, Karnataka State Co-operative Apex Bank Ltd., Chamarajpet, Bangalore.
2. The Managing Director, Karnataka State Co-operative Agriculture and Rural Development Bank Ltd., Tippu Sulthan Palace Road, Bangalore.

Sir,

Sub: Refinance from NABARD - Compliance with instructions and Policy directions of RBI/NABARD relating to interest rates - reg.

Ref: i) D.O. Letter No. MD/DO/28455/88-89 dated 15-3-1989 from the Managing Director, Apex Bank Ltd., Bangalore.

ii) D.O. Letter No. AF4/1751-52 88-89 dated 16-3-1989 from the Managing Director, KSCARD Bank Ltd., Bangalore.

In continuation of Government letter of even number dated 25-3-1989 on the subject mentioned above, I am directed to state that in view of the stoppage of re-finance by NABARD to both the Karnataka State Co-operative Apex Bank Ltd., and Karnataka State Co-operative Agriculture and Rural Development Bank on the ground that the interest rates specified by it are not being collected from the Farmers. If refinance is not resumed, credit flow to farmers will be seriously affected.

Therefore, you are hereby authorised to convey to all subordinate co-operative institutions Government instructions that they should abide by conditions stipulated by Reserve Bank of India and National Bank including interest rate in respect of refinance of all short-term, medium-term and long-term loans issued

by you are requested by National Bank under their letter No. POD.I.OPR.2465/A.126/88-89 (Circular No. NB.POD I OPR. 25/1988) dated 29 November 1988.

Yours faithfully, Sd/- I/c Officer on Special Duty Co-operation Department."

On examining these matters, the Registrar of Co-operative Societies, in Karnataka, opined that it might be desirable that the Government subsidy scheme be continued upto 30-6-1989. Therefore, he suggested the following action:

"In these circumstances, the following action is suggested:-

- i) Government Order No. RDC 132 CLS 83-II dated 11-4-1983 should be withdrawn so that the withdrawal come into effect in respect of all loans which have got due dates after 30th June 1989.
- ii) The matter has to be taken up with NABARD that this action in any way will not affect the NABARD stand since NABARD stand to collect full rates has been accepted but the same has been implemented with prospective effect. NABARD stand cannot be implemented with retrospective effect in respect of loans about which the farmers already had an understanding that only 7% interest will be collected. This is necessary to avoid discrimination between farmers.
- iii) A quick decision has to be taken in this regard and communicated without ambiguity to all the officers of the Department, both the Apex institutions and DCC Banks so that the institutions are clear regarding the policy of the Government.
- iv) If it is not possible to have the scheme upto 30-6-1989, then Government has to clearly indicate the cut-off date from which full interest has to be collected according to the rates of NABARD."

It is under these circumstances, the Government issued the impugned Government Order which runs as under:

"PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

Subject: Concessions to farmers for prompt repayment of co-operative current dues - Scheme for subsidising interest payable by the farmers to co-operative agricultural credit institutions.

PREAMBLE:

Government have announced a number of concessions to farmers. Among the concessions announced by the Chief Minister in his Budget Speech on 18-3-1983, one of the concessions relates to the introduction of a scheme for giving interest subsidy to farmers who repay their current dues pertaining to loans taken by them from co-operative institutions within the due dates fixed by the co-operative institutions under short term, medium term, medium term (conversion) and long term loans to the extent of the difference between the loaning rate of the Reserve Bank of India/NABARD to the Co-operative Apex

Bank for providing agricultural credit or the date at which Reserve Bank of India/NABARD contributes to the debentures floated by the State Land Development Bank and the rate at which loans are extended to the farmers by the Primary Agricultural Credit Societies and the Primary Land Development Banks respectively. With regard to loans that become due during the co-operative year 1982-83, this interest subsidy will apply to co-operative loans that become due between 1-7-1982 and 30-6-1983, provided the payment is made before 30-6-1983. The interest subsidy at the rate of 1 per cent at the DCC Bank level and 1/2 per cent at the level of the Karnataka State Co-operative Apex Bank is expected to be borne by the institutions by reducing their margins to that extent for Short Term, Medium Term, Medium Term (Conversion) loans. In the case of Long Term loans interest over and above 7 per cent will be given as subsidy to the Primary Land Development Banks. In the case of the weak DCC Bank its share of one per cent will be subsidised by Government, till the Bank is removed from the weak bank list.

ORDER No. RDC 132 CIS 83 (II) Bangalore, Dated 11th April 1983.

Sanction is accorded to a scheme for subsidising the interest payable by the farmers over and above the concessional interest rate given by the Reserve Bank of India/National Bank for Agriculture and Rural Development to the Co-operative Apex Bank in the case of short term, medium term, medium term (conversion) loans and over and above the rate at which the Reserve Bank of India/NABARD contributes to the debentures floated by the State Land Development Bank, provided the farmer clears his current dues along with the interest payable by him. The farmer will, therefore, be required to pay only 7 per cent interest on his borrowings from the co-operative institutions pertaining to the current demand. The difference between the 7 per cent and the interest charged to the farmers by the co-operative institutions will be treated as a subsidy given to the farmers. Out of this amount, one per cent will be given by the DCC Bank as a rebate for prompt payment by reducing its margin in respect of short term, medium term, medium term (conversion) loans at one per cent and 1/2 per cent respectively. The balance of the difference will be given by the Government as subsidy to the farmers.

In case of the following weak DCC Banks, the Government will bear the financial liability of 1 per cent.

1. Bangalore 7. Raichur 2. Bellary 8. Hassan 3. Bijapur 9. KCCB Dharwad 4. Chitradurga 10. Shimoga 5. Gulbarga 11. Tumkur 6. Kolar In respect of loans and loan instalments that become due on any day during the co-operative year 1982-83. This concession is applicable to such category of loans/installments which become due (and not to cover due loans) on any day between 1-7-1982 and 30-6-1983 provided the payment is made before not later than 30-6-1983. This incentive subsidy will continue to be given to all those who repay their current dues within the due dates fixed by the financing institutions even after 30-6-1983.

The Assistant Registrar of Co-operative Societies of the concerned sub-divisions will sanction to the institutions, the interest subsidy payable by Government and countersign the bills presented by the societies concerned, after obtaining the required information regarding the claims, in the format annexed to the Order.

There is no budget provision and no head of account to meet the proposed expenditure under the scheme. A new head of account is indicated to incur the expenditure initially under Contingency Fund Advance, as this will attract the character of a "New Service" and this will be debited to the following new head of account. The Finance Department will issue separate orders, sanctioning the drawal of the amount from Contingency Fund.

298 Co-operation-5 Credit Co-operatives-I-B General-A State Sector Scheme XXV-Incentive interest subsidy for prompt repayment of short term/medium term, medium term (conversion) and long term loans (non-plan) during the financing year 1983-84.

This order issues with the concurrence of Finance Department No. FD 553 EXP II 83 dated 5th April 1983.

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

Sd/- Officer on Special Duty, R, D & C Department."

In this background we will examine the applicability of the Doctrine of Promissory Estoppel. To such of those loans which were advanced prior to 11-4-1983, there is no possibility of invocation of this doctrine. This is, for the simple reason that no representation was made to the loanees and they acting on their representation to the detriment did not arise. In other words, on the basis of a subsequent Government Order they cannot contend that the principles of Promissory Estoppel could apply to loans taken prior to this date.

9. Then the question is as to whether this Doctrine could be invoked to loans taken after 11-4-1983. It has already been seen that the incentive Subsidy under the Government Order dated 11-4-1983 was continued to be given to all those who repaid their current dues within the due dates fixed by the financial institutions even after 30-6-1983. If, therefore, on the basis of the representations, loans were obtained by farmers and if this incentive Subsidy is to be discontinued, they could well contend, as is contended before us by the petitioners, that the Doctrine of Promissory Estoppel would apply. Therefore, the question would be whether the Government was justified in withdrawing this incentive Subsidy and thereby get over the Doctrine of Promissory Estoppel. As the learned Government Advocate rightly contends that this concession could be withdrawn provided the Government makes out a case that it would be inequitable to require the Government to continue this concession against public interest. The clear authority on this point is Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., . In that Ruling it was categorically held as follows after an analysis of the various Cases relating to Promissory Estoppel at page

388:

"It would be most inequitable to allow the Excise Authorities to assess excise duty on the basis that the value of the cigarettes manufactured by the respondents should include the cost of corrugated fibreboard containers, when it was clearly represented by the Central Board of Excise and Customs in response to the submission made by the Cigarette Manufacturers' Association - and this representation was approved and accepted by the Central Government - that the cost of corrugated fibreboard containers would not be includible in the value of the cigarettes for the purpose of assessment of excise duty."

We consider that the ratio of the above Decision fully applies to the facts of the instant cases. We have already referred to the circumstances under which the concession came to be withdrawn. That was because of the clear instructions of the Reserve Bank of India and the NABARD. As a matter of fact, the Government Order itself very clearly states the stoppage of re-finance by the Reserve Bank of India and the NABARD has immediate implications for State's agricultural operations. That was why the State Co-operative Agriculture and Rural Development Bank was advised on 28-3-1989 to abide by the conditions stipulated by the Reserve Bank of India/NABARD and collect interest from the loanees at the rates specified by the NABARD. Therefore, it will be inequitable to require the State to continue this incentive subsidy scheme. From this point of view, we do not find any scope for application of the Ruling in Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, . That was a case in which when concessions were withdrawn, it was argued on behalf of the Assistant Commissioner of Taxes that the withdrawal became necessary because of misuse of those concessions. The Court held in paragraph 4 as under:

"The first contention of the learned Counsel for the appellants in that the doctrine of Promissory Estoppel was not applicable in the present case because it was found by the Government of Karnataka that the concessions granted under the said order dated 30th June 1969 were being misused and undue advantage was being taken of the same. It was submitted by him that in view of this, it would not be proper to hold the Government to the promises or the assurances it had given under the said order dated 30th June 1969. We are afraid it is not possible to accept this submission. No counter-affidavit was filed by the appellant before the trial Court in the Writ Petition. Beyond the statement of Counsel, there is nothing to show that any misuse was made of these concessions or undue advantage taken of the same. It is true that the preamble to the order dated 12th January 1977 does recite that the concessions given by the earlier order had given room for many types of misuse but such a recital by itself cannot establish that the concessions were, in fact, misused. If that were so, it was the duty of the Government and the concerned authorities to file a counter-affidavit and place the relevant facts establishing the misuse before the Court. This they have totally failed to do, It is well settled that if the Government wants to resile

from a promise or an assurance given by it on the ground that undue advantage was being taken or misuse was being made of the concessions granted the Court may permit the Government to do so but before allowing the Government to resile from the promise or go back on the assurance the Court would have to be satisfied that allegations by the Government about misuse being made or undue advantage being taken of the concessions given by it were reasonably well established. In the present case, there is nothing on record to show that any such misuse was being made or undue advantage taken of the said concessions by the newly established industries. The Government, had, therefore, failed to establish the requisite ground or the basis of which it might be allowed to go back on its promise. The first submission of the learned Counsel for the appellants must, therefore, fail."

Therefore, this Case is clearly distinguishable. As to what the Government has to establish in such cases of withdrawal has been stated in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, as follows:

"Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the Rule of Law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden."

In our considered view, the withdrawal of the incentive Subsidy Scheme by the impugned Government Order fully answers the requirement laid down in the above Case. Thus we conclude that there is no Promissory Estoppel.

10. The next question is, whether the Government Order could be retrospective in its operation. It is well settled in law that only the Legislature has got the plenary powers of legislation to legislate prospectively or retrospectively. With regard to retrospective nature of subordinate legislation, we need only refer to the following passage in Justice G.P. Singh's "*Principles of Statutory Interpretation*" at page 545:

"Power may be conferred to make subordinate legislation in the shape of rules, bye-laws, etc. which have retrospective operation. Such a power may be either

conferred in express words or may be inferred by necessary implication. In the absence, however, of an express or necessarily implied power to that effect, subordinate legislation, be it a rule, bye-law or a notification, cannot have retrospective operation."

Then again at page 546 it is stated:

"But a notification, which has the effect of creating a penal liability, cannot have retrospective operation. It need hardly be emphasised that even when there is power to make a retrospective rule or notification, the well accepted rule of interpretation is that in the absence of express words or necessary implication a rule or notification takes effect from the date it is issued and not from any prior date. Merely because a notification "substitutes" something in a prior notification, the substitution cannot have any retrospective operation."

In this regard we will refer to Sri Vijayalakshmi Rice Mills, New Contractors Co. and Others Vs. State of Andhra Pradesh, it was observed as follows:

"It is a well recognized rule of interpretation that in the absence of express words or appropriate language from which retrospectivity may be inferred, a notification takes effect from the date it is issued and not from any prior date. The principle is also well settled that statutes should not be construed so as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the Amending Act came into force. [See Nani Gopal Mitra Vs. The State of Bihar,

Another Ruling which has a bearing on the point is Income Tax Officer, Alleppey Vs. M.C. Ponnoose and Others, . The Head Note reads as under:

"By issuing notification in exercise of powers conferred u/s 2(44)(ii), the State Government cannot invest the Tahsildar with the powers of a Tax Recovery Officer with effect from a date prior to the date of the notification i.e., retroactively or retrospectively. Consequently, the attachment of shares belonging to assesses in order recover arrears by the Tahsildar, subsequent to 1st April 1962 i.e., commencement of the Act of 1961 but prior to the date of notification empowering him as a tax Recovery Officer is invalid.

It is open to a sovereign legislature to enact laws which have retrospective operation. The Courts will not ascribe retrospectively to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation, it will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the Courts that the person or authority

exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect.

It can hardly be said that the notification empowering Tahsildar to act as Tax Recovery Officer, promulgates any rule, regulation or bye-law all of which have a definite signification. The exercise of the power under Sub-clause (ii) of Clause (44) of Section 2 is more of an executive than a legislative act. The only effect of the substitution made by the Finance Act is to make the new definition a part of the Act from the date it was enacted. The legal fiction cannot be extended beyond its legitimate field and the words "shall be and shall be deemed always to have been substituted" occurring in Section 4 of the Finance Act 1963 cannot be construed to embody conferment of a power for a retrospective authorisation by the State in the absence of any express provision in Section 2(44) of the Act itself."

In view of this clear pronouncement, there is no need to refer to the Rulings in T.R. KAPUR v. STATE OF HARYANA, 1986 (Supp) SCC 584; N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, and Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., .

11. It should also be taken into consideration that the effect of retrospective operation would be, the loanees would be required to repay the difference in interest. This will not only be harsh but would offend all principles of equity. They cannot be asked to disgorge the benefit they had received unaware of a future Government Order which came to be passed on 11-1-1990. Accordingly, we conclude that the Government Order being administrative in character, no doubt issued in the name of the Governor as required under Article 166 of the Constitution, cannot have retrospective operation.

12. In the result, we hold as follows:

(1) The Government Order No. CMW 260 CCB 88 dated 11-1-1990 is valid and is not affected by doctrine of Promissory Estoppel.

(2) It would be operative only from 11-1-1990 prospectively.

(3) To the extent it gives retrospective operation with effect from 28-3-1989, it is invalid.

These cases are allowed to the extent indicated above. No costs. In view of this, no orders are necessary in W.A. No. 78 of 1991.